

**LANDS TRIBUNAL ACT 1949**

*LEASEHOLD ENFRANCHISEMENT – price payable for freehold of house – leasehold vacant possession value without right to enfranchise – relationship between leasehold and freehold values – appropriate yield for deferring reversion – LVT approving yield suggested by landlord’s valuer – Landlord’s valuer contending for a lower yield before Lands Tribunal – whether landlord entitled to appeal on question of yield – appeal and cross-appeal dismissed – Leasehold Reform Act, 1967, s9(1C).*

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

**BETWEEN**

**CADOGAN HOLDINGS LIMITED**

**Appellant**

**and**

**RICHARD PENRHYN POCKNEY**

**and**

**ANTOINETTE ELIZABETH POCKNEY Respondents**

**Re:**

**57 Shawfield Street,  
London SW3 4BA**

**Before: N J Rose FRICS**

**Sitting at 48/49 Chancery Lane, London WC2A 1JR  
on 30 January, 2, 12, 13 and 27 February 2004**

The following case is referred to in this decision:

*Sinclair Gardens Investments (Kensington) Ltd v Franks*, 1998 76 P & CR 230

The following further cases were also cited:

*Langinger v Cadogan*, LRA/46/2000, unreported.  
*Blendcrown v The Church Commissioners*, LRA/50/2003, unreported.  
*Thiery v John Lyon's Charity*, LRA/44/2002, unreported  
*Cadogan v Cecil*, LRA/10/2000, unreported.  
*Sharp v Cadogan*, LRA/33 & 35/1997, unreported.  
*Howard de Walden Estates Ltd v Dioszeghy*, LRA/9/2000.  
*Wellcome Trust v Romines* [1999] 3 EGLR 229.  
*Phyllis Trading Ltd v 86 Lordship Road Ltd*, LRA/16/1999, unreported.  
*West Midland Baptist Trust v City of Birmingham* [1968] 2 QB 188, 210.  
*W. Clibbett Ltd v Avon CC*, 1976 (237) EG 271.  
*Stein v Trustees of Eyre Estate*, LRA/11/2000, unreported.  
*Land Securities v Westminster City Council* [1993] 1 WLR 286.  
*Cadogan v Hows* [1989] 2 EGLR 216  
*Crofton Investment Trust Ltd v Greater London Rent Assessment Committee* [1967] 2 QB 955.  
*Porter v Magill* (1998) 96 LGR 157.  
*Swann v White* [1996] 1 EGLR 199.  
*Maryland Estates Ltd v 63 Perham Road Ltd* [1997] 2 EGLR 198.  
*Verkan & Co Ltd v Byland Close (Winchmore Hill) Ltd* [1998] 2 EGLR 139.  
*Daejan Properties Ltd v Weeks* [1998] 3 EGLR 125.  
*Trustees of the Eyre Estate v Saphir* [1999] 2 EGLR 123.  
*Carl v Grosvenor Estates* [2000] 3 EGLR 79.  
*Howard de Walden Estates Ltd v Moreau* LRA/2/2002, unreported.  
*Tanfern Ltd v Cameron-Macdonald* [2000] 1 WLR 1311.  
*Asiansky Television v Bayer Rosin* [2001] EWCA Civ 1792.  
*Assicuraziani Generalia v Arab Insurance Group* [2002] EWCA Civ 1642  
*Capelo v Barstow Investments Limited*, LRA/31/2002, unreported  
*Gallagher Estates Ltd v Walker* (1973) 28 P & CR 113

*Kenneth Munro*, instructed by Penberton Greenish, solicitors, for the Appellant.  
*Katharine Holland*, instructed by Pinsents, solicitors, for the Respondents.

## DECISION

### Introduction

1. This is an appeal by Mr Richard Penrhyn Pockney and Mrs Antoinette Elizabeth Pockney, the underlessees of a house known as 57 Shawfield Street, London SW3 4BA (“the appeal property”) and a cross-appeal by the freeholder, Cadogan Holdings Limited, against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel (“the LVT”), determining the price to be paid for the freehold interest under the provisions of section 9(1C) of the Leasehold Reform Act 1967 as amended (“the 1967 Act”) at £462,854. It is agreed that, out of the total enfranchisement price, £242 is payable to the head lessee. By order of this Tribunal the appeal and cross-appeal were consolidated and the freeholder treated as the appellant. Before me the appellant contended for a price of £530,000 and the respondents’ figure was £414,674.

2. Mr Munro, counsel for the appellant, called two expert witnesses, namely Mr A J McGillivray, a partner in Messrs W A Ellis, and Mr K D Gibbs, FRICS, an associate of Messrs Gerald Eve and one witness of fact, Mr C N Carter-Pegg, MSc, MRICS. Miss Holland, counsel for the respondents called one expert witness, Mr J Shingles, practising as Justin Shingles Ltd. She also called, as witnesses of fact, Mr S S Wortley, Mr C L Manton, Dip LA, FRICS, Mr G P Hollamby MRICS and Mr J E J Gambles, MRICS. Finally, she produced a witness statement from Mr J J Murphy, which was not challenged.

### Facts

3. Mr Gibbs and Mr Shingles produced a statement of agreed facts, in the light of which I find the following facts. Shawfield Street is a quiet one-way residential street in Chelsea; regarded as a prime central London location. It runs parallel with and is adjacent to Flood Street and Radnor Walk and adjoins the King’s Road at its northern end and Redesdale Street at the southern end. The road is approximately 750m west of Sloane Square and the area is well served by the main bus routes of the King’s Road and Royal Hospital Road as well as the underground at Sloane Square. The street is close to the King’s Road and other excellent shopping areas.

4. The appeal property is a modern end of terraced house built in about 1970. It is arranged on basement, ground and three upper floors (the top being an attic floor) with an integral garage for one car and a walled east facing rear garden. The house is of traditional brick construction with suspended wooden floors under tile clay pitched roof with dormer windows front and now rear. The exterior of the building is an attractive traditional style with a reproduction stone course to the ground elevation and timber sliding sash windows with glazing bar. The gross internal area including the garage but net of tenant’s improvements is 2,605 sq ft (242 m<sup>2</sup>). The additional gross internal area of tenant’s improvements is 40 sq ft (3.74 m<sup>2</sup>).

5. The date of valuation is 11 June 2002, when the respondents' lease had an unexpired term of 32.54 years and the appeal property was in good repair and decorative condition throughout.

6. By a head-lease dated 29 September 1971, Nos.49 to 57(odd) Shawfield Street were demised to Dovemill Properties Limited for 65 years from 25 December 1969 at a fixed rent of £1,000 per annum exclusive. That part of the head-lease relating to No.55 was surrendered to the underlessee on 18 April 1986 and the head rent reduced to £800 per annum exclusive.

7. The underlease of the appeal property was dated 16 December 1971. It was on a full repairing and insuring basis for 65 years less three days from 25 December 1969 at a fixed rent of £225 per annum exclusive.

8. A licence dated 8 March 1993 permitted the then underlessee to carry out an internal reorganisation of the basement, ground, first, second and third floors and to provide a new rear dormer window.

9. I inspected the appeal property on 11 March 2004.

### **Issues**

10. It is agreed that the unimproved freehold vacant possession value of the appeal property was £1,750,000, that the head rent should be capitalised at 6.5% and that the marriage value is to be apportioned equally between the freeholder and the tenants. It is also agreed that the value of the head leasehold interest is £242. The disputed valuation matters before me were the unimproved leasehold vacant possession value and the rate at which the reversion should be deferred.

11. The differences between the valuation of Mr Gibbs (Appendix 1) and that of Mr Shingles (Appendix 2) are summarised in the following table, which also includes the determination of the LVT upon these issues:

	<b>Mr Gibbs</b>	<b>Mr Shingles</b>	<b>LVT</b>
Leasehold value	£1,024,000	£1,186,313	£1,090,000
Deferment rate	5¼%	6%	6%

### **Leasehold value**

12. Mr McGillivray said that his firm had been instructed to advise Gerald Eve on the open market vacant possession value of the leasehold interest in the appeal property. Although Mr

Gibbs also gave detailed evidence on of this aspect of the valuation, he in fact adopted Mr McGillivray's figure of £1,024,000.

13. Mr McGillivray's firm specialises in all aspects of residential property in the Mayfair, Belgravia, Knightsbridge, Kensington and Chelsea areas of inner London and has practised from offices in the same terrace of property in Brompton Road since 1868. He joined the firm in 1972 and became a partner in 1975. Since joining WA Ellis he has been responsible for running the house sales department and has provided valuation advice in connection with a considerable number of leasehold reform cases over the past fifteen years. He and his partners are normally instructed to advise the Cadogan Estate on open market value issues arising from all leasehold reform claims against the Estate. His firm has a similar role advising the Ilchester Estate and acts in addition for a great many private landlords and claimants.

14. Mr McGillivray said that he had only been able to identify one sale of a lease of similar length to that of the appeal property which was of any assistance in establishing the leasehold value at the relevant date. That was the sale of 36 Shawfield Street, a modern house situated immediately opposite the appeal property. It has a west facing garden and the additional advantages of off-street parking for one car in front of the house and four bathrooms. In August 2002 it was in poor decorative condition and still had the original bathroom and kitchen fittings. It had been occupied by an elderly person and there was an invalid lift on the staircase between the ground floor and basement.

15. 36 Shawfield Street was sold in July 2002, very close to the relevant valuation date, with the benefit of a claim under the 1967 Act. The purchaser paid £1.35m for a lease with 32.65 years unexpired and immediately entered into negotiations to acquire the freehold. An enfranchisement price of £537,500 was subsequently agreed. This gave a total figure for the freehold of £1,887,500, or £1,925,000 if the purchaser made an allowance for costs and risk.

16. Mr McGillivray continued:

"I have valued the leasehold by reference to the John D Wood and Co/Gerald Eve (1996) graph of relativities. I have referred to this graph on many occasions before the Leasehold Valuation Tribunal and have consistently used the graph in valuing leasehold houses for sale in my role as an estate agent. My firm also maintains a table of relativities which was born out of our experience in the market place prior to the Act covering all houses. It is similar to the John D Wood and Co/Gerald Eve (1996) graph.

In my role as an estate agent, if I am called upon to value a house with an enfranchisable lease, my first step is to value the property freehold.

The next step is to calculate the likely cost of enfranchisement. I would firstly make a deduction for any improvements and secondly use the John D Wood and Co/Gerald Eve (1996) graph applying the appropriate relativity to the unimproved freehold value to arrive at an unimproved leasehold value. If the lease has an onerous ground rent and/or onerous rent reviews I would make a further deduction as the graph assumes a nominal rent.

With these adjusted freehold and leasehold figures, I would calculate the likely cost of enfranchisement.

My advice to the client would be to expect to achieve a figure which approximates to the improved value of the property less the cost of enfranchisement. This is my unerring approach in every such case.

The relativity for the lease of 36 Shawfield Street with 32.65 years unexpired, with a low rent, (according to the John D Wood & Co/Gerald Eve (1996) graph) is 58.65%, giving a leasehold value for 36 Shawfield Street of £1,107,019 (if working from a freehold value of £1,887,500) or £1,129,000 (if working from a freehold value of £1,925,000).”

17. Mr McGillivray then pointed out that, if the total price paid for 36 Shawfield Street had been £1,887,500, there was difference of 7.86% between the freehold values of Nos.36 and 57. If the total price had been £1,925,000, including costs and risk, the difference was 10%. He continued:

“It follows, therefore, that there should be a corresponding difference in the leasehold values of the two properties given the fact that their leases are for virtually identical terms.

If the difference of 7.86% is adopted, the leasehold value of 57 is 7.86% less than the leasehold value of 36. As the leasehold value of 36 is £1,107,019 the leasehold value of 36 (sic) should be £1,026,000 ( $£1,107,019 \div 107.86\%$ ).

The same result is achieved if a difference of 10% is adopted. The leasehold value of 36 in this instance, is £1,129,000 and the corresponding leasehold value of 57 is £1,026,000 ( $£1,129,000 \div 110\%$ ).

36	£1.925m freehold	£1,887,500 freehold
57	£1.75m freehold	£1.75m freehold
Difference	10%	7.86%
	£1.925m freehold	£1.887m freehold
Relativity	58.65%	58.65%
	£1,129,000 leasehold	£1,107,019 leasehold
	$\div 110\%$	$\div 107.86\%$
	= £1.026m	£1.026m

The reason my leasehold valuation of 57 Shawfield Street (£1,024,000) is £2,000 lower than the above result, is that there is a small difference in the length of lease of the two properties and consequently a small difference in relativity. The lease of 36 Shawfield Street has 32.65 years unexpired whereas 57 has 32.54 years unexpired and their relativities according to the John D Wood/Gerald Eve (1996) graph are 58.65% and 58.5% respectively.”

18. Mr McGillivray also analysed the price of £800,000 that the respondents had paid for the enfranchiseable leasehold interest in the appeal property in May 1999, three years prior to the relevant valuation date. In order to relate this price to conditions on the valuation date, he used an average of the FPD Savills Prime Central London Residential Index PCL South West and PCL Houses. Applying this average to the figure of £800,000 produced a value of £1,195,476 at the relevant date. From that figure he deducted £100,000, representing his assessment of the value of the tenant’s improvements, leaving £1,095,476, say £1,095,000.

19. Mr McGillivray then made an adjustment for the fact that the lease was three years shorter at the valuation date. The John D Wood/Gerald Eve (1996) graph showed a relativity for a 35.5 year lease of 61.5% and for a 32.54 year lease of 58.5%. The figure of £1,095,000 using these relativities indicated a leasehold value, including the right to enfranchise, of £1,041,585, say £1,042,000. This value was £18,000 more than his valuation of the lease without the right to enfranchise. Mr McGillivray said that he had no doubt that the right to enfranchise was worth significantly more than £18,000. He accepted, however, that indexing forward over a period of three years was not satisfactory and could introduce error.

20. In the course of cross-examination Mr McGillivray said that, whilst he considered that the freehold value of 36 Shawfield Street lay in the bracket between £1,887,500 and £1,925,000, the latter figure “sits more comfortably” with the evidence.

21. Mr Shingles trained as an estate agent with Chestertons from 1981, primarily in their Chelsea office between 1983 and 1987. He joined Strutt and Parker as a partner in October 1987 to set up their London residential agency business. In September 1996 he established their professional department to concentrate primarily on leasehold reform negotiation. At the end of June 2000 he left Strutt and Parker to set up his own business, again specialising in leasehold reform work. He has conducted many negotiations, primarily on the Cadogan, Crown, Grosvenor and Wellcome Trust Estates, as well as other estates elsewhere.

22. Mr Shingles used the price paid for the lease of 36 Shawfield Street as the starting point for his leasehold valuation of the appeal property. He then deducted 7½% to reflect the value of the right to enfranchise (“the value of rights”) and a further 5% to reflect the differences between the two properties. His calculation was as follows:

36 Shawfield Street leasehold sale	£1,350,000
Less rights @ 7.5%	<u>£ 101,250</u>
Value of lease excluding rights	£1,248,750
Less 5% for differences	<u>£ 62,438</u>
	<u>£1,186,313</u>

23. He arrived at the value of rights in two ways. Firstly, he applied the pattern which he said had emerged over the past 10 years as the appropriate discount for rights for differing lease lengths since the coming into operation of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), This table showed the following discounts:

Remaining years	% discount
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**unexpired**

5-10	30
10-15	20
20-25	15
25-30	10
30-40	7.5
40-50	5
50-60	2.5
60 +	Nil

24. The subject lease had 32.54 years unexpired and therefore fell in the 30-40 year bracket. Mr Shingles said that his table “fits” or “sits correctly” with the pattern displayed by the following settlements and determinations by the LVT and the Lands Tribunal:

<b>Property</b>	<b>Length of unexpired Lease</b>	<b>% Discount</b>	<b>Comment</b>
F 14-18 Sloane Court East	13	15	W A Ellis for landlord (Cadogan)
3 @ 17-21 Sloane Court West	13	15	Gerald Eve
31 Lennox Gardens	14.35	20	LVT decision
31 Lennox Gardens and other references	13	20	E-mail from Robert Orr-Ewing of Knight Frank
23B and D Cadogan Square	23½/24	12½	Agreed W A Ellis for landlord (Cadogan)
Flat 7, 8 and 9, 14-15 Ennismore Gardens	23.64 to 24.38	12½	LVT decision
20 Ennismore Gardens	29	10	Agreed W A Ellis for landlord (Wellcome Trust)
<b>SUBJECT</b>	32.54		
7 Clunie House, Hans Place (Langinger v Cadogan)	43	5	LT agreed with LVT decision against landlord (Cadogan) trying to overturn 7% on appeal.
36 Chester Row	46.083	5	George Pope for Grosvenor allowed 5% for rights

25. Mr Shingles’s second method of valuing the right to enfranchise was to deduct £101,250, or 25% of £405,000, which he said was the marriage value ascribed to the appeal property by the LVT. This was exactly the same as the allowance based on his table of discounts, although arrived at by a different route.

26. Like the LVT, Mr Shingles then made a further deduction of 5% to reflect the fact that No.36 was a larger property in a better position, with additional bathroom accommodation, a west facing garden and off-street parking in addition to an integral garage. He thus arrived at a value for the tenant’s existing leasehold interest of £1,186,313. That figure was 67.79% of the value of the freehold with vacant possession.

27. In order to provide a check, Mr Shingles produced a diagram incorporating a number of graphs which had been prepared by various firms of surveyors practising in Central London. This showed the relationship to freehold value of a 32.5 year lease ranging from 56% to 70%. Mr Shingles pointed out that his relativity of 67.79% fell within the upper parameter of this “graph of graphs”.

28. In the course of cross-examination, Mr Shingles agreed that he was not aware of any case in which a prospective purchaser of an enfranchisable lease had calculated his bid on the basis of a percentage of marriage value. He added that he did not adopt that approach in practice, but relied on his table of deductions.

29. Mr McGillivray clearly thought that it was relevant to his valuation approach to establish the relationship between the freehold values of Nos.36 and 57. In fact, however, the effect of the calculation referred to in paragraph 17 above is that No.36 played no effective part in his valuation. This is because he reduced the leasehold value, based on the freehold value of No.36, by a percentage precisely equal to the difference in value between 36 and 57. Thus, whether the difference in value between 36 and 57 was 5% or 50%, he would always have arrived at the same leasehold value for 57 – before adjustment for the small time difference – of £1,026,000. That value is based simply on the application to the agreed freehold value of £1,750,000 of the John D Wood and Co/Gerald Eve (1996) graph.

30. The reliability of that graph has been questioned. Following the departure of Mr Pope, the former chairman of John D Wood and Co, Mr Hollamby of that firm wrote a letter about the graph to the Grosvenor Estate, who were by then being advised by Mr Pope. He said:

“I am sorry to say that I have never been able to find any market evidence to support the percentages provided in this table. Furthermore, I have collected the details of nearly 500 enfranchisement settlements (produced by firms including Cluttons, Daniel Smith, Chesterton, Boston Carrington Pritchard and W A Ellis) and valuation tribunal decisions and an analysis of these decisions seems to point to the percentages given in this table as being abnormally low.

I am enclosing for your information a graph on which is shown trend lines plotting the average level of settlements according to data provided by:

1. Agents (such as my firm and Boston Carrington Pritchard) who normally represent tenants;
2. Agents (such as Cluttons Daniel Smith, Chesterton and W A Ellis) who normally represent landlords;
3. Published Leasehold Valuation and Lands Tribunal decisions; and
4. The Gerald Eve/John D Wood table.

As you will see, the data produced by tenants’ agents follows the line of tribunal decisions very closely. The average level of settlements according to landlords’ agents is rather lower but the Gerald Eve/John D Wood line is very clearly at odds with what most agents and the various tribunals seem to think appropriate. The discrepancy becomes particularly obvious with the shorter lengths of lease and a 20

year lease, for example, is shown as having a value of 43% on the Gerald Eve/John D Wood line whereas according to the Tribunals and tenants' agents it should be about 57%.

Although I have asked Ian McPherson at Messrs Gerald Eve, and also George Pope, for detailed information on how the table was prepared, I am afraid that I have not obtained anything that has been sufficient to allay my concerns. I understand that George has retained all our Grosvenor Estate files and so I have not been able to see the specific evidence that was utilised ...

I have discussed my concerns with my Managing Director and, in the circumstances, I am afraid that I have to tell you that the "Gerald Eve/John D Wood" table no longer has the support of my firm. I hope that you will appreciate that we cannot allow ourselves to continue to be associated with a report or table of values in which we do not have full confidence and in respect of which we are no longer in possession of the relevant files. If you decide that you do still want to utilise it, therefore, I would be most grateful if you could delete our name from any reference to it that might appear in the future."

31. Quite properly, Mr Gibbs drew the Tribunal's attention to the fact that John D Wood had disassociated themselves from the graph. Mr McGillivray, however, did not consider it appropriate to refer to the matter, even though he cannot fail to have been aware of John D Wood's concerns. For him to have relied on a particular graph, without at the least indicating that it had been disowned by one of its two compilers, was regrettable. Nor did Mr McGillivray refer at any stage to the "graph of graphs" which was included in Mr Shingles's report, and which was inconsistent with the John D Wood/Gerald Eve graph.

32. In his report, Mr McGillivray said "I have included all facts which I regard as relevant to the opinions I have expressed and I have drawn to the attention of the Tribunal all matters which would affect those opinions." Clearly, that statement was inaccurate.

33. I now turn to Mr Shingles's evidence. He used the price paid for the lease of No.36 to arrive at the leasehold value of the appeal property. In doing so, he applied his own chart to arrive at the percentage which should be deducted for the value of rights. He then produced a list of nine settlements or determinations, which were consistent with or lower than the percentages in his table. In the course of his evidence in chief he referred to a further two decisions of the LVT, which again supported or were lower than the percentages in his table.

34. In the course of his opening submissions, Mr Munro queried why Mr Shingles had chosen the settlements and determinations that he had. He produced a list of LVT decisions, in which specific percentage deductions had been made for rights. With one exception, Mr Shingles did not refer to any of the additional decisions that had been produced when he gave evidence in chief. I calculate that, of the 21 settlements and decisions which were referred to by Mr Shingles and Mr Munro, only seven showed discounts for rights which were consistent with Mr Shingles's table, eight showed a lower discount and six showed a higher discount. Mr Munro put it to Mr Shingles that, far from producing a pattern of discounts which

was consistent with Mr Shingles's table, the totality of LVT decisions did not produce a pattern at all. To this Mr Shingles replied

“Quite a number do fit the pattern.”

35. Again, it is to be regretted that Mr Shingles did not take steps to refer in his evidence in chief to all relevant settlements and decisions. Nevertheless, it is clear that he was wrong, and in effect acknowledged himself to be wrong, in contending that his chart did fit the pattern of such evidence.

36. Mr Shingles's second valuation method was to take 25% of what he said was the marriage value determined by the LVT. This is not a method that he adopts in his practice and I therefore disregard it.

37. Several firms of surveyors have produced charts indicating the relationship to freehold value of leases of different lengths. In the case of the appeal property, having approximately 32.5 years unexpired, the relationships shown vary from 56 per cent to 70 per cent. Mr McGillivray has adopted 58.65 per cent, which is close to one extreme and Mr Shingles has chosen 67.79 per cent, which is close to the other. Having seen and heard both valuers giving evidence, I have concluded that Mr McGillivray has underestimated and Mr Shingles has overestimated the value of the leasehold interest. Mr McGillivray's valuation is £1,024,000 and that of Mr Shingles is £1,186,313. I am unable to find that the degree of error is greater in one case than in the other and I conclude that the value of the leasehold interest is mid-way between the two figures at £1,105,000.

## **Yield**

38. At the LVT hearing, Mr Gibbs suggested that the freehold reversion should be deferred at 6% and Mr Shingles considered that the appropriate rate was 6½%. The LVT decided that Mr Gibbs's figure was right. Before me, Mr Shingles reiterated his opinion that the appropriate rate was 6½%, but he said that the respondents did not seek to challenge the figure determined by the LVT. Mr Gibbs, on the other hand, argued that a rate of 5¼% should be adopted.

39. Miss Holland submitted that the appellant was not entitled to appeal on the question of yield, for two reasons. Firstly, the issue had not been challenged in the grounds of appeal attached to the appellant's notice of appeal. Secondly, the LVT had determined that the rate of 6% suggested by the appellant was correct and at no stage had the appellant contended for a deferment rate of 5¼% before the LVT. I indicated that I would allow the appellant to adduce evidence in support of 5¼%. In arriving at that decision, I had regard to rule 36(1) of the Lands Tribunal Rules 1996 which states:

“On the hearing of an appeal under Part III or of an application under Part V, the appellant or applicant may rely only on the grounds stated in his notice of appeal,

statement of case or application unless the Tribunal permits additional grounds to be put forward.”

40. The appellant’s statement of case was dated 12 September 2003. It indicated that Mr Gibbs would give evidence that the value of the freehold should be deferred at 5¼%. It therefore appeared to me that the effect of rule 36(1) was that the appellant was entitled to argue for a deferment rate of 5¼%, even though it had previously been prepared to agree to a higher figure.

41. Mr Gibbs said that he was not aware of any open market evidence of yields for long leasehold single houses in Central London. This was because any transactions in the market would have had regard to the ability and likelihood of a sitting tenant, or now even an investor taking advantage of the 1967 Act by serving a notice to buy the freehold or extend the current lease.

42. Mr Gibbs referred to four sales of residential investments in postal districts SW3 and SW1, where Mr McGillivray had given evidence that the net returns from assured shorthold tenancies averaged 3.2%.

43. He also produced a copy of the “UK Residential Research Bulletin” produced by FPD Savills and dated October 2002, some four months after the relevant date. Within the section entitled “Prime Central London Residential Market Rents” and under the heading “How low can prime London yields go” it stated:

“The average net yield from prime Central London residential property, which allows for ongoing property and management costs, currently stands at 2.8%. This is well below the cost of finance and highlights that investors are seeking capital growth to boost their returns. However, as we have already commented, investors are still entering the market looking to diversify their assets away from equities. If they are cash buyers, or have very low levels of gearing, then the weakness of the rental market will not be of much concern. By the end of the year, we expect net yields to stand at 2.75%.”

44. The accompanying graph indicated the downward trend in net residential yields in prime Central London from approximately 6.8% in 1993 to below 3% in 2002.

45. Mr Gibbs said that it had become common practice to value houses and flats in highly regarded central London areas for leasehold reform purposes at 6%. It was significant that this rate had continued to be applied during the previous 10 years, a period when returns on Central London residential property and other alternative forms of investment had been falling. The relatively low income returns from such property had been balanced by growth in capital values of over 1,000% or an average of over 11% per annum over the last 23 years, including the last significant downturn in 1990-1991.

46. Where property investments offered the prospect of significant future growth in rental income and/or capital value, it gave them a relative advantage over fixed interest investments, such as long dated gilts, for which yields (at 4.8%) were historically low at the valuation date compared with their movement over the previous 28 years, without any potential for dynamic growth and subject to erosion by inflation. Further, the influence of the economies of the European Union with historically lower interest rates had been a significant factor reinforcing the established trend to lower interest rates in Great Britain and at the valuation date this appeared set to continue.

47. Mr Gibbs produced a graph which indicated these trends over the previous 26½ years. It showed movements in mortgage rates, annual inflation and long dated gilts. Throughout that period mortgage rates varied between approximately 15% and 5.7% and were near their lowest at the valuation date. Thus the cost of borrowing was at its cheapest for more than 26 years. Mr Gibbs's graph also showed the overall trend in long dated gilt yields based on the rate at the beginning of each year. The overall range was from 15.5% in 1983 down to 4.8% at the valuation date. Finally, the graph showed the annual rate of inflation based on the rate each January, again from 1975 to date. At the valuation date, annual inflation at 2½% was very close to the lowest at any time since before 1974. Furthermore, the Government was committed to maintaining low inflation.

48. Mr Gibbs said that it was important to recognise that the prices achieved in the market for residential ground rent investments had themselves been influenced by the effects of the 1967 Act. Thus the 6% deferment yield now almost universally adopted on prime Central London estates, and the prospect of enfranchisement subject to the restrictive statutory provisions, would have increased the yields required for such investments on the open market. The relevant statutory provisions were a fixed valuation date, the requirement to disregard improvements and the tenant's opportunity to have the price for the freehold determined by the LVT.

49. The effect of the last provision was that the tenant was given a significant advantage compared with a free negotiation between a willing landlord and a willing tenant. Under the statutory regime, the landlord was unable to test the maximum price which the tenant would be prepared to pay by threatening to withdraw from the transaction because the tenant's offer was inadequate.

50. Although Mr Gibbs had been aware of these factors for some time, he had not been able to find convincing evidence to support his contention for a lower yield. He had, however, now become aware of an investment which was based exclusively on residential ground rents. He produced a copy of the prospectus of the Freehold Income Trust sponsored by Close Property Investment that was available at the valuation date. The yield on the offer price at 1 April each year had fallen from 11.5% in 1995 to 5.6% in April 2002. Despite paying a projected gross income of 5% per annum, the capital value of the fund had increased by 45.24% since 1993. This was despite the capital from the fund having been eroded by sales of extended leases or freeholds, in order to obtain the 5% return from a minimal ground rental income.

51. Although the rental income to the fund was nominal, in practice growth could be generated by sales in the open market or a premium from rearranging leases; granting consents; insurance commissions or disposals to sitting tenants. The same possibilities would arise with the appeal property. Mr Gibbs said that although the yield on the trust units was 5.6% in April 2002, that was based on a wide range of houses and flats throughout the country, not on a modern house with garden and garage in a prime area of Central London. He had little doubt that the suggested differential of 0.35% would be appropriate to reflect such a locational advantage.

52. It was important to remember that even the Freehold Income Trust was influenced by the provisions of the 1967 Act. Thus, to the extent that the element of capital growth reflected in the yield resulted from enfranchisement or the grant of extended leases under the 1967 Act, that would also reflect the historically high yields that had continued to be applied in enfranchisement negotiations on the main Central London estates.

53. Mr Gibbs considered that residential ground rent investments in Central London had certain advantages compared with other property investments and gilts. These included exceptional security of net income, minimal outgoings or liabilities, the potential to release capital before the expiry of the term and historically good capital growth.

54. He produced a copy of the Savills index of Prime Central London South West houses. This showed capital growth averaging 8.9% per annum over the last 16 years, including the slump of 1989-1992 (FPD Savills Central London Residential Statistical Supplement Quarter 3 2003). He said that this capital growth contrasted with the much less impressive rental growth which was indicated by comparing the FPD Savills Prime Central London South West houses capital value index with the rental value index. This showed that capital growth had averaged 12.4% per annum for the last five years, whereas rental growth had been only 7.7% per annum. The graph on page 5 of the FPD Savills October 2002 Research Bulletin indicated net yields on residential investments in prime central London falling from a peak of 6.8% in 1993 to under 3% in 2002. The indices showed that rental returns had been more uncertain than capital growth. Indeed there had been five years of reduction in rental value of up to 12%, but only three years where there had been relatively small falls (between 0.75% and 2.75%) in capital value. Thus, if investors were prepared in 2002 to accept net yields down to under 3% in this part of Central London, when yields would have been more than twice as high nine years earlier, it was in his view appropriate to assume that investors would have accepted a reduction in yield of only  $\frac{3}{4}$ % (from 6% to  $5\frac{1}{4}$ %) for the same type of property but let on low ground rents and which still offered the benefits of security and growth with less volatility.

55. Mr Gibbs said that the increased attraction and interest in residential investments at the valuation date was further illustrated by figures reported by IPD, the property analyst. According to an article in Estate Gazettes on 25 May 2002 entitled "Residential beats all asset classes",

"Residential property outperformed all other asset classes in 2001 with a total return to investors of 17.1%.

According to figures published in the IPD's first fund-based index, institutions are also demonstrating a much greater appetite for residential.

Ian Cullen, joint managing director of the IPD, unveiled the findings from a survey of 6,783 houses and flats worth £683m at a meeting on Tuesday in London's Stationers' Hall.

The performance of residential investments compared with a commercial property return of 6.7% and an equities return of -13.2%. Gilts produced 3.2% and cash 5.5%

(Cullen said: 'I believe that as the market become more transparent which includes the publication of this report we will see more investment in institutional portfolios as well as more investment from those institutions.'")

56. Mr Gibbs considered that the general reduction in yields from residential property investments, particularly over the last 24 months since the loss of confidence in the equity markets, had not been reflected in settlements under the 1967 Act. In his opinion it would be appropriate to adopt a deferment rate of under 5¼%, having regard to the yields on assured shorthold investments, the return from the inferior ground rent investments in the Freehold Income Trust, the trends in interest rates and inflation and the increased popularity of residential property investment, particularly in houses, with the collapse in equity markets. He accepted that this represented a departure from the settlement evidence, but he was sure from the wealth of indirect evidence that it was inappropriate to maintain a deferment yield of 6% in June 2002. It was illogical to suggest that, in the light of sustained and increased demand for investment in prime Central London residential property, a freeholder would not accept a lower deferment yield than would have been the case from the 1970s to the early 1990s.

57. He was aware that house prices in Central London had not been as buoyant as in other parts of the country recently. Prime Central London houses, however, would continue to offer more sustainable long term prospects for growth than other residential locations, because of the status of London as an important world capital and the limited supply of new housing in the centre.

58. Mr Shingles considered the evidence was overwhelming that the deferment rate could be no lower than 6%. He said that for many years there had been a wealth of evidence that 6% was the appropriate rate for well located Central London property. In that connection he referred to a table of 31 enfranchisement settlements in respect of houses on the Cadogan Estate. The unexpired lease terms varied from 27.75 to 37.75 years, the relevant dates ranged from April 1975 to July 2001 and in every case the reversion had been deferred at 6%. Mr Shingles said that the majority of the houses listed on the table were either better located or far more architecturally appealing and less utilitarian than the appeal property. He also produced tables of settlements on the Grosvenor and Ilchester Estates, which he said pointed to a deferment rate no lower than 6%.

59. Mr Shingles made the following additional points. Firstly, although interest rates may have dropped in the short term since the valuation date, so had property values. The FPD Savills Prime Central London index for June 2002 in respect of SW houses was 342.3. The

corresponding index for September 2003 – which was the latest available when his report was prepared – was 331.8, showing a drop of 3.067%. Thus, property was hardly a more secure haven in times of low interest rates than the certainty of a bank deposit or Government backed gilt edged securities. Although it was anticipated in October 2002 that net rental yields on prime Central London residential properties would have fallen to 2¾% by the end of the year, such property could hardly be seen as a safe place to seek a worthwhile return compared with that obtainable from a bank deposit or gilt edged security, especially taking into account the increased costs of stamp duty on acquisition.

60. Secondly, Central London landlords had maintained 6% as the deferment rate for enfranchisement purposes, even in times of high interest rates. They had no doubt justified this by arguing that in times of high inflation property was a safe hedge. It was unfair for landlords to seek a low deferment rate in times of high interest rates, arguing that property was a secure low risk option, and then argue that rates should be even lower when interest rates were (temporarily) low, but when property was no longer as safe an investment from a capital growth point of view.

61. Thirdly, the valuer advising the lessee on the enfranchisement of 36 Shawfield Street had definitely not agreed that 5¼% was the appropriate rate for deferring the reversion of that property.

62. Finally, the LVT had decided on 22 September 2003 that the reversion to flats 7, 8 and 9 at 14-15 Enismore Gardens, London SW7, should continue to be deferred at 6%, despite the contention by Miss Bailey of Cluttons, the landlord's surveyor, that the rate should drop to 5%.

63. Mr Shingles remained of the view that 6½% was the appropriate deferment rate for the appeal property, but said that respondents were prepared to accept the LVT's determination of 6%.

64. In cross-examination he accepted that the FPD Savills Prime London Central Residential Capital Value Index for SW houses showed increases in value in September and December 2002, the two quarters immediately following the valuation date; that the most recent quarterly index had shown that values were rising; that investors had been moving funds from equities into property following the collapse of share prices; that interest rates had reached their nadir at or about the valuation date and that "there might have been a perception that interest rates were dropping" at that date.

65. Miss Holland submitted that the fact that the appellant did not refer to the yield rate in its grounds of appeal, and that it had contended for 6%, not 5¼%, before the LVT, meant that its case for the lower yield in the Lands Tribunal should be treated "with, if not particular scepticism, at least with particular care". (*Sinclair Gardens Investments (Kensington) Ltd v Franks*, 1998 76 P & CR 230).

66. When granting permission to the appellant to call evidence from Mr Gibbs in support of a lower yield than he had argued for before the LVT, I indicated that I would indeed consider that evidence with particular care. Having done so, I am satisfied that the evidence he gave to the LVT is not inconsistent with the evidence he gave in this Tribunal. His report to the LVT was dated 13 January 2003. In paragraph 10.41 he said:

“I consider it is relevant to mention again the general reduction in interest rates and the yields for residential investments particularly over the last 12 months since the loss of confidence in the equity markets. This movement is not reflected if historical settlement evidence is relied on. In contrast purchasers as occupiers/investors in June 2002 who (sic) in buying enfranchisable leases are likely to have been advised that 6% would apply to the deferment of the reversion on an enfranchisement claim. However, in my view they would quite likely have regarded the potential opportunity to secure the freehold at an historically high yield under the Act as justification for paying more for the lease as they would calculate that they would be able to pay less to the landlord.”

67. Mr Gibbs was therefore saying that a purchaser, taking the view that the 6% to be adopted in the enfranchisement valuation was high, would pay a price for the lease that in reality would reflect the appropriateness of a lower yield. That is consistent with the opinion that he expressed in his evidence before me. Mr Gibbs, however, did not seek to persuade the LVT that it should depart from the historical settlement evidence. As all the enfranchisement evidence in respect of prime Central London residential property indicated a minimum reversionary discount rate of 6%, it is in my view understandable that he should have taken that course, whilst informing the LVT of his opinion about the reliability of that evidence. Since the LVT hearing, however, other surveyors have taken the plunge and given evidence before the LVT that the deferment rate for properties in SW3 and SW7 should be below 6%. In those circumstances, it is in my view equally understandable that Mr Gibbs should have decided that it would now be appropriate for him to ask the Lands Tribunal to adopt a rate below the 6% which, before the LVT, he had clearly indicated did not accurately reflect the general reduction in interest rates and investment yields that had taken place.

68. Miss Holland further submitted that it could not be suggested that the LVT were wrong to defer the reversion at 6% in circumstances where the appellant's own expert had given evidence to the effect that 6% was the appropriate rate. Again, I do not accept that submission. On an appeal, the Lands Tribunal will be concerned to see whether the appellant has shown that the decision of the LVT, that is the enfranchisement price, was wrong. It will do this having regard to the totality of the evidence before it. Where a component of a witness's valuation is different from the one which he advanced at the LVT, that point may go to the question of whether the witness is correct in his valuation before the Lands Tribunal and it could have consequences for the award of costs if the view is taken that he ought to have put the matter differently in the LVT.

69. Miss Holland also sought to cast doubt on the truthfulness of Mr Gibbs's evidence. This was because, although he stated in his report that his proposed deferment rate of 5¼% represented “a departure from the settlement evidence”, he indicated in the course of cross-examination that he had recently settled some enfranchisement claims at less than 6%. As a

result Messrs Wortley, Manton, Hollamby, Gambles and Carter-Pegg were called to give factual evidence, Mr Manton as a result of a witness summons.

70. Mr Manton negotiated the enfranchisement price for 36 Shawfield Street on behalf of the tenant. In the light of his evidence and that of Mr Hollamby, I am satisfied that it is not uncommon in enfranchisement negotiations in Central London for the respective surveyors to prepare a number of different valuations, each containing a variation in one or more of its constituent parts and that agreement is reached when each surveyor is able to recommend a particular price to his client, not necessarily when each element of the valuation is specifically agreed. In such circumstances, it is possible for a valuer to believe that a particular yield has been agreed by his opposite number, when in fact it has not.

71. Such a situation arose in the negotiations on 25 Chelsea Square, which resulted in agreement at a price of £365,000. Mr Gibbs wrote to the tenant's surveyor, Mr Hollamby, on 4 October 2002, offering to agree £365,000 "on the basis that the valuation should be as attached". The attached calculation showed a freehold value of £3,600,000 deferred at 5¼%. Mr Hollamby's reply, dated 17 October 2002, suggested that £3,500,000 "was ample" for the freehold and added "I think that we will therefore probably need to agree to differ slightly concerning the analysis of the premium".

72. Mr Hollamby was a straightforward witness. I accept his evidence that he was under the impression that he had agreed the deferment yield at 6%. As he fairly accepted, however, it would with hindsight have been better if he had expressly disagreed with Mr Gibbs's 5¼% in his letter of 17 October 2002. In the absence of any reference in that letter to the deferment rate, I consider that Mr Gibbs was entitled to assume that Mr Hollamby was content with his suggested 5¼%.

73. Mr Gambles negotiated the enfranchisement of 32 Chelsea Square on behalf of the tenant. He said that, on 16 January 2004 Mr Gibbs informed him on the telephone that he had been involved in three cases where a reversionary yield of 5¼% had been either agreed or determined. In the light of that information, Mr Gambles recommended his client to agree a settlement based on a reversionary yield of 5¼%. I have found that Mr Gibbs reasonably considered that 25 Chelsea Square had been agreed at 5¼%. He denied that he had said that 5¼% had been determined by a tribunal, although he had probably mentioned that he was awaiting the LVT's decision on 40 Chelsea Square, where another surveyor was arguing for less than 6%. Mr Gibbs said "I know I would not have said something absolutely wrong". I accept that evidence, not least because it would have been easy for Mr Gambles to check the details of the relevant LVT decisions, which are a matter of public record. Equally, I am satisfied that Mr Gambles is an honest witness and that there was a genuine misunderstanding between the two valuers. I therefore approach my decision on the deferment rate on the basis that, whilst Mr Gibbs's evidence was truthful, there are no relevant settlements where the reversion was deferred at less than 6 per cent.

74. 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 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, all 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 property investments.

75. In my judgment, the deferment rate has remained at 6% for so long because of the lack of reliable evidence of yields in the no-Act world, not because such yields have not changed over time.

76. The yields obtained from Central London residential investments let on assured shorthold tenancies had declined from 6.8% in 1993 to approximately 3% in 2002. In 1995, investors in the Freehold Income Trust, secured on residential ground rents throughout the country, could obtain a yield of 11.5% and this had fallen to 5.6% by 2002. Between 1993 and 1995 the majority of houses in prime Central London were valued for enfranchisement purposes on the basis of a reversionary yield of 6%. I am entirely satisfied that the changes in yields on prime residential property in Central London and on ground rents throughout the country that had occurred since then meant that the previously established deferment rate of 6% was too high in June 2002 and I find that the rate of 5¼% suggested by Mr Gibbs is not too low.

77. I have not overlooked the fact that three recent LVT decisions have rejected evidence by landlords' surveyors seeking a deferment rate below 6%. Those decisions were based on the evidence that was submitted to the particular LVT. I am satisfied on the evidence before me that, in the circumstances of this appeal, 6% is too high.

78. My valuation of the appeal property is therefore £489,505 (Appendix 3). The LVT's determination of £462,854 was 5.4% below what I have found to be the correct figure. That is a modest difference in what is a difficult valuation exercise, given the limited availability of reliable evidence. I am therefore unable to find that the LVT's decision was wrong. Accordingly the appeal and the cross-appeal are dismissed.

79. A letter on costs accompanies this decision, which will take effect when, but not until, the question of costs is determined.

Dated: 16 April 2004

(Signed) N J Rose FRICS

### **Addendum**

80. I have received written submissions on costs.

81. The appellant submits that the respondents should pay the appellant's costs of their own appeal and the appellant's appeal pending consolidation and the appellant's costs following consolidation. It gives four reasons for this submission. Firstly, the respondents' appeal, which was first in time, failed. Secondly, on 27 June 2003, the appellant gave notice of intention to respond and lodged its own application for permission to appeal out of time. On the same day, the appellant's solicitors wrote to the respondents' solicitors without prejudice save as to costs, offering to settle both appeals on the basis that the respondents pay the price determined by the LVT. All the costs incurred thereafter would have been avoided if that offer had been accepted. The costs incurred before 27 June 2003 will have been negligible in the context of the costs since incurred. Thirdly, the appellant succeeded on one of two issues upon which it appealed. Fourthly, the respondents had made a simple appeal with a limited number of issues much longer and much more expensive than needed. A considerable amount of time had been spent on the first morning trying to prevent the appellant raising the issue on which it succeeded. The respondents' attack on the integrity of the appellant's witnesses (and its counsel and solicitor) also involved much time and was unhelpful and unwarranted.

82. The appellant's appeal only failed because the Lands Tribunal decided that the difference between its determined figure and that of the LVT was not so great that the Lands Tribunal could say that the LVT was wrong. Neither party had argued that point. So far as the appellant was aware, in no other appeal to the Lands Tribunal had it been suggested that a difference of 5.4% or nearly £27,000 was so little as to be ignored. The only other appeal where the issue had been addressed in similar terms involved a difference of less than 3% and less than £4,000.

83. The respondents submit that they should pay the appellant's costs of the respondents' appeal (which was dismissed) and the appellant should pay the respondents' costs of the appellant's appeal since that, too, was dismissed. In any event, it must be right that the appellant should pay the respondents' costs of the appeal on the deferment rate issue, having regard to the special factor that the appellant did not contend for a 5¼% rate at the LVT.

84. It was the clear policy of the statutory regime relating to the determination of issues on enfranchisement disputes that a tenant was entitled to a hearing before the LVT without any potential costs liabilities to the landlord. In this case, the appellant did not raise the 5¼% deferment rate issue before the LVT. In those circumstances, it could not be right that the tenants were denied a hearing on the argument over the 5¼% deferment rate issue before the LVT, at which they would not have been exposed to any liability on costs.

85. Moreover, it was a general principle that a party who sought to amend should bear the costs of and occasioned by the amendment and costs thrown away as a result of the amendment. The appellant clearly amended its case on the deferment rate for the purposes of a hearing before the Lands Tribunal from its previously suggested 6%. It should bear the costs thrown away as a result. The success of the appellant before the Lands Tribunal on the deferment rate issue necessarily depended upon a finding that the rate of 6% for which Mr Gibbs had argued before the LVT was wrong. The respondents should not be prejudiced by the appellant having previously “got it wrong” on its own evidence.

86. Before the LVT, the appellant argued for an enfranchisement price of approximately £495,000. Following the respondents’ appeal against the LVT’s determination of a price of £462,854, the appellant cross-appealed for a price of £530,000 (some £35,000 more than that sought before the LVT). Accordingly, the respondents were entitled to an order compensating them for there having been a second hearing on the deferment rate issue based on the new 5¼% rate argument.

87. The appellant did not accept that it had amended its case or that costs were occasioned by any amendment. Mr Gibbs raised the issue of whether 6% was the correct rate in his evidence to the LVT. The point was taken, as provided for by the rules, in the appellant’s statement of case. The respondents could point to no costs incurred before the appellant’s statement of case was served that would not have been incurred in any event. If Mr Gibbs had given evidence to the LVT in support of a rate below 6%, the overwhelming probability was that that evidence would have been rejected, a rate of 6% used and there having to be an appeal on the point. In only one LVT decision of which the appellant was aware had the LVT fixed a lower rate than that commonly applied on any of the large London estates. In all other cases where evidence had been adduced in support of a lower rate the LVT had refused to fix a lower rate.

88. The respondents did not agree that the offer of 27 June 2003 should be taken into account. This was not an ordinary situation of an offer being made to settle at a figure arrived at by the LVT. The whole dynamics of the case changed by virtue of the new arguments raised by the appellant, particularly in relation to the application of a deferment rate of 5¼%. The appellant could not escape from the point that it should have sought to adopt the 5¼% argument before the LVT.

89. The offer of 27 June 2003 had no real relevance to the costs determination because it did not affect any liability arising as a result of the respondents’ appeal having failed and it did not affect the appellant’s liability arising by virtue of its cross-appeal having failed. This was because a “without prejudice save as to costs” offer could only have assisted the appellant if its terms were more advantageous to the respondents than the LVT valuation.

90. In any event, the offer could only realistically be perceived as an attempt to put pressure on the respondents not to appeal. Effectively, the approach was to put the respondents under the pressure of only being able to pursue their appeal on a fairly limited issue at the price of having to face a wholly new argument based on a 5¼% deferment rate with the extra costs and length of hearing that this would entail.

91. To allow an order for costs to be made against the respondents in such circumstances would be contrary to the principle that litigation was now to be conducted “on a level playing field” pursuant to the principles embodied in the “overriding objective” of the CPR. In this respect, the position of the respondents and that of the appellant were very different. For the respondents, the enfranchisement determination process was a one-off experience; the premium was determined for their property alone. For the appellant the position was very different. It frequently appeared in determination hearings before the LVT and the Lands Tribunal. In particular, the appellant will seek to enjoy considerable benefits from the Lands Tribunal’s determination in arriving at future enfranchisement settlements or determinations. Accordingly, it could not be right that the overall justice of the position on costs should require the respondents in this particular case to have to pay for this.

92. In my judgment the following matters are to be taken into account in determining costs. Both parties appealed and both were unsuccessful so that the fact that this Tribunal determined a higher value than the LVT is irrelevant. Only the appellant appealed on the deferment rate issue. The appellant did not amend its case in this Tribunal. I do not consider that the appellant’s criticisms of the respondents’ conduct in attempting to prevent the deferment rate issue being raised, and in successfully disproving Mr Gibbs’s claim to have agreed some valuations using a deferment rate below 5¼%, are justified. Nor can any of the comments of the respondents’ counsel properly be regarded as constituting an attack on the integrity of the appellant’s legal advisers. In my judgment, the respondents’ counsel behaved properly throughout. Had the offer dated 27 June 2003 not been made, in view of the fact that the deferment rate issue had not been raised before the LVT, the appellant might have expected an adverse order for costs. The fact is, however, that an offer was made which, if accepted, would have avoided all the costs incurred thereafter. Moreover, raising the 5¼% point at the time of the offer constituted a further encouragement for the respondents to settle rather than the reverse. It does not seem to me that it could possibly be said that the respondents would have been likely to have accepted the offer if the issue had not been raised. In those circumstances, it would not in my judgment be right to deprive the appellant of its costs after the date of the offer, despite the fact that it differed from the more usual form of such offers.

93. The respondents will therefore pay the appellant’s costs incurred after 27 June 2003. In default of agreement such costs are to be assessed on the standard basis by the Registrar of the Lands Tribunal in accordance with the Civil Procedure Rules.

Dated 19 May 2004

(Signed) N J Rose FRICS

**57 SHAWFIELD STREET, LONDON SW3 4BA  
VALUATION OF K D GIBBS, FRICS**

<b>Value of Lessor's interest excluding marriage value</b>	<b>£</b>	<b>£</b>	<b>£</b>
<b>Compensation to Head Lessee -</b>			
Ground Rent received	225.00 pa		
Head Rent apportioned to House and Garage	<u>200.00</u> pa		
Profit Rent	25.00 pa		
Capitalised for 32.54 years @ 7.50% 3.5%			
tax      40%	<u>9.6828</u>	242	
<b>Compensation to Freeholder</b>			
For remainder of term -			
Rent currently payable	200		
Capitalised for 32.54 years @ 6.50%	<u>13.402</u>	2,680	
For reversion to -			
Value of freehold in possession	1,750,000		
Deferred 32.54 years @ 5.25%	<u>0.1892</u>	<u>331,089</u>	334,012
<b>Add Lessor's share of marriage value</b>			
Value of freehold in possession		1,750,000	
<b>Less</b>			
Value of lessor's interest exclusive of marriage value	334,012		
Value of lessee's interest exclusive of marriage value	<u>1,024,000</u>	<u>1,358,012</u>	
Gain on marriage		391,988	
Attributed to lessor at 50%			<u>195,994</u>
Enfranchisement price			530,006
		Say	<u><b>£530,000</b></u>

**57 SHAWFIELD STREET, LONDON, SW3 4BA  
VALUATION OF J SHINGLES**

**A) DIMINUTION IN VALUE OF INTERMEDIATE LEASEHOLDER'S INTEREST**a) Value of intermediate Leaseholder's interest profit rent

Annual rent payable	£25	
Years Purchase for 32.54 yrs @ 7.5%	<u>9.683</u>	
sf 3.5% tax 40%		£242

## b) Less

<u>Value of Intermediate Leaseholder's Proposed Interest</u>		Nil
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c) Value of freeholders Interest

Annual rent payable	£200	
Years Purchase for 32.54 yrs @ 6.5%	<u>13.402</u>	
		£2,680

Diminution in Value of both landlords interests £2,922

**B) DIMINUTION IN VALUE OF FREEHOLDER'S INTEREST**

Value of Freehold's Existing Interest on Reversion

Reversion to value of freehold in possession

Unimproved FH value without potential to develop	£1,175,000	
Deferred 32.54 yrs @ 6.00%	<u>0.1501360</u>	
		£262,738

Total of Freeholder's interest before marriage value £265,418

d) Diminution in value of Freeholder's interest £262,738

**C) DIMINUTION IN VALUE OF BOTH LANDLORD'S INTERESTS** £265,660

**D) CALCULATION OF MARRIAGE VALUE**a) Value of proposed interests

Freeholder's	£0	
Intermediate Leaseholder's	£0	
Tenants	<u>£1,750,000</u>	
		£1,750,000

**Value of existing interests**

Freeholder's	£265,418
Intermediate Leaseholder's	£242

Calculated as follows:

36 Shawfield St leasehold sale	1,350,000
Less rights @ 7.50%	<u>101,250</u>
Value of lease ex rights	1,248,750
Less 5% to adjust to 57 SS	<u>62,438</u>

Tenants	Produces	<u>£1,186,313</u>
Relativity	67.79%	<u>£1,451,973</u>

GIA	2605
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LH £psf	£455
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c) Marriage Value £298,027

d) Attributed to Landlord @ 50% £149,014

**E) ENFRANCHISEMENT PRICE** **£414,674**

