

**LEASEHOLD VALUATION TRIBUNAL  
FOR THE LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER SECTION 21 OF THE  
LEASEHOLD REFORM ACT 1967**

Following a hearing on 8<sup>th</sup> and 9<sup>th</sup> January 2002

**Re: 54 Woodsford Square, London W14**

**Applicant: The Trustees of the Ilchester Estates**

**Respondents: F M and C E Javitte**

**Date of Tenant's Notice: 8<sup>th</sup> January 2001**

**Application to the Tribunal dated: 22<sup>nd</sup> May 2001**

**Re: 66 Woodsford Square, London W14**

**Applicant: The Trustees of the Ilchester Estates**

**Respondents:**

**Jacinta Swee Tin Khoo, Boon Inn Khoo and Winston Kian Leng Khoo**

**Date of Tenant's Notice: 20<sup>th</sup> December 2000**

**Application to the Tribunal dated: 22<sup>nd</sup> May 2001**

**Appearances:**

**For the Applicant:**

**Mr S Burrell (of Counsel) instructed by Messrs. Boodle Hatfield, Solicitors**

**Mr J M Clark BSc MRICS of Messrs. Gerald Eve**

**Mr J Wilson Dip Surv MRICS FCI Arb of Messrs. W A Ellis**

**Mr G Dobson of the Ilchester Estates**

**For the Respondents (54 Woodsford Square):**

**Mr B R Maunder Taylor FRICS MAE of Messrs. Maunder Taylor instructed by  
Messrs. Nicholson Graham & Jones, Solicitors**

**For the Respondents (66 Woodsford Square):**

**Mr M Dray (of Counsel) instructed by Messrs. Seddons, Solicitors**

**Mr J Hewetson MRICS of Messrs. Matthews & Goodman**

**Members of the Leasehold Valuation Tribunal:**

**Miss A Seifert FCI Arb**

**Mr C White FRICS**

**Mr D Myer-Smith LLB**

**Date of the Tribunal's decision: 2. May 2002**

LON/LVT/1407 – 8/01

**Re: 54 WOODSFORD SQUARE, LONDON W14 and  
66 WOODSFORD SQUARE, LONDON W14**

**THE TRIBUNAL'S DECISION:**

**PRELIMINARY**

1. By Applications dated 22<sup>nd</sup> May 2001, the applicant landlord, the freeholder, the Ilchester Estates, applied to the Tribunal for the determination of the prices payable under section 9(1C) of the Leasehold Reform Act 1967 as amended ("the Act") for 54 and for 66 Woodsford Square, London W14. The Applications also requested determinations under section 21(2) of the Act of the provisions to be contained in the conveyances. However, at the commencement of the hearing the Tribunal was informed that no determinations under section 21(2) were required. The tenants' claim to acquire the freehold of 54 was dated 8<sup>th</sup> January 2001 and was admitted on 16<sup>th</sup> March 2001. The claim to acquire the freehold of 66 was dated 20<sup>th</sup> December 2000 and was admitted on 5<sup>th</sup> March 2001.
2. In respect of 54, the landlord suggested a premium of £144,300 and the tenants suggested a premium of £123,400. In respect of 66, the landlord suggested a premium of £145,500 and the tenants suggested a premium of £120,600.
3. The parties agreed that the applications in respect of 54 and 66 should be heard together and that there should be a combined decision document, but a valuation for each property.

Tenure

4. 54 is let on a lease dated 23<sup>rd</sup> December 1971 for a term of 100 years from 24<sup>th</sup> June 1967 expiring at 24<sup>th</sup> June 2067. At the date of the claim, the lease had about 66 years and 5 months unexpired. 66 is let on a lease dated 16<sup>th</sup> February 1973 for a term of 100 years from 24<sup>th</sup> June 1967 expiring at 24<sup>th</sup> June 2067. At the date of the claim, the lease had about 66 years and 6 months unexpired.
5. Both leases reserve a rent of £184 per annum plus further or additional rent as follows:
  - (a) during the term of 33 years commencing on the 24<sup>th</sup> June 2002 the yearly sum (if any) by which 3/20<sup>th</sup> of the annual rack rental value of the premises as at the 24<sup>th</sup> June 2001 exceeds the said annual rent of £184
  - (b) during the last 32 years of the term commencing 24<sup>th</sup> June 2035 the yearly sum (if any) by which 3/20<sup>th</sup> of the annual rack rental value of the premises as at 24<sup>th</sup> June 2034 exceeds the said annual rent of £184,payable by four equal quarterly payments on the usual quarter days.

"Annual Rack Rental Value" is the full annual rent at which the premises could be let without premium and with vacant possession for a term of 33 years subject to the covenants and conditions contained in the lease (with the exception of the rents reserved) and upon the assumption that the covenants and conditions relating to repair and user of the premises

have been fully observed and complied with up to the date upon which such annual rack rental value is required to be ascertained.

The matters agreed

6. The following matters were agreed in respect of 54:
  - 1] The statutory basis of valuation is in section 9(1C) of the Act.
  - 2] The valuation date is 8<sup>th</sup> January 2001.
  - 3] An equivalent yield of 6.5% is to be used to capitalise Ilchester's current ground rental income until 24<sup>th</sup> June 2002 and its estimated rental income on review from 24<sup>th</sup> June 2002 and to defer its freehold reversion due on 24<sup>th</sup> June 2067.
  - 4] The value of the freehold interest with vacant possession, at the valuation date and disregarding the value of the tenant's improvements, if any, is agreed at £990,000.
  - 5] The value of the tenant's existing leasehold interest, at the valuation date and disregarding tenant's rights to enfranchise and the value of tenant's improvements, if any, is £815,760.
  - 6] The marriage value released as a consequence of the transaction proceeding is to be shared equally between Ilchester and the claimants.
  - 7] (a) At the valuation date the subject house will achieve an annual rent of £52,780 (£1,015 per week) if let unfurnished on a yearly term to a corporate tenant / on a contractual agreement.  
(b) From the gross rent at (a) above a sum of £10,000 per annum would be deducted in respect of all out goings save lettings and management fees, and voids.
7. The following matters were agreed in respect of 66:
  - 1] The statutory basis of valuation is in section 9(1C) of the Act.
  - 2] The valuation date is 20<sup>th</sup> December 2000.
  - 3] An equivalent yield of 6.5% is to be used to capitalise Ilchester's current ground rental income until 24<sup>th</sup> June 2002 and its estimated income on review from 24<sup>th</sup> June 2002 and to defer its freehold reversion due on 24<sup>th</sup> June 2067.
  - 4] The value of the freehold interest with vacant possession, at the valuation date and disregarding the value of tenant's improvements, if any, is £1,000,000.
  - 5] The value of the tenant's existing leasehold interest, at the valuation date and disregarding tenant's rights to enfranchise and the value of tenant's improvements, if any, is £824,500.
  - 6] The marriage value released as a consequence of the transaction proceeding is to be shared equally between Ilchester and the claimants.
  - 7] (a) At the valuation date the subject house will achieve an annual rent of £53,300 (£1,025 per week) if let unfurnished on a yearly term to a corporate tenant / on a contractual agreement.  
(b) From the gross rent at (a) above a sum of £10,000 per annum would be deducted in respect of all out goings save lettings and management fees, and voids.

The matter in dispute in each case

8. The allowance to be made for the annual rack rental value for review purposes.

**REPRESENTATIONS**

9. At the hearing, Ilchester Estates, were represented by Mr Simon Burrell, of Counsel, instructed by Messrs. Boodle Hatfield. Mr J M Clark BSc MRICS of Messrs. Gerald Eve

and Mr J Wilson MRICS of Messrs. W A Ellis, submitted reports both dated 21<sup>st</sup> December 2001, which they amplified in oral evidence.

10. The respondent tenants of 54, Fred Marcel Javitte and Carole Elizabeth Javitte, were represented by Mr B R Maunder Taylor FRICS MAE of Messrs. Maunder Taylor, instructed by Messrs. Nicholson Graham & Jones, Solicitors. Mr Maunder Taylor also submitted a report dated 4<sup>th</sup> January 2002, which he amplified in oral evidence.
11. The respondent tenants of 66, Jacinta Swee Tin Khoo, Boon Inn Khoo and Winston Kian Leng Khoo, were represented by Mr Martin Dray, of Counsel, instructed by Messrs. Seddons. Mr J Hewetson MRICS of Messrs. Matthews & Goodman submitted a report dated 2<sup>nd</sup> January 2002, which he amplified in oral evidence.
12. The parties provided very helpful written closing submissions following the hearing.

## **INSPECTION**

13. The Tribunal externally inspected the subject houses, which were both terrace houses comprising ground, first, second and third floors with an integral garage and hard standing at the front, built in the late 1960s/early 1970s, situated on the Woodsford Square development. The Tribunal also externally inspected the surrounding area and the other properties that were referred to in the evidence.

## **EVIDENCE, SUBMISSIONS AND DECISION**

### **A. The landlord's approach and the tenants' approach**

#### **a) The landlord's case on the valuation approach**

14. Mr Clark explained that in estimating the rents payable on review, the landlord used an estimate of the Annual Rack Rental Value for 54 of £48,015 per annum and for 66 of £48,500 per annum. These values equated to 4.85% of the corresponding agreed freehold values of the subject houses. The Tribunal was invited to conclude that in the hypothetical negotiations, the estimate of the review rent which the parties would make is £7,202 p.a. for 54 (i.e. 15% of £48,015) and £7,275 p.a. for 66 (i.e. 15% of £48,500). He suggested that the enfranchisement prices payable to be £144,300 for 54 and £145,500 for 66. Mr Clark's valuations are annexed to this decision marked "A" and "B".
15. Mr Clark considered that the relevant question to ask was what would the parties have been likely to agree in a friendly negotiation as an estimate of the relevant rent review to go into the calculation of the price which they would negotiate for the voluntary sale of the particular freehold. He considered that there were two significant differences, which would have an effect on the outcome, between the hypothetical context relevant to the valuations for leasehold enfranchisement purposes and the actual rent reviews. In the hypothetical context, firstly there is no possibility of a dispute on the estimate of rent review being referred to a third party for determination and secondly, although the estimate of rent review will impact upon the price agreed for the freehold, it will not result in a rent which has ever to be paid.

16. In Mr Clark's opinion, the most relevant comparables for determining the estimate of rent are the corresponding rental values which have previously been agreed for similar houses in the same context. He stated that there was already a large amount of evidence available by the relevant valuation dates, which had been agreed for other similar houses in Woodsford Square, disregarding the effect on value of their different tenant's improvements. He stated that he knew of no other evidence that would be likely to carry greater "weight" in the hypothetical negotiation between the parties.
17. During his evidence in chief, Mr Clark produced a revised schedule of rent review comparables on the Ilchester Estate with a degree of analysis and updating, which he relied upon as a cross check.
18. Mr Clark referred to a case relating to 46 Chester Square, London SW1 under section 9(1C) in which the Lands Tribunal had preferred evidence of similar rent review comparables to the alternative approach of adjusting a rent payable on a short term tenancy to accord with the significantly different terms of the hypothetical letting which had to be assumed for the rent review.
19. Mr Clark submitted that the closest comparables for the requisite valuations of 54 and 66 are the 86 enfranchisement prices agreed for other houses in Woodsford Square. He produced a summary schedule of agreed enfranchisement prices. He explained that the majority of the settlements related to 58 cases for which the valuation dates were between February 1994 and July 1997. There was also one other enfranchisement price which had been the subject of an LVT decision, namely 6 Woodsford Square. The Tribunal in that case was satisfied from the evidence given that the price proposed by the landlord was appropriately based on good comparable evidence and accepted the valuation of Mr Ian Macpherson MA FRICS of Gerald Eve.
20. Mr Clark stated that the cases were settled following a long series of negotiations. For reasons set out in his report and in the evidence of Mr Macpherson in relation to 6 Woodsford Square, in order to conclude matters Ilchester offered discounts of 2.5% against prices that it had previously sought, provided the required offers were made by 25<sup>th</sup> November 1998. 57 enfranchisement prices for houses in Woodsford Square were agreed by 25<sup>th</sup> November 1998 and one by 8<sup>th</sup> December 1998. All sales at these agreed enfranchisement prices were completed by March 1999. The prices were agreed but not their analysis. Mr Clark's analyses of the prices are Gerald Eve's valuations, which formed the basis of the 58 offers that were accepted.
21. Mr Clark stated that the tenant of 6 Woodsford Square was part of the original group of tenants but did not take up the proposal. The matter was referred to the LVT. The tenants of 6 wrote a letter of representation to the LVT but did not appear at the hearing. Mr Clark stated that the analysis of the enfranchisement price for 6 is the same as Mr Ian Macpherson's valuation that was accepted by the LVT. Mr Clark's analyses of the price agreed for 22, 32 and 91 Woodsford Square were the same as the valuations which Mr Macpherson offered in the culmination of negotiations with Mr Hewetson representing the tenants.
22. Mr Clark stated that the valuations were based on the application of a 6.5% yield rate, and that the relevant annual rack rental value required to estimate the full rent reviews was calculated at 4.85% of the estimated value for the freehold in possession disregarding the

effect of tenant's improvements. He stated that they also incorporate WA Ellis' advice on the relevant values for the freehold interests and existing leases with vacant possession disregarding the effect on the value of tenant's improvements, and in the case of the existing leases the rights to enfranchise and the landlord's statutory minimum 50% share of the marriage value.

23. The settlement of subsequent claims to enfranchise houses in Woodsford Square had followed the basis of valuation agreed with Mr Hewetson in relation to 22, 32 and 91 save in so far as set out in Mr Clark's report.
24. Mr Clark in his report stated that there were 8 exceptions, which related to 7 claims settled by reference to valuation dates between May 1999 and December 2000. The difference between Gerald Eve's analysis of the prices agreed for these houses and those that had preceded them and those that had followed, was that they reflected yield rates of 5.0% to capitalise the ground rent passing, 6.5% to capitalise the rent on review and 6.0% to defer the freehold reversion, rather than an equivalent yield of 6.5% throughout. This was because during most of 1999 growth in capital values outstripped growth in rental values for residential property in Central London, leading to a downward pressure on yield rates. Mr Clark produced extracts from FPD Savills Capital Value and Rental Value indices for Prime Central London Houses and Houses and Flats in West London as an illustration. In order to reflect the greater capital growth during this period as compared with the growth in rental values, Gerald Eve's analyses of these settlements reflected estimates of open market values on review by capitalising the relevant freehold value for a given house at 4.57% to 4.61% rather than by 4.85% for the earlier settlements.
25. Mr Clark stated that during the remainder of 2000, growth in capital and rental values equalised and Gerald Eve's analyses of the 7 settlements agreed by reference to valuation dates from August 2000 to November 2000 all reflected the application of a yield equivalent to 6.5% throughout the valuation and open market rental values on the review estimated by applying the earlier agreed decapitalisation rate of 4.85%. Each of these claims with the exception of 124 and 41 were settled in July 2001. The prices for 124 and 41 were agreed in January 2001 and October 2001 respectively.
26. Mr Clark concluded in his report that:
  - (a) The evidence of enfranchisement prices already agreed for houses within Woodsford Square since February 1994 provided the best evidence by which to establish the enfranchisement prices that would be agreed in friendly negotiations for 54 and 66.
  - (b) Gerald Eve's analysis of these enfranchisement prices agreed, showed a consistent application of an equivalent yield of 6.5% and the estimation of the Annual Rental Value on review by decapitalising the freehold value at 4.85%, the exception being those for which lower yield rates were applied to reflect the greater growth in capital values over rental values referred to.
  - (c) The friendly negotiations for the sale of the subject houses would be concluded at the respective valuation dates against the background of these earlier agreements and at a time when the rents payable on review would not become due for some 18 months and at a time when the commencement of rent review proceedings would be 6 months away and the reference to the arbitrator a year away.
27. In oral evidence Mr Clark stated that his firm did not maintain the decrease in the percentage because after 1999 the rent resumed growth more akin to growth in capital

values. In relation to the 1999 claims Mr Hewetson on behalf of the tenants had argued that capital values had accelerated so that there ought to be some corresponding adjustment to the yield rate. His firm's negotiations with Mr Hewetson in that period indicated that attempting to reach settlement would not be possible. His firm considered that in order to put forward prices that they thought would achieve settlement and in order to avoid the need to go to the LVT, the most appropriate approach was to return to 4.85% and the previous yield rate. He accepted the reassessment to 4.85% had resulted from the negotiations with Mr Hewetson and that there had never been a detailed review of the 4.85%. Mr Clark also accepted that the 4.85% analysis had never been agreed by Mr Hewetson.

28. Mr Wilson contended that one has to assess the view in the market that prospective purchasers of 54 and 66 would each take at each of the respective valuation dates and that this view would be in the knowledge and with the assistance of the settlements up to that time. In each of the settlements the vacant possession values have been provided by W A Ellis and the capitalisation and deferment rates have been handled by Gerald Eve. Mr Wilson stated that he had been involved with the valuations and negotiations of all the settlements of the enfranchisement prices in relation to Woodsford Square, which he referred to in his evidence.
29. He had experience of determining rack rental values on full repairing and insuring terms where analyses were carried out on a £psf or £psm basis. There are various leases on the Grosvenor (Belgravia) Estate where rent on review is by reference to a rack rent, of those of which he is aware the leases have, typically, had reviews every ten years or so. He produced details of a review he had handled at 25 Cliveden Court SW1 where negotiations with Grosvenor Estate were by analysis on a £psf/£/psm basis.
30. Mr Wilson had been involved in the rent review within Monckton Court (also within the Ilchester Estate) which he said was fundamentally the same as Woodsford Square. 15 Monckton Court was taken to arbitration as a "test case" within the block of circa 40 flats. Mr Wilson considered that further assistance to analyse what might be an appropriate percentage of freehold with vacant possession value for the annual rack rental value might be gleaned from voluntary transactions in "buying out" onerous ground rent provisions.
31. As a further cross check Mr Wilson had analyses using FPD Savills PCL West as to the movement of capital values for June 1985 to December 2000, and December 1990 to December 2000. The review is for a 33 year term, and accordingly in these hypothetical circumstances an investor suitably advised acting prudently would consider how prices might "move on an extended period". He considered that without a crystal ball the next best indicator is historical analysis coupled with economic forecast.
32. Mr Wilson pointed out that early settlements were based on rack rental value estimated at 4.85% of freehold vacant possession value. Subsequently settlement prices advised by WA Ellis/Gerald Eve have been determined based on 6.5% Tables, respective leasehold and freehold with vacant possession values and then applying 4.85% for the "hypothetical in effect" rent on review, the purpose being that consistency is maintained. In the cases where the percentage ranged from 4.57% to 4.61% this was to reflect the fact that rental values were fairly static at that time compared with rising capital values.
33. In oral evidence Mr Wilson said that the figure of 4.85% may be too high or is arguably too low, but in order to achieve consistency that was the figure that the landlord had adopted.

4.85% was a negotiated position taken with the 1994 to 1998 settlements. He considered that consistency was important. However, he accepted that it was unlikely that 4.85% would be the right figure on every subsequent valuation date and that it would be highly likely to be plus or minus that figure, but overall that figure was never going to be a million miles away from what would be the right answer. He considered that the rent reviews showed that the resultant figure was a reasonable figure on the valuation dates.

34. Mr Burrell submitted that the issue is what estimate of the review rent would have been made in the hypothetical friendly negotiations and not what is the basis upon which the rent would or should be reviewed on an actual review before an arbitrator. He submitted that the task of the Tribunal was not to carry out a rent review but rather to seek to second guess the estimate of review rent which the parties would have made in the hypothetical friendly negotiations envisaged by section 9(1C) of the Act. He submitted that arguments to the effect either that the rent review clauses do not provide for the rent to be reviewed to a percentage of capital value or that the difference in the respective rates of capital and rental growth since 1994 casts doubt on the appropriateness of approaching the issue in this case by reference to settlements of the same issue in other cases at 4.85% of capital value miss the point. He contended that the parties to the hypothetical negotiations would inevitably as a matter of common sense have regard to the substantial and consistent body of evidence showing that, in a number of settlements over a number of years at regular intervals, precisely the same issue had been determined on a basis which analysed out at 4.85% of capital value of the premises and that given the difficulty in obtaining actual open market evidence of lettings on the terms which are to be assumed for the purposes of the rent review clause, it is all the more likely that the hypothetical purchaser would conclude that there was no sufficient reason why the review rent should be estimated otherwise than on the same consistent basis as in the cases which were agreed after the first tranche of 58 cases and before the relevant valuation dates.
35. Mr Burrell submitted that although the prudently advised purchaser would take into account the arguments as to the alternative valuation methodology advocated by Mr Maunder Taylor and Mr Hewetson, he would also note that those arguments have never been pressed as far as a Tribunal hearing, and that in the end the prices have been agreed which analyse out on a basis which with very few exceptions are entirely consistent with an approach to estimating the review rent which is equivalent with 4.85% of the property's capital value. The consistency of the settlement evidence in relation to the analysis of the basis upon which the rent from the rent review had been taken into the final valuations of both sides to the enfranchisement prices actually agreed, is not undermined by reference to the fact that it was not explicitly agreed in any particular case that the review rent should be estimated on a basis that analysed out to 4.85% of the capital value of the property concerned.
36. Mr Burrell further submitted that the settlement evidence is good evidence of the local land market and should be relied upon unless there is some good open market evidence. He referred to Wellcome Trust v Rominees [1993] 3 EGLR 229 at 234J-K and submitted that in the present case there is no open market evidence since there is no evidence of letting values of Woodsford Square houses on 33 year terms, which is the basis for reviewing the rent set out in the rent review clauses. The evidence relied upon by the tenant's respective valuers is of a quite different market, or of prices obtained for lettings on a wholly different basis from that envisaged by the rent review clause, namely short term lettings. Even if that evidence were regarded as market evidence, it is of insufficient weight to displace reliance on the settlement evidence since in order to produce an answer it has to be subjected to a



number of differing deductions made on the basis largely of subjective assessments unsupported by evidence.

37. Mr Burrell submitted that the issue was fundamentally one of price. The hypothetical purchaser would not be paying over the odds on the landlords' approach, and that it should be borne in mind that the estimate of rent review is only one of the matters that would need to be agreed in the hypothetical friendly negotiations that the 1967 Act envisages. The fact that all the other matters had been agreed between the parties in the present cases before the hearing, leaving only the estimate of the rent review outstanding, has given that one remaining issue an apparent significance out of all proportion to its true significance in the overall scheme of things in the hypothetical negotiations and has led to its being subjected to over-elaborate analysis bearing scant resemblance to the sort of analysis that would be brought to bear in negotiations in the real world.

Cross-checks / ready reckoners

38. Mr Burrell submitted that ultimately one can stand back and see whether the landlord's approach or the tenants' approach represents the most reliable estimate of review rent and therefore the most likely estimate in the hypothetical negotiations. The value of an estimated review rent derived from 4.85% of the freehold value falls over time confirming that it is reasonable. It produces estimates of review rent in both cases that are equivalent to rental values on a  $\pounds$ psf basis of  $\pounds 21.15$  psf for 54 and  $\pounds 21.36$  psf in the case of 66. He submitted that these figures seem to be about right by reference to cross checks referred to in his submissions, which Mr Wilson referred to as "ready reckoners" at the beginning and the end of the period over which the approach of rentalising at 4.85% of the freehold value has been applied.
39. Mr Burrell referred to Mr Wilson's evidence in respect of 15 Monckton Court rent review (by reference to a similar notional 33 year lease) as at 25<sup>th</sup> December 1992 determined by an arbitrator at a figure equivalent to  $\pounds 13.76$  psf. Mr Wilson described in his oral evidence the process of reasoning by which he adjusted this for time to December 2000, deducted 10% for location, deducted a further 5% to reflect the smaller size units at Monckton Court, netting about  $\pounds 23.40$  psf and then deducted a further 10% to reflect the fact that the landlords had in fact allowed a further 10% deduction approximately from the arbitrator's figure fixing the review rents from December 1992 to give him about  $\pounds 21$  psf. He submitted that the point that Mr Clark was making was that the landlords' rental values on review expressed on a  $\pounds$ psf basis equated to only 2/3rds of the updated rental value on a  $\pounds$ psf basis determined at Monckton Court and his conclusion was that the landlord's rental values on review are both reasonable and closer to the mark than the tenants' figures, which equated to only 1/3<sup>rd</sup> of the updated Monckton Court rental figure expressed in  $\pounds$ psf. The 23 Melbury Road rent review (by reference to a similar 33 year notional lease) as at 25<sup>th</sup> December 1998 at a figure equivalent to  $\pounds 30.49$  psf or  $\pounds 34.90$  psf when updated to 25<sup>th</sup> December 1998. Mr Burrell submitted that in his oral evidence Mr Wilson compared the relativity of the freehold values on a  $\pounds$ psf basis between Melbury Road and the smaller houses 54/66 Woodsford Square as at December 2000 and, applying the same relativity to rental values on a  $\pounds$ psf basis derived a rental value of  $\pounds 18.52$  psf for 54/66 from the updated figures of  $\pounds 34.90$  psf for 23 Melbury Road. He then added back 10% to reflect the higher rate psf generally commanded by a smaller property in comparison with a larger property to arrive at approximately  $\pounds 20$  psf. Standing back Mr Wilson was satisfied that figures of  $\pounds 21$  odd psf for the subject houses sit comfortably with this check. Mr Wilson

also said that this analysis by reference to Melbury Road had been within his contemplation when he prepared his report. In respect of the 25 Cliveden Place rent review (by reference to a notional 20 year lease) as at 25<sup>th</sup> December 2000, at a figure equivalent to £27.08 psf, Mr Wilson told the Tribunal that he had deducted 15% for location and a further 7 ½% to reflect the fact that 54/66 Woodsford Square are larger units, then added back 2 ½% for the 13 years longer review pattern for 54/66 Woodsford Square, leading to a net deduction of 20% and a figure of about £21 psf.

40. Mr Burrell submitted that the tenants' estimates are equivalent to rental values on a £psf basis of £11.98 psf (54) and £10.71 psf (66). He submitted that those figures do not sit well with above figures by way of cross checks and with the figure of £10.24 psf to which the rent was reviewed (by reference to a similar notional 33 year lease) as at 25<sup>th</sup> December 1992 in relation to 1 Strangways Terrace. Even disregarding any differences between the properties and any distorting effect introduced by upgrading that figure for time, he submitted that it could not be right that the estimated review rents for 54/66 Woodsford Square should equate to figures which are only marginally above a figure psf agreed on a rent review on the same estate 8 years before the valuation dates in the present cases.

**b) No. 54's – case on the valuation approach**

41. Mr Maunder Taylor submitted that the correct approach was a calculation based on rental values, not capital values. Mr Maunder Taylor submitted that the landlord's method of calculating the rack rental value results in a wholly unrealistic figure, very much in favour of the landlord and that this method of calculation should be rejected. It produced a substantially different annual rack rental valuation figure from that produced by following the method for calculation as set out in the terms of the lease. Mr Maunder Taylor considered that this method was both inappropriate and unrealistic for several reasons referred to in his report including the following:
- i) If the landlord were to market the freehold interest of 54 Woodsford Square for a sale on 8<sup>th</sup> January 2001, he accepted that they would seek to persuade any potential purchaser as to the best possible outcome of the forthcoming rent review negotiations, and to do that they would disclose their schedule of settlements so far achieved.
  - ii) Based on correspondence from Mr Clark and Mr Hewetson referred to in his report, there were no friendly negotiations over the settlement schedule method of applying 4.85% to the freehold value of the house to arrive at the annual rack rental value. His interpretation of the evidence was that once Gerald Eve/WA Ellis feel that they had established any evidence for that basis, it is never re-examined and becomes a self-reinforcing method of valuation adopted by landlord and pressed on each tenant's valuer as each new negotiation takes place.
  - iii) The landlord has a vested interest in putting forward the best gloss on the interpretation of the factual evidence.
  - iv) The valuers who acted for the landlord in those negotiations would have a conflict of interest in giving advice to the prudently advised purchaser. However he accepted in oral evidence that the prospective purchaser would receive the schedules but the landlord's valuer would not advise the prospective purchaser.
  - v) The prudently advised prospective purchaser could not rely in the fullest sense of the word, on any opinion analysis of the settlement evidence.
  - vi) If the prudently advised prospective purchaser relies on the settlement schedule and finds that he cannot reach agreement with the tenant at the relevant time, then he

must face an arbitration process which could be relatively costly and in which he could be exposed to an adverse costs award if he finds he has taken an unrealistic position.

- vii) Such arbitration would be covered by the provisions of the Arbitration Act 1996, reasons would have to be given for the arbitration award (unless the parties agreed to dispense with reasons), and if the purchaser did not follow the provisions of the lease for determining the ground rent review, then this award would be vulnerable to appeal.
- viii) The settlement schedule gives no satisfactory assurance that the tenants in any of those cases agreed a figure that they honestly believed was the right figure, as opposed to a figure reflecting pressure to settle, a wish to avoid costs and risks of dispute.

42. Mr Maunder Taylor further submitted that:

- i) The lease does not provide for a rent review to a proportion of capital value. If that had been intended, it could have so provided, but it did not.
- ii) Most of the 80 deals were agreed with Mr Hewetson, whose evidence was that he wrote to Mr Clark at the time denying that the agreements were on the basis of percentage of capital values.
- iii) Mr Clark's and Mr Wilson's main reasons for a calculation based on 4.85% of freehold value is consistency. The root of the settlements were other settlements on the Ilchester Estate and they do not have a root in rental values.
- iv) If growth in capital values had kept pace with growth in rental values since February 1994 there might have been some basis in this consistency, but the evidence showed that there has been a substantial divergence of growth between capital and rental values in favour of capital values. That divergence destroys any credibility in annual rack rental values being assessed at the same pro rata relationship with capital value as was agreed with effect from February 1994 and at different points in time since.

43. Mr Maunder Taylor further submitted that the landlord's alternative or check calculation is by reference to rental values per square foot. However, these were also derived from settlements and do not have their roots in the analysis of rentals actually achieved in the market. Information such as the address of a particular property, date of settlement and floor area calculated rate per square foot was provided, but there was insufficient information for a comparison of floor area rates. He submitted that this method, on the inadequate information given, is unreliable and should be rejected.

44. In Mr Maunder Taylor's opinion the prudently advised purchaser would follow a far more realistic approach to formulating his offer for the freehold interest. That would take account of the facts that:

- i) In the real marketplace there are a number of houses in Woodsford Square which the owners let out and therefore information concerning letting values is not too difficult to establish.
- ii) This is an area in which there are a number of individual letting agents and also a number of larger agents with letting departments, so that information and advice based on real market evidence is available for a calculation of annual rack rental value in accordance with the terms of the lease.
- iii) The mathematics which follow ( $3/20^{\text{th}}$  of annual rack rental value) is straight forward and does not involve a subjective assessment of other settlements.

Mr Maunder Taylor accepted in cross examination that he had not himself found any lettings in the market for a 33 year term. However the lease required an annual rack rental value to be found, so you find whatever evidence is available in the market and make adjustments to reflect the 33 year term. A hypothetical purchaser would have to be satisfied that he was paying a reasonable capital sum based on his estimation of the review.

**c) No. 66's – case on the valuation approach**

45. Mr Hewetson considered that the correct approach to the calculation of the ground rent review, for the calculation of the enfranchisement price, was that it should be calculated by reference to the annual rack rental value derived from open market residential rents. He did not agree with the approach contended by Ilchester that the Annual Rack Rent from which the Ground Rent is derived be pegged to the freehold capital value at a fixed rate of 4.85%. Mr Hewetson stated that in correspondence over the years he made clear his reservations over the applicant landlord's method of valuation that he considered fixes rental value immutably to freehold value, and had steadfastly maintained that the only valuation approach is by reference to rental value. He had never been provided with any evidence to justify the adoption of a starting point of 4.85% of freehold value to equate to the net annual value of a Woodsford Square house. In his opinion the decapitalised capital value approach to fixing the rent is unreliable for the reason that it is impossible to disentangle rental income from capital appreciation and receipts. In his experience the approach by surveyors to a ground rent review set out in the terms applicable to 66 is invariably on the basis of analysis of weekly rents, then adjusted from gross to net.
46. Mr Hewetson stated that leases with rent reviews such as contained in the lease of 66, were not uncommon in 1966, but that such leases have not been granted generally since 1970 and that there are no examples of such lettings in today's market. In his experience rack rental value in today's market is normally implied to mean the rent achievable under a residential tenancy for a term from year to year. Such lettings need to be adjusted to have relation to the terms of the lease. In relation to the settlement evidence, Mr Hewetson said that any prospective purchasers taking soundings from him would establish that the only reason the settlements have been undertaken is because the lessees have not pursued the point in issue to the LVT as it would not have been cost effective.
47. Mr Dray submitted that the landlord's approach should be rejected for a number of reasons including the following:
- i) A purchaser of the freehold of 66 in the market place as at 20<sup>th</sup> December 2000 could only have regard to those settlements which had been concluded up to that time and that this was acknowledged by Mr Wilson in his evidence.
  - ii) Therefore, as Mr Wilson accepted in cross-examination, such a purchaser could take into account the settlements in respect of 48, 12, 62, 114, 111, 41, 98 or 50 Woodsford Square.
  - iii) Details of 124 Woodsford Square would have been available as Mr Wilson said, but the deal was not done in relation to that property until 3<sup>rd</sup> January 2001. The purchaser would have been aware of the asking price but would not have known at what level the deal might be struck. This settlement could not have influenced the mind of a purchaser of 66.
  - iv) Consequently, a purchaser would note that the most recent available settlement (No. 57) had a valuation date of December 1999.

- v) A purchaser would appreciate that of the 79 settlements made prior to December 2000, the 58 earliest, relating primarily to valuation dates in 1994, were dealt with as a single tranche and that was followed by various further tranches.
- vi) A purchaser would be aware that the landlord's approach had never been agreed by a major valuer for the tenants in settlements and had been subject to express dissent.
- vii) A purchaser would learn that the tenant's methodology had consistently been to take the rental values of premises on a short term let and then adjust to reflect the differences between short term lettings and the hypothetical 33 year FRI lease.
- viii) A purchaser would see that in general terms the price eventually agreed upon represented a slight uplift to the price computed from a pure application of the tenant's approach. However, he would note in every case: (i) the difference between the parties' assessment of the rent payable upon review; and (ii) the consequential extent of the uplift was of relatively small order.
- ix) A purchaser would conclude that the historical settlements themselves provided no safe guide as to which parties' approach to the estimation of the ground rent is to be preferred in principle and would not view the settlements as reliable or the best evidence. Historically the narrow margin between the two approaches was overshadowed by the anticipated costs of a reference to the LVT and in those circumstances it would not have been economically worthwhile for a dispute to be pursued purely as a matter of principle.
- x) A purchaser would note the difference between the respective approaches to be of an entirely greater magnitude in December 2000 and would recognise the need to seek further advice.
- xi) A purchaser would be alert to the fact that the 4.85% approach was spawned originally from rental values.
- xii) A purchaser's research would lead him to discover that rents, rather than percentages of capital value, have been used in determining the rental value of hypothetical long terms in all cases outside Woodsford Square.
- xiii) A purchaser would appreciate that there is no correlation between capital and rental values and that the ratio between the two is far from constant.
- xiv) A purchaser would note (as Mr Wilson accepted) that even if 4.85% was correct at one time (i.e. when it was fixed in 1994 by reference to 1994 values) it will not be right for ever after.
- xv) A purchaser would realise from the available indices that since March 1994 capital growth has outstripped rental growth.
- xvi) A purchaser would in all the circumstances regard slavish adherence to an approach based on an historically fixed percentage of capital value as dangerous and unreliable.

48. Mr Dray stated that the landlord sought to support its assessment of the annual rack rental value of 66 by cross checking against rental values per square foot derived from rent reviews agreed or determined in respect of other properties, such rent reviews being in respect of 33 year hypothetical lettings (or other long terms). The landlord's figure of £48,500 equates to £21.37 psf and this is the figure it seeks to corroborate. Mr Dray submitted that the landlord's comparables did not support the rate of £21.37 psf for No.66 in December 2000, and set out a number of criticisms in relation to Mr Wilson's evidence, which were rejected by Mr Burrell.

**6) Decision**

49. The applicant landlord contends for the estimation of the Annual Rack Rental Value on review by decapitalising the agreed freehold value at 4.85%. The tenants of 54 and 66 consider that this is not the correct method and contend that the allowance to be made for the rack rental value for review purposes should be based on the rental values from evidence in the market.
50. The Tribunal does not agree with Mr Burrell that the hypothetical purchaser would primarily have regard to the settlements. The hypothetical purchaser would take into consideration, but only as one of the factors providing background, that settlements had historically, since 1994, taken place based of 4.85% (except for the period referred to in the evidence) of assessed capital value. However, the Tribunal considers that the hypothetical purchaser in the friendly negotiations envisaged, would ask the question, "But what does the lease say?" The hypothetical purchaser would primarily have regard to the terms of the rent review clause in seeking to assess the allowance to be made for the rack rental value for review purposes. The lease requires the new rent to be calculated as a percentage of the rent for a 33 year lease, not a percentage of capital value. In the absence of market evidence in respect of a 33 year lease, the hypothetical purchaser would have regard to the rental evidence in the market and make appropriate adjustments.
51. The landlord's approach of taking a percentage of capital value has resulted in a consistent approach but does not take into account changes in the market and in particular the relationship between rental and capital values. The Tribunal assumes that the hypothetical purchaser would have the information helpfully provided by Mr Clark and Mr Wilson in cross-examination. Mr Wilson promoted consistency as the mainstay of the 4.85% adopted. However he could not put his hand on his heart and state that 4.85% was the correct percentage at any given valuation date, although he thought it was not a million miles from the correct figure.
52. The Tribunal also notes that the percentage reverted to 4.85% following the period of the lowering of both yield and percentage figure. Reverting to the previously adopted figure of 4.85% of capital value resulted, at least in part, from negotiations on behalf of tenants by Mr Hewetson, to achieve settlement and avoid a LVT hearing. There was no reassessment by the landlord as to whether 4.85% remained appropriate. The Tribunal considers that hypothetical purchaser would question the basis of the figure, and ask why there had been no proper reassessment of the percentage, especially as the applicant landlord's own valuers accepted that it might be too high or arguably too low at any given time.
53. The Tribunal agrees that the hypothetical purchaser would be concerned with the 'price'. However, the Tribunal considers that both the hypothetical purchaser would, in assessing the 'price', question the appropriateness of adopting the basis of 4.85% of capital value. The Tribunal prefers the tenants' approach based on rental values to that of the landlord.

**B. The deductions**

54. The parties were agreed that the annual rent based on a short term corporate (or similar) letting is £52,780 per annum for 54 and £53,300 per annum for 66. £10,000 per annum is

the sum to be deducted for repairs, insurance, service charge, renewal of white goods etc. It was also agreed that there should be further deductions for letting and management fees and voids, but the parties disagreed on the amounts.

**a) No. 54's case on deductions**

55. Mr Maunder Taylor submitted that the properly calculated annual rack rental to be determined in accordance with the terms of the lease is £4,161, which therefore resulted in the price of £123,400 in accordance with his amended valuation. Mr Maunder Taylor's valuation is annexed to this decision marked "C".

Letting and management fees

56. Mr Maunder Taylor submitted that similar evidence was given by the experts that the initial letting fee of 10% of one year's rent would be charged, 7.5 – 8% for a renewal negotiation fee at the end of year one and a 6% per annum management fee, all plus VAT.
57. Mr Maunder Taylor submitted that Mr Wilson's opinion was that an average of 12% per annum including VAT should be allowed. The VAT element would reduce the average annual allowance to 9.9% net of VAT. Mr Wilson justified this on the basis that there would be (i) a discount for quantity (about 35 lettings) and (ii) a discount for a 33 year letting and management contract. Mr Hewetson and Mr Maunder Taylor had approached the assessment on the basis of (i) one individual property to be let and there was therefore no discount for scarcity (ii) agents keep long term business by providing a good service which they only provide when being properly paid, and therefore no discount for the possibility of a 33 year relationship with the landlord.
58. Mr Maunder Taylor submitted that Mr Hewetson came to an average annual letting/management fee of 14%, which he accepted in cross examination did not include VAT, which would make his figure a little over 16%. Mr Maunder Taylor had come to a figure of 17% with VAT, adjusted under cross examination to allow for voids to 16%.

Voids

59. Mr Maunder Taylor spoke to a number of letting agents in the area and took into account the information derived about uncertain periods between lettings, to allow for both marketing and any redecoration works, the risk of tenant failure over a 33 year period and the risk of the cyclical property market. His opinion was an allowance of 3 months average for every 2 year average letting, therefore resulting in 1.5 months per annum or 12.5%. He submitted that Mr Hewetson carried out researches with local agents, and with other clients in Woodford Square. His opinion was that the average lettings are for 2 years and average void periods are from between 2.5 to 3 months. He also arrived at an allowance for voids of 12.5%. Mr Wilson gave evidence based on one letting at 58 Woodford Square producing an allowance for voids of 6.43%.
60. Mr Maunder Taylor submitted that the evidence of Mr Hewetson and himself is to be preferred as they are based on general researches rather than experience of one property. The hypothetical purchaser would not rely on only one letting history and that Mr Wilson had ignored the original void period before completing the first letting.

Valuation effect of a 33 year term

61. Mr Maunder Taylor submitted that Mr Wilson sees this as an advantage pointing to historical increases in rental values, claiming that these will be reflected in the future. Mr Maunder Taylor pointed out that in cross-examination Mr Wilson agreed that he carries out a few mortgage valuations and that in none of those does he project forward growth expectations.
62. Mr Maunder Taylor submitted that Mr Hewetson's evidence was that there was a risk margin. In his opinion a 20% margin should be allowed as a further deduction from the agreed short term rental income.
63. Mr Maunder Taylor's opinion was that the prospect of future growth is the basis for choosing yield rate and that the agreed yield rate of 6.5% is too low for a fixed income for 33 years unless there were prospects of growth. He considered that the property market is a cyclical one, that there are no guarantees of continuing increased values, particularly in high value properties for which the market is more restricted. This was a matter that the hypothetical purchaser of a 33 year term would take into account in assessing the void periods to be allowed. He considered that void allowance and risk should be calculated at 12.5% of gross income with no separate allowance for risk.
64. Mr Burrell submitted that Mr Maunder Taylor was not correct in contending that the prospect of future growth is taken into account when fixing yield rates, the choice of yield rate did not take into account the benefits to the tenant, such as the prospect of a growing benefit from the difference between a rent fixed on review for 33 years and the actual rental values during that 33 year period.

**b) No. 66's case on deductions**

65. Mr Hewetson submitted that the properly calculated rack rental value to be determined in accordance with the terms of the lease is £3,650 per annum which therefore resulted in the price payable for the freehold at £120,600. Mr Hewetson's valuation is annexed to this decision marked "D".

Letting and management fees

66. Mr Dray submitted that:

- a. Mr Hewetson proposes a 14% deduction.
- b. Mr Maunder Taylor proposes a 17% deduction.
- c. Mr Wilson proposes a 12% deduction.

The Tribunal notes that Mr Maunder Taylor in his closing submission states that he adjusted his deduction to 16%.

67. Mr Dray submitted that Mr Hewetson admitted that he had overlooked VAT on the fees and that if factored in - this would increase the 14%. He had failed to take into account that letting fees would not be payable during voids and taking account of this would decrease the 14%.

Voids

68. Mr Dray submitted that:

- a. Mr Hewetson proposes a 12.5% deduction (3 months in every 2 years).
- b. Mr Maunder Taylor proposes a 12.5% deduction.



- c. Mr Wilson proposes a 6.5% deduction.

Mr Dray submitted that the Tribunal should select 14% for anticipated letting and management fees and 12.5% for anticipated voids.

69. In his closing submissions, Mr Burrell referred to Mr Hewetson's evidence as to the lettings history of 121 Woodsford Square initially by reference to a period of 3 ½ years or so commencing 28<sup>th</sup> November 1997 and ending June 2001, showing voids period of 7 months and 10 days over that period and leading Mr Hewetson to conclude for a voids percentage of 12 ½%. When Mr Hewetson corrected his evidence to the commencement of the period being late 1994 so that the voids period was 6 ½ years this did not lead Mr Hewetson to adjust his 12 ½% voids percentage, and Mr Burrell submitted that his pointed to the adjustments made as being "guesstimates". Mr Hewetson had said that he considered what he had done in respect to voids deduction was reasonable.

Valuation effect of a 33 year term

70. Mr Dray summarised the parties' positions as follows:
- a. Mr Hewetson believes that a 20% deduction for risk should be made.
  - b. Mr Maunder Taylor considers that there should neither be uplift or discount.
  - c. Mr Wilson contends that a 45% addition for profit is appropriate.
71. In Mr Hewetson's opinion the true annual rack rental value for a 33 year lease would be less by an amount that would allow the prospective lessee some margin for the risk he is assuming from the landlord in signing that commitment. He accepted in oral evidence that a prospective tenant might hope to get a profit rent, but he thought that a tenant taking a 33 year lease would proceed with caution and he did not think that any of us do more than hope for rental growth.
72. Mr Dray submitted that no tenant taking a 33 year lease commitment at a rack rent, fixed and without review, would commit to paying a rent set at a level (according to Mr Wilson some 45%) in excess of the prevailing market rental value. On the contrary, such a tenant would insist upon protection from day one and negotiate a discount to reflect the risk he was assuming.
73. Mr Dray submitted that the Tribunal should not subscribe to Mr Wilson's opinion in relation to the effect of a 33 year term for reasons set out in his written closing submissions. A lessee will be acutely aware that the future carries with it all sorts of potential risks. These include tenant default, destruction of the building with no rent suspension clause, risks of future legislation regarding rent control or in relation to environmental issues. One can speculate as to the likelihood of occurrence and impact of risks but they will not be ignored. On the other hand, Mr Dray submitted, the landlord's return is assured for 33 years. His management duties are displaced onto the tenant's shoulders. If the market falls, he bears no pain. It stands to reason that a landlord whose income stream is clear of any deductions and not subject to risks will accept a lower return than one whose income will fluctuate and is not guaranteed. Mr Dray submitted that the issue is fundamentally one of price.

**c) The landlord's case on deductions**

74. Mr Burrell submitted that if, contrary to the landlord's submissions, the Tribunal took the view that the approach of the tenants' valuers is the correct approach, then the Tribunal should prefer the approach of Mr Wilson to the making of the necessary adjustments to the headline short lease annual rental to that of the tenants' valuers.
75. Mr Wilson stated that an alternative method of analysing as to the annual rack rental value is to start from the rental value per annum/per week on a company let or contractual agreement. In adopting an analysis of a company let an adjustment to the rental value has to be made to reflect the nature of the tenancy against the rack rental value. He assisted in an analysis of 34 Hans Place SW1, where Mr M J W Duncan, senior partner WA Ellis, gave evidence to The Lands Tribunal and gave details. The range of discounts analysed in the Hans Place case was from 32.28% to 39.58%.

#### Letting and management fees

76. Mr Wilson's proposed reduction was 12% inclusive of VAT.

#### Voids

77. Mr Wilson referred to 58 Woodsford Square which had been let for a number of years, he analysed fees and voids and concluded that a reasonable overall deduction is 37 ½ % in Woodsford Square. He stated that analysis of the letting at 58 Woodsford Square showed that from September 1990 to 24<sup>th</sup> May 2002 the house was vacant for 9 months, representing 6.43%.

#### Valuation effect of a 33 year term

78. With regard to the "Annual Rack Rental Value", Mr Wilson considered that "a term of 33 years" is an unusual provision nevertheless one has to value the market price for the rent between the landlord and the tenant if that lease came on the market. He considered that fundamentally the annual rack rental value is one that takes into account the length of the term.
79. Mr Wilson considered that a typical tenancy would include a provision for review in the second and third years. A prospective tenant taking a 33 year commitment would have regard to the potential movement of rental value over the term. As appendixes to his report he produced an analyses showing how the rental value could have moved from over 33 years prior to the valuation dates. The hypothetical tenant for the 33 year term might otherwise be expected to remain in occupation for seven years, being in his view the average time currently a property owner would remain in one household prior to moving; then he would seek to assign or sublet the interest. Mr Wilson sought to show by his appendixes how a hypothetical tenant would receive a "profit rent" in due course, and eventually a considerable profit rent. He said he considered that whether you are letting a flat or house for 6 months or 33 years, the rental value has to take into consideration the length of the term and that an uplift was appropriate. Although he accepted that there was no specific market evidence in respect of an uplift for a 33 year term he considered that a hypothetical purchaser would look generally at what has been happening over the last 33 years to rental values.
80. The hypothetical purchaser will look at the rent reviews within the Ilchester Estate, which sit comfortably with the proposed uplift. The evidence from the rent reviews on the Ilchester Estate indicate an uplift, from a one year tenancy to a 33 year tenancy with the one year tenancy adjusted to a net rent, in the region of 1 ½% p.a.

81. Mr Wilson considered that an investor analysing corporate lettings would deduce that whilst at the outset there was an element of risk in taking a tenancy at a rack rent which might be sub-let at a rental loss, in the not too distant future a profit rent which becomes substantial will be generated. Mr Burrell submitted that it is inevitable that the prospective landlord and tenant in relation to a letting for a 33 year period without review would have regard to future growth over the period of the lease when fixing the rent payable over during the term. In considering how values might move over that period, it would be strange if the prospective landlord and tenant did not take into account how they had moved in the last 33 years or even the last 10 years. He submitted that the evidence produced by Mr Wilson confirms that the rentalisation by reference 4.85% of freehold value is reasonable.

**d) Decision**

Letting fees and voids

82. The evidence of the tenants' valuers was inconsistent and was adjusted during cross examination. The Tribunal having given careful consideration to the parties arguments and using their knowledge and experience considers that the appropriate allowance for letting and management fees for this type of property is 15% and that the appropriate allowance for voids is 10%.

Valuation effect of a 33 year term

83. The Tribunal considers that the hypothetical landlord of the 33 year term would have regard to the absence of voids over 33 years and that there would be a regular income. However, such a landlord would want some return for giving up the opportunity to obtain an increased rent over 33 years and would expect a higher initial rent to compensate. The hypothetical tenant of the 33 year term would consider that there would be a good prospect of an increase in real rent within a few years particularly having regard to the historical increase in rental values. The Tribunal prefers the general approach of Mr Wilson in this respect to that of both Mr Hewetson and Mr Maunder Taylor. Using its knowledge and experience the Tribunal considers that an appropriate upward allowance to reflect the valuation effect of the 33 year term is 45%.

84. The Tribunal therefore considers that the rents for the purposes of the rent review can be calculated as below:

		<u>No 54</u>		<u>No 66</u>
Agreed annual rental		52,780		53,300
<u>Deduct</u>				
Agreed allowance				
for out goings	10,000		10,000	
25% management fees				
and voids	<u>13,195</u>	<u>23,195</u>	<u>13,325</u>	<u>23,325</u>
		29,585		29,975
Add 45%		<u>13,313</u>		<u>13,489</u>
		<u>£42,898</u>		<u>£43,464</u>

15% of these figures are included in the Tribunal's attached valuations as the review figures.

85. The Tribunal accepted Mr Burrell's submission that in relation to the assumed 33 year letting for the purposes of rent review, that one has to assume that the landlords will only have the benefit of a rental reversion and not a capital reversion at the end of the notional 33 year term.
86. The Tribunal noted that no evidence was provided in relation to the rent review in 2035 and the valuations submitted assumed that the proposed rental value would continue to the end of the lease. The Tribunal took the view that in 2035 the ground rent will be substantially more than the ground rent currently calculated but, in the absence of any evidence from any of the valuers, it was considered too speculative to try to put a figure on the second review and accordingly have assessed that the ground rent will remain unchanged.

**DETERMINATION**

87. The Tribunal determined that the enfranchisement price is £131,550 for 54 Woodford Square and £132,765, for 66 Woodford Square in accordance with the Tribunal's valuations annexed to this decision marked "E" and "F".

CHAIRMAN.....*Anna Sear*.....

DATE.....*2 May 2002*.....

ILCHESTER ESTATES

LEASEHOLD REFORM ACT 1967 AS AMENDED

54 Woodford Square, London W14

Valuation by Julian Mansfield Clark BSc MRICS

as at the Date of Claim 8 January 2001

Unexpired term of lease: 66.5 years

VALUATION IN ACCORDANCE WITH SECTION 9(1C) OF THE LEASEHOLD REFORM ACT 1967

		£	£	£
<u>Valuation of lessor's interest</u>				
<u>exclusive of marriage value</u>				
For remainder of term-				
Ground rent currently payable		184		
Years Purchase for	1.5 years @	6.5%	<u>1,387</u>	
				255
Reversion to Rent Review on 24 June 2002 and 2035				
Annual Rack Rental Value			<u>48,015</u>	
ARRV as % of FHVP:	48,015 / 990,000 =	4.85%		
Rent payable on review at 3/20ths			7,202	
Years Purchase for	65 years @	6.5%	15.128	
Deferred	1.5 years @	6.5%	<u>0.9099</u>	
			13,7650	99,136
For reversion to -				
Value of freehold interest with vacant possession			990,000	
(from the evidence of J Wilson)				
Deferred	66.5 years @	6.5%	<u>0.0152</u>	
				<u>15,048</u>
				114,439
<u>Add lessor's share of marriage value</u>				
Value of freehold interest with vacant possession				990,000
<u>Less</u>				
Value of lessor's interest exclusive of marriage value			114,439	
Value of lessee's interest exclusive of marriage value				
(from the evidence of J Wilson)	% of FH VP	82.40%	<u>815,760</u>	
				<u>930,199</u>
Gain marriage				59,801
Landlord's share @	50%			<u>29,901</u>
Enfranchisement price				144,340
			Say	<u>144,300</u>

Date: 21-Dec-01

GERALD EVE  
Chartered Surveyors  
File No: MH82607

"B"

JMC 4

ILCHESTER ESTATES  
LEASEHOLD REFORM ACT 1967 AS AMENDED

66 Woodford Square, London W14  
Valuation by Julian Mansfield Clark BSc MRICS  
as at the Date of Claim 20 December 2000

Unexpired term of lease: 66.5 years

VALUATION IN ACCORDANCE WITH SECTION 9(1C) OF THE LEASEHOLD REFORM ACT 1967

<u>Valuation of lessor's interest exclusive of marriage value</u>			£	£	£
For remainder of term-					
Ground rent currently payable			184		
Years Purchase for	1.5 years @	6.5%	<u>1,387</u>		
				255	
Reversion to Rent Review on 24 June 2002 and 2035					
Annual Rack Rental Value			<u>48,500</u>		
ARRV as % of FHVP: 48,500 / 1,000,000 =	4.85%				
Rent payable at 3/20ths			7,275		
Years Purchase for	65 years @	6.5%	15.128		
Deferred	1.5 years @	6.5%	<u>0.9099</u>		
			<u>13,7650</u>		
				100,140	
For reversion to -					
Value of freehold interest with vacant possession (from the evidence of J Wilson)			1,000,000		
Deferred	66.5 years @	6.5%	<u>0.0152</u>		
				<u>15,200</u>	
					115,595
<u>Add lessor's share of marriage value</u>					
Value of freehold interest with vacant possession				1,000,000	
<u>Less</u>					
Value of lessor's interest exclusive of marriage value			115,595		
Value of lessee's interest exclusive of marriage value (from the evidence of J Wilson)		% of FH VP	<u>82.45%</u>	<u>824,500</u>	
				940,095	
Gain marriage				<u>59,905</u>	
Landlord's share @	50%				<u>29,953</u>
Enfranchisement price					145,548
				Say	145,500

Date:  
21-Dec-01

GERALD EVE  
Chartered Surveyors  
File No: MH8260/7

Chartered Surveyors

100 years from 24 June 1967 @ £184 p.a. rising in 2002 and 2035

<i>Paragraph 2(1)(a): the value of the freeholder's interest in the premises as determined in accordance with Paragraph 3</i>		
Ground rent annually		£184
Years purchase @ 6.5% for 1.5 years		1.387
		£255.21
		£255
Ground rent annually		£4,161
Years purchase @ 6% for 65 years	15.128	
Present value of £1 deferred 1.5 years @ 6.5%	0.9099	
	13.7650	13.7650
		£57,276
		£57,276
Reversion to:		£990,000
Present value of £1 deferred 66.5 years @ 6.5%		0.0152
		£15,048
		£15,048
<i>Paragraph 2(1)(b): the freeholder's share @ 50% of the marriage value as determined in accordance with Paragraph 4.</i>		
Agreed freehold value		£990,000
Less		
Agreed existing lease value		(£815,760)
Freehold value as above		(£72,579)
Marriage value		£101,661
50% of marriage value		£50,831
<i>Paragraph 2(1)(c): compensation payable to the landlord under Paragraph 5.</i>		
Compensation Payable		Nil
But Say		£123,410
		£123,400



**5.0 CALCULATION OF ENFRANCHISEMENT PRICE OF 66 WOODSFORD SQUARE**

5.1 Notice of Claim was served for the freehold of 66 Woodford Square on 20 December 2000. I therefore set out hereunder my calculation of the enfranchisement price:

**5.2 Landlord's Present Interest**

Current Ground Rent	£184		
YP 1.5 years @ 6.5%	<u>1.39</u>	£255	
Reversion to revised rent	£3,650		
YP65 years deferred 1.5 years @ 6.5%	<u>13.77</u>	£50,235	
Reversion to Freehold Value	£1,000,000		
PV£1 for 66.5 years @ 6.5%	<u>0.01518</u>	<u>£15,180</u>	£65,670

**Marriage Value**

Freehold Value		£1,000,000	
Less			
Landlord's Interest	£65,670		
Tenant's Interest	<u>£824,500</u>	<u>£890,170</u>	
Gain on marriage		£109,830	
50% share to Landlord		<u>0.5</u>	£54,915
Enfranchisement Price			<u>£120,585</u>
			=====

5.3 It is therefore my opinion that the enfranchisement price properly payable for 66 Woodford Square is **£120,600 (One Hundred and Twenty Thousand and Six Hundred Pounds)**.



"E"

**Leasehold Reform Act 1967 ( Amended )**

**Valuation of 54 Woodford Square, London, W.14**

**Date of valuation - 8<sup>th</sup> January 2001**

Unexpired leasehold interest - 66.5 years. Current ground rent ( for 1.5 years ) £184

**Landlords current interest**

**Valuation of ground rents**

Current ground rent		£184	
	1.5 years @ 6.5% Years purchase	1.387	£255
Reversion ground rent on 24 <sup>th</sup> June 2002 for 65 years. ( This assumes no change in the ground rent at the last review 24/6/35 )			
3 / 20 of £42898		£6435	
Years purchase deferred 1.5 years @ 6.5%		13.77	£88,606
<b>Value of Landlords present interest</b>			<b>£88,861</b>

**Marriage Value**

Agreed value		£990,000	
Deduct	Agreed tenants current interest	£815,760	
	Value of landlords interest	<u>£88,861</u>	
		£904,621	
		£85,379	
<b>50% of marriage value</b>			<b>£42,689</b>

**ENFRANCHISEMENT PRICE**

**£131,550**

"F"

**Leasehold Reform Act 1967 ( Amended )**

**Valuation of 66 Woodsford Square, London, W.14**

**Date of valuation - 20<sup>th</sup> December 2000**

Unexpired leasehold interest - 66.5 years. Current ground rent ( for 1.5 years ) £184

**Landlords current interest**

**Valuation of ground rents**

Current ground rent		£184	
	1.5 years @ 6.5% Years purchase	1.387	£255
Reversion ground rent on 24 <sup>th</sup> June 2002 for 65 years. ( This assumes no change in the ground rent at the last review 24/6/35 )			
3/20 of £43464		£6520	
Years purchase deferred 1.5 years @ 6.5%		13.77	£89,775
<b>Value of Landlords present interest</b>			<b>£90,030</b>

**Marriage Value**

Agreed freehold value		£1,000,000	
Deduct	Agreed tenants current interest	£824,500	
	Value of landlords interest	<u>£90,030</u>	
		£914,530	
		£85,470	

**50% of marriage value** **£42,735**

**ENFRANCHISEMENT PRICE** **£132,765**