FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**GM/LON/00BG/OCE/2017/0195**
HMCTS Code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Meridian Place, London E14 9FE**
Applicant	**:**	**Meridian Place Freehold Limited**
Representative	**:**	**Ms Nicola Muir (Counsel) – instructed by Mr Kevin Kearney (direct access)**
Respondents	**:**	**Meridian Consultancy and Management Limited (1)** **Meridian Gate Estate Management Company Limited (2)** **Meridian Place Management Limited (3)**
Representative	**:**	**Mr Philip Rainey QC (Counsel) for the First Respondent – instructed by Housing and Property Law Partnership Solicitors**
Type of Application	**:**	**Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	**:**	**Mr J P Donegan (Tribunal Judge)** **Mr W R Shaw (Valuer Member)**
Date of Hearing	**:**	**24 November 2020**
Date of Decision	**:**	**12 April 2021**

REVIEWED AND AMENDED FURTHER DECISION

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The Tribunal has reviewed its decision dated 11 January 2021 and the Scott Schedule, pursuant to rules 53(1) and 55(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. It has amended paragraphs 49 and 61 of the decision and pages 8 and 11 of the schedule, following that review. The amendments are all crossed through or underlined.

Covid-19 pandemic: description of hearing

This decision was made following a remote video hearing, which none of the parties objected to. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held due to the current lockdown restrictions and all issues could be reasonably determined at a remote hearing. The Tribunal was referred to various documents, as detailed at paragraphs 7-9 below, the contents of which were noted.

Decision of the Tribunal

(A) This decision supplements the Tribunal's decisions dated 05 December 2018 ('the 2018 Decision') and 09 April 2019 ('the 2019 Decision') and should be read in conjunction with those decisions.

(B) The Tribunal makes the determinations set out at paragraphs 39, 40, 61, 81 and 82 of this decision and in the final column of the attached Scott Schedule.

The background

1. This application concerns a collective enfranchisement claim under the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'). Meridian Place is a substantial, mixed use development, located off Marsh Wall on the Isle of Dogs. The northern boundary is adjacent to the Thames Walkway and overlooks South Dock.

2. The applicant ('A') is the nominee purchaser, the First Respondent ('R1') is the current freeholder and the Second Respondent ('R2') manages Meridian Place. The Third Respondent ('R3') manages the wider estate. R2 and R3 are parties to most of the existing leases.

3. The Tribunal dealt with a number of legal issues in the 2018 Decision. It then dealt with the price payable for the freehold in the 2019 Decision. This decision deals with the remaining issues, being the following disputed terms in the conveyancing documents:

   (a) the extent of the land to be included in the freehold transfer;

   (b) the terms of the freehold transfer (TP1);

   (c) the terms of the leaseback of Flat 59; and

(d) the terms of the commercial leasebacks.

4. The Tribunal has issued various directions since the 2019 Decision. The penultimate directions, dated 13 July 2020, required A and R1 to each serve a suite of relevant conveyancing documents and plans and then complete a Scott Schedule ('the Schedule') with their submissions on the disputed terms. The completed Schedule was filed with the Tribunal on 07 October 2020. The final directions, dated 23 October 2020, required A to file a supplemental (digital) bundle for use at the remote hearing, to include the completed Schedule.

The hearing

5. The remaining issues were listed for a remote video hearing on 24 and 25 November 2020. Ms Muir appeared for A and Mr Rainey appeared for R1, as they had at previous hearings. Also in attendance were Mr Kevin Kearney (a director of A), Mr Aashu Oberoi (R1's solicitor) and Mr Mukarram Sattar (a beneficiary of R1). No-one appeared or attended for R2 or R3.

6. The hearing concluded at 4.30pm on 24 November. The Tribunal reconvened on 25 November to make its decision.

7. The Tribunal was supplied with two supplemental bundles; one from A and one from R1, together with skeleton arguments from both counsel and bundles of authorities. Judge Donegan also had access to the bundles from the previous hearings and six sets of architect's drawings, relating to the original construction of Meridian Place, showing the first to sixth floors.

8. The evening before the hearing, the case officer received a letter from R1's solicitors with copies of six undated deeds of variation for various commercial units at Meridian Place (see paragraph 64 below). The Tribunal did not have an opportunity to study these documents before the hearing, due to their late arrival.

9. During the course of the hearing, Ms Muir referred to the latest correspondence from R2 and R3, regarding the leaseback of Flat 59, not included in either bundle. These are an email from R3 dated 20 November and a letter from R2, incorrectly dated 27 October 2020 (see paragraphs 53 and 55 below). Copies were emailed to the case officer on 23 November but were only seen by the Tribunal after the hearing.

10. At the start of the hearing, the Tribunal dealt with two preliminary matters; both arising from R1's supplemental bundle. This included a witness statement and exhibit from Mr Oberoi dated 13 November 2020. The statement addressed various issues, including the rear boundary of Meridian Place, easements for the commercial leasebacks,

an external staircase for Flat 59 and the leaseback of this flat. Exhibited to this statement was a short 'report' from Mr Jonathan Ward BA, Dip Arch, RIBA, dated 02 August 2019. This was headed "*Assessment of Ground floor footprint and site boundary along river frontage*" and addressed the footprint of the building at Meridian Place.

11. Ms Muir objected to the late service of Mr Oberoi's statement and Mr Ward's report. The former was disputed and she wished to cross-examine Mr Oberoi. The latter should not be admitted, as it had been produced in August 2019 but not disclosed until November 2020. Further, there was no permission for expert evidence, it was not a formal expert report and had been produced without sight of the original construction drawings or full access to the basement. Mr Rainey suggested that Mr Oberoi's statement could be accepted without oral evidence. Alternatively, he could tender Mr Oberoi for cross-examination. He explained that Mr Ward's report was not relied upon as expert evidence but would assist the Tribunal in dealing with the rear boundary issue.

12. Having heard submissions on the preliminary issues, the Judge directed that Mr Oberoi give oral evidence. Following a short adjournment, the Judge informed the parties that Mr Ward's report would not be admitted. The report was unsigned, did not include a statement of truth and Mr Ward did not attend the hearing, so could not give oral evidence. Further, the limited terms of reference meant the report would not assist in determining the rear boundary issue. Rather the Tribunal would rely on the plans and photographs in the bundles and the members' recollection of a site inspection on 16 October 2018.

13. During the adjournment, the parties agreed some issues and others were agreed during oral submissions. These are noted in this decision and the Schedule.

14. The Judge asked Mr Rainey to take the Tribunal through the undated deeds of variation, given these had been served so late in the day.

Mr Oberoi's evidence

15. Mr Oberoi is a partner in R1's solicitors, Housing and Property Law Partnership. He spoke to his statement dated 13 November 2020, which contained both evidence and legal submissions. Some of the evidence was uncontroversial. For example, Mr Oberoi stated there were no obvious changes to the rear boundary during his latest inspection on 04 November 2020. He also referred to tables and chairs outside the commercial units, which were in place during the Tribunal's inspection.

16. The controversial parts of Mr Oberoi's evidence largely relate to the redevelopment of Flat 59, which is located above the entrance archway. As part of their term and reversion agreement, the parties agreed that R1 would take a leaseback of this flat with a right to extend into the airspace below. This agreement was recorded in emails passing between the valuers, Mr Richard Muphy (A) and Mr Ghulam Yasin (R1), on 04 October 2018. These are recited below, in chronological order:

"Hi Ghulam

To reach agreement I will recommend a settlement of the term and reversion calculation based upon a 5.95% Cap Rate and a FHVP of £48million for the Reversion. Please confirm your client will accept this.

Regards,

Richard Murphy MRICS

Dear Richard

I am pleased to confirm the components listed in your email below are agreed - strictly for the purposes of agreeing a deal. When applied the premium is £793,843 for the term and reversion of 90 flats plus s33 costs.

As you confirmed on the phone, your clients are agreed to my clients retaining the right to extend Flat 59 in line with the attached planning permission. For completeness, please confirm this in your reply.

The remaining issues will be dealt with separately.

Kind regards

Ghulam Yasin BSc MRICS

Dear Ghulam

My client agrees to a premium of £793,843 for the specified premises on the understanding that 90 flats are involved (and not 93) plus S33 Costs.

My client agrees to your client retaining the right to extend Flat 59 in line with the attached planning permission and in accordance with building regulations in force at the time.

Regards,

Richard Murphy MRICS".

17. A copy of the relevant planning consent was included in A's bundle. This was issued by Tower Hamlets Council ('THC') on 22 September 2017 ('the 2017 Planning Permission'). It is headed "*CONDITIONAL PERMISSION FOR DEVELOPMENT*" and refers to application number

PA/14/02209. The accompanying schedule refers to various documents and drawings and includes the following description:

"***Proposal***: *Infill below Flat 59 to enlarge the existing accommodation to create a duplex unit. Retention of the enlarged duplex accommodation as a self-contained three bedroom flat.*"

18. The planning consent schedule also includes various conditions, including a requirement that the development commences within three years and that full details of the facing materials be submitted to, and approved by, THC prior to commencement.

19. In his statement, Mr Oberoi explained that R1 has carried out extensive works to the void below Flat 59. He exhibited two photographs, showing the progress of the works as at 04 November 2020, which he described as "*not that far from completion (save as regards the need for a fire escape)*" (paragraph 24). He dealt with the fire escape at paragraphs 16 and 17, which are recited below:

"16. Before I deal with the recent issues over the proposed form of leaseback for Flat 59, there is one practical issue that has arisen. As mentioned below, the First Respondent has almost completed the works to develop into the airspace below Flat 59. It has become apparent that in order to ensure the completed flat is safe as can be and in particular the risk of death or injury in the event of fire are minimalised, an external staircase is required. I exhibit recent correspondence in this regards [5 to 7]. The First Respondent will say that the extended flat is unusual in that the exit is on an upper floor, with no separate means of escape from the lower floor.

17. I am instructed that the First Respondent will need planning permission for this and once obtained, a staircase will be constructed. The First Respondent will ask that the leaseback for Flat 59 includes an easement of access over such staircase to and from the extended flat. At it is not intended that the staircase be demised, its precise location/design need not delay the inclusion of an easement and that such an easement to be:
i) new clause (F) in the First Schedule, Part II of the First Respondent's amendments in red being the lease Titled "RS1's LEASEBACK ON BASIS WORKS NOT YET COMPLETED 23 August 2020" to the Applicant's draft lease in black (Item 4 of the Trial Bundle) and/or
ii) new Clause 6 in the First Schedule, Part II of the First Respondent's amendments in read being the lease Titled "RS1's LEASEBACK ON BASIS WORKS COMPLETE 23 August 2020" to the Applicant's draft lease in black (Item 4 of the Trial Bundle)
in the following terms

"the full and unfettered right of access and egress to and from the Premises at all times over the external staircase leading to the Premises"".

20. Also exhibited to Mr Oberoi's statement were:

    (a) a letter from Assent Building Control Limited ('ABCL') to R1 dated 10 November 2020, recommending a fire escape leading from the new lower floor of Flat 59 to the ground level; and

    (b) a design review statement from Mr Opeolu Awolesi BEng dated 10 November 2020, commenting on the proposed fire safety design of the extended flat.

21. There were two notable omissions in Mr Oberoi's statement, being any reference to:

    (a) a substantial, external staircase that had already been installed below Flat 59, which is clearly visible in photographs in A's bundle; and

    (b) a planning application made by Rolfe Judd Planning ('RJP') on 27 August 2020 and refused by THC on 22 October 2020. Copies of an application summary and THC's refusal were included in the applicant's bundle. These described the proposed work as "*Creation of a standalone 2 bedroom residential unit within the void of level 002 of the Meridian Place development accompanied by the introduction of a new external staircase to act as primary access."* The reasons given for the refusal were:

    "1 – The proposed infill development and external stairwell by way of its form, positioning and design would be an unsympathetic and incongruous addition to its surrounding context. It would negatively impact the appearance of the development in which it sits, harm the street scene and damage existing views. This is contrary to policies 7.4 and 7.6 of the London Plan (2016) and policies S.DH1 and D.DH2 of the Tower Hamlets Local Plan (2020).

    2 – The proposed two-bedroom apartment would not be provided with adequate waste and cycle storage. This is contrary to policy 6.9 of the London Plan (2016) and policies D.TR3 and D.MW3 of the Tower Hamlets Local Plan."

22. In his oral evidence, Mr Oberoi said the new staircase is not a permanent structure and is not fixed. Rather, it is used to transport building materials to and from the new structure below Flat 59.

23. In cross-examination, Mr Oberoi said he only learned of the 2020 planning application in the last couple of weeks and was unaware of the refusal until he saw A's bundle. He confirmed that an external staircase was visible on his inspection on 04 November and "*looks similar*" to

that shown in the applicant's photographs. He had not mentioned the staircase in his statement as he understood it to be a temporary structure for the transportation of materials. He did not consider the staircase worthy of mention and rejected all allegations of impropriety.

24. In re-examination, Mr Oberoi denied any dishonesty or intention to mislead the Tribunal. The need for a fire escape, as referred to in his statement, was based on the advice from ABCL and Mr Awolesi. This was different to the temporary staircase seen in A's photographs.

25. On questioning from the Tribunal, Mr Oberoi accepted that means of escape would have been considered as part of the 2017 planning application and the 2017 consent does not require a fire escape. His understanding, based on instructions from R1, is that the 2020 planning application had been submitted in error. He had been inside the new structure during his recent inspection. This is an extension to Flat 59, rather than a separate flat, albeit the builders are yet to punch through to connect the two storeys.

26. Mr Oberoi's statement also dealt with correspondence from R2 and R3, regarding the leaseback of Flat 59, which had been overtaken by their most recent letters (see paragraphs 53 and 55 below). It also addressed the proposed right to place tables and chairs outside the commercial units, stating "*In this regard I am informed by Mr Sattar (who represents the First Respondent and has been involved with the property for many years) that such use has been enjoyed for approximately 15 or so years and certainly during the First Respondent's ownership*." There was no statement or evidence from Mr Sattar.

27. The Tribunal found Mr Oberoi to be a credible and honest witness, who did his best to answer the questions put to him. It accepts there was no intention to mislead but the failure to mention the 2020 planning application or external staircase (in his statement) was material. The statement post-dated his inspection on 04 November and service of A's bundle and should have addressed both of these issues.

28. The omissions in Mr Oberoi's statement may be attributable to inadequate or misleading instructions from R1. The Tribunal does not accept the 2020 planning application was submitted in error. This is highly improbable and there was no evidence from RJP to support this allegation. Further, it is undermined by refusal letter from THC. This refers to the various documents and drawings that accompanied the application, including a shadowing assessment and design and access statement. R1 went to the trouble and expense of obtaining these assessments, as well as the drawings and clearly contemplated the creation of a separate flat with external staircase.

29. The Tribunal accepts Mr Oberoi's evidence that the new structure is an extension to Flat 59; rather than a separate flat. It is unnecessary to decide the purpose of the staircase shown in A's photographs. However, it is substantial and could become a permanent means of access and escape for the new structure.

The issues

30. Both counsel made detailed oral submissions, expanding on points made in their skeleton arguments. These are summarised below.

The land to be included in the transfer

31. Both parties relied on two plans; Plan A showing the land to be transferred and Plan B showing the land to be retained, subject to permanent rights.

32. Initially there were three areas of dispute on Plan A; the northern boundary, stairwells on the east and west sides and the extent of the front entrance steps. The parties agreed the stairwells should be excluded from the transfer and also agreed the extent of the front steps, as shown on the attached, modified version of Plan A. The only remaining issue was the northern boundary. A contends this should be a straight line matching the northern boundary on the freehold title plan. This would incorporate low level perimeter walls, two structures that house air vents for the basement and all of the rear steps leading to the Thames Walkway. R1 contends there should be two indents for narrow 'voids' between the low walls and the flank wall of the building. These are in front of Flats 1 and 2 on the left-hand side and Flats 84 and 85 on the right, looking from the Thames Walkway. R1 accepts that the vent structures and all of the rear steps should be included but says the voids should be retained.

33. Ms Muir submitted that the voids were claimed in the section 13 notice, as part of the 'Specified Premises'. Both plans accompanying the notice showed a straight line for the northern boundary of the building. These show the Specified Premises edged red and the other property, to be acquired under section 1(2)(a) of the 1993 Act, edged green. There is no gap between the red and green lines demarking the northern boundary on Plan 1. However, there is a narrow gap on Plan 2. Ms Muir submitted that it would have been obvious to the reasonable recipient that the red and green lines were intended to be in the same place on Plan 2, as they were the same on Plan 1. Further, the leaseholders would have intended, and were only entitled, to acquire the whole of the Specified Premises. She also pointed out that R1 had not disputed the validity of the s.13 notice.

34. Ms Muir also submitted that the voids are part of the building, as they form part of the basement roof. She drew support from the lease plans for Flat 25, which included a basement floor plan. This shows the northern edge as a straight line with two "*outcrops*". She submitted that this must follow the line of the low walls and the bottom of the rear steps; otherwise the steps would trespass onto the Thames Walkway. It follows that the voids must be above the basement. Ms Muir also relied on the balconies for Flats 1, 2, 84 and 85, which overhang the voids. Retention of the voids by R1 would create a flying freehold, with different freeholders of the balconies and the voids below.

35. Mr Rainey explained that no issue was taken on the section 13 plans. He relied on a basement floor plan in the freehold title plans, which also shows the two "*outcrops*". These are the vent structures which jut out from the rear basement wall, to the north. The low walls are in line with the outer face of these structures and the bottom of the rear steps. The northern edge of the basement is not the edge of the site and there is a gap between the two. This means the voids are not above the basement and extend beyond the footprint of the building. R1 wishes to retain the voids to prevent any blocking up of grilles at the bottom of the flank walls, which provide air and light to the basement car park. Associated companies have leases of parts of the car park.

36. Mr Rainey rejected the notion that overhanging balconies create a flying freehold, as the balconies are supported by the building. It is common for balconies to overhang pavements or other land, without causing tenure problems. If the voids are retained then the retained areas would only extend up to the underside of the lowest balconies.

37. During the course of the hearing, the Valuer Member pointed out that the basement foundations, below the northern flank wall, would need to be substantial. They support the building above and act as a retaining wall for the Thames Walkway and South Dock. This means the foundations may extend out from the flank wall. Mr Rainey acknowledged this but suggested the foundations would be extremely thick if they are the width of both the wall and the voids.

38. During the course of the hearing, counsel agreed the extent of A's permanent rights over the retained land. The agreed form of Plan B is attached.

The Tribunal's decision

39. The Tribunal determines that freehold transfer shall include the voids and low perimeter walls.

40. The Tribunal approves the modified version of Plan A attached.

Reasons for the Tribunal's decision

41. The architect's drawings relate to the first to sixth floors and do not show the basement. The legend, on each drawing, includes the following note:

"FOUNDATIONS

The site is piled with existing piles and additional piles have been driven (subject to previous application dated 12/03/96).

A 700mm thick reinforced concrete slab will be cast at basement level with reinforced concrete retaining wall to Ground floor level. Calculations to be submitted prior to commencement on site."

The Tribunal was not supplied with the original planning consent or any calculations, drawings or specification showing the extent of the basement foundations. The lease and title plans show the two "*outcrops*" extending beyond the basement footprint. The Tribunal finds these demark the vent structures and the voids are not above the basement car park, as advanced by Mr Rainey.

42. The Tribunal does not know the dimensions of the foundations. Based on the Valuer Member's knowledge and experience, as a retired Surveyor of over 40 years' standing, it is highly likely that the foundations are wider than the flank wall above. They support a six-storey building and act as the retaining wall for the Thames Walkway and South Dock. This is consistent with the legend note in the architect's drawings.

43. Based on the limited evidence available and using its own expertise, the Tribunal concluded that the voids, or a substantial part, are above the basement foundations. These voids are approximately 1 meter wide. It is likely that the foundations extend outwards by some distance. Any 'gap' would be minimal and all of the voids are liable to acquisition. This also avoids any potential problems that might arise from the overhanging balconies.

The terms of the freehold transfer (TP1)

44. There are three disputed sub-clauses in panel 12 of the draft transfer deed, as detailed in the Schedule. The Tribunal's decision on each of these clauses, with brief reasons, is to be found in the final column of the Schedule.

45. In relation to sub-clause 8 and schedule 3, A suggested it was unnecessary to include details of the various leasebacks in the transfer. Rather, these should be dealt with separately in a contract. However, A's suite of conveyancing documents did not include a draft contract

and the Tribunal can only determine the documents before it. In the absence of a contract, sub-clause 8 and schedule 3 should remain. They clarify the transaction and identify the leasebacks to be completed simultaneously with the transfer.

The terms of the leaseback of Flat 59

46. This flat is already subject to a 125-year lease and the current leaseholder, The Komoto Group Limited ('KGL') is associated with R1. The parties agreed that R1 would take a 999-year leaseback of this flat, with the right to extend, as part of the term and reversion settlement.

47. R1's solicitors have drafted two leasebacks; the first assumes the extension has not been finished at completion and the second assumes it has. The Schedule included submissions on both drafts, as did the skeleton arguments. Ms Muir and Mr Rainey asked the Tribunal to determine both documents, as no-one can say when the works will be completed. The Tribunal has proceeded on this basis and its decision on each disputed clause, with brief reasons, is in the final column of the Schedule. Its decision on the proposed fire escape easement is at paragraph 61 below.

48. During the course of the hearing, Ms Muir agreed the following amendments to both leasebacks:

Prescribed clause LR4	Add "*as is more particularly described herein*" at the end of this clause
1st schedule part I	Substitute "*Flat 39 and the Airspace*" for "*the Flat*"
1st schedule part I para 1(b)	Add "*within the Flat*" at the end of this clause
1st schedule part II	Add "*in respect of the Premises and the Flat*" at the end of this clause.

49. When determining these leasebacks, the Tribunal focused on the terms agreed by the valuers in October 2018 ('the October 2018 Agreement'). They are ~~not~~ leasebacks under s.36 of the 1993 Act, as Flat 59 ~~does not come~~ comes within ~~parts II or~~ part III of schedule 9 and a leaseback was requested in the counter-notice. ~~Rather, the~~ The parties have agreed there should be a leaseback with the right to extend Flat 59 and the Tribunal must implement the terms of that agreement in accordance with paragraph 7 and part IV of schedule 9. Adopting Mr Rainey's phraseology, those terms are a "*Greenpine term of acquisition*" within s.24. This is a reference to the decision in ***Greenpine Investment Holding Limited v Howard de Walden Estates Ltd [2016] EWHC 1923 (Ch),*** where the leaseholder's agreement to provide an opinion from a BVI lawyer, outside the 1993 Act, was a term of acquisition for the purposes of s.48.

50. The terms of the October 2018 Agreement were that R1 would retain "*the right to extend Flat 59 in line with the attached planning permission and in accordance with the Building regulations in force at the time*." This was a reference to the 2017 Planning Permission for an infill below Flat 59 to enlarge that flat. There was no agreement for the construction of a separate flat. The reference to "*Building regulations in force at the time*" must mean the Building Regulations in force at the time of construction; rather than time of the agreement.

51. It is convenient here to address the correspondence from R2 and R3. In a letter to the Tribunal dated 13 December 2018 R3 stated:

"*This letter is confirmation that we are willing to become a party to any Leaseback Lease granted pursuant to the above Application and acting as the Management Company in the same or similar manner as are in the Existing Leases*."

R2 and R3 then sent identical letters to the Tribunal on 16 January 2019, asking to be joined to the proceedings and reciting part of paragraph 201 of the 2018 Decision. Both letters concluded "*The effect of the tribunal's decision will mean that in practice, under any leaseback terms, our current obligations will not change and confirm that we do not wish to be separately represented."*

52. In an email to the Tribunal dated 21 September 2020, Mr Brendon Howe of R3 stated (of Flat 59):

"We would not agree to any Lease that did not mirror the terms of the existing 125-year lease.

In particular, any alterations to the Tenant's Covenants, or any lease for this and other units that do not contain adequate provisions for Service Charges."

53. Mr Howe then sent an email to Mr Kearney dated 20 November 2020, in the following terms:

"To whom it may concern

The Management Company agree in principle to a clause, in the Leaseback lease of flat 59, permitting the extension of flat 59 in accordance with the Planning Consent dated 22nd September 2017 (PA/14/02209) and conforming to Building Regulations. We do not consent to any other development.

We agree with the Applicants Clause 3(8) in the proposed lease, but are not prepared to agree to the 1st Respondent's clauses 6(iii) and 8(2)(b) or any clause or definition that would allow work other than that permitted by the Planning Consent of 22nd September 2017."

54. In a letter to the Tribunal dated 27 October 2020 R2 stated:

"As this matter is again before the Tribunal in November 2020, we wish to restate our position with respect to the terms of any Leaseback

Leases. We would not agree to any lease that does not mirror the terms of existing leases and that all leases should contain provisions for service charges.

In particular, we would not agree with terms in a lease that appear to allow flat 59 to be extended down one floor (to the second floor) to form a duplex unit as per the planning consent granted on 22nd September 2017 (PA/14/02209) or otherwise."

55. R2 sent subsequent letter to the Tribunal, incorrectly dated 27 October 2020 but received on 23 November 2020, reading:

"Meridian Gate Estate Management Company Ltd agree in principle to a clause, in the Leaseback lease of flat 59, permitting the extension of flat 59 in accordance with the Planning Consent dated 22nd September 2017 (PA/14/02209) and conforming to Building Regulations. We do not consent to any other development.

We agree with the Applicants Clause 3(8) in the proposed lease, but are not prepared to agree to the 1st Respondent's clauses 6(iii) and 8(2)(b) or any clause or definition that would allow work other than that permitted by the Planning Consent of 22nd September 2017."

56. In his skeleton argument, Mr Rainey took issue with the September/October 2020 correspondence. R2 and R3 were seeking to block the extension to Flat 59, possibly at A's instigation, by insisting on a leaseback in the same terms as the existing leases (without a right to extend). Further, R2 specifically opposed the downward extension. However, these objections had been overtaken by the latest email and letter, now agreeing a clause permitting the extension.

57. Ms Muir did not pursue any point arising from the decision in ***Duval v 11-13 Randolph Crescent [2020) UKSC 18***, which had been flagged in pre-hearing correspondence. In her skeleton argument, she said the issue did not arise as R1 had granted KGL a licence for alterations in December 2018. This permitted "*the Tenant Works*", which are defined as:

"*the works to be carried out by the Tenant at the Building for the purposes of enlarging Flat 59 by constructing a second floor beneath the existing Flat 59 at the Building brief details of which are set out in the Planning Drawings together with a connection to Utilities at the Building in such position as shall be approved by the Landlord (such approval not to be unreasonably withheld or delayed) such works to be completed before the Deed of Variation is completed*".

The Tribunal was not supplied with a copy of this licence.

58. R1 seeks an easement over the planned external staircase for Flat 59. This was not included in their draft leases or addressed in the Schedule. Rather, it was first requested in Mr Oberoi's statement dated 13 November 2020. The location/design of the staircase is not known, as

R1 is yet to seek planning consent. Based on Mr Oberoi's evidence, it will be different to the temporary staircase shown in A's photographs. He says it will not be demised and seeks a widely drafted right of access and egress.

59. The letter from ABCL and design review statement from Mr Awolesi, both recommend a fire escape. The latter recited part of section 3.21 of Approved Document B1, which provides practical guidance on the Building Regulations 2010, namely:

"When multi-storey flats do not have their own external entrance at ground level, adopt one of the following approaches.

Approach 2 – provide at least one alternative exit from each storey that is not the entrance storey of the flat. All habitable rooms should have direct access to a protected landing (Diagram 3.6 and paragraph 3.22)."

Mr Awolesi did not recite the other approaches recommended at section 3.21.

60. Mr Rainey submitted that the Tribunal cannot decide if a fire escape is necessary to comply with current Building Regulations. Rather, it must determine the terms of the leaseback so as to permit compliance with those Regulations.

61. The Tribunal refuses R1's request for an easement over the planned external staircase. This was made too late in the day (only 11 days before the hearing), is too uncertain and too widely drafted. The Tribunal agrees it cannot decide if a fire escape is necessary. This is a matter for THC. However, the 2017 Planning Permission did not require a fire escape. R1 started work and, on Mr Oberoi's evidence, has substantially completed the development without seeking consent for an escape. This suggests it is unnecessary, as does the absence of any specification or drawings. It is over two years since the October 2018 Agreement. If a fire escape is necessary then this should have been addressed before now. The draft easement is too wide, as it is not restricted to egress or emergency use and would allow the leaseholder to use the proposed fire escape for unrestricted access to and egress from the flat. In any event, if an escape is found to be necessary and is constructed then the leaseholder can always rely on the general right of way at paragraph 4 of part II of the first schedule in both draft leasebacks. This general right is sufficient to meet the requirements of paragraph 11(a) of schedule 9 to the 1993 Act.

The terms of the commercial leasebacks

62. R1 is to be granted reversionary leasebacks of the seven commercial units on the ground floor (1, 3, 5, 6, 117, 120 and 123). Each of these units is already subject to a commercial lease. Up until the evening of 23 November 2020 the only issue was whether the leasebacks of Units

3 and 123 should include express rights to place tables and chairs outside these units.

63. The terms of the commercial leasebacks were agreed by the solicitors acting for A and R1 in an email exchange dated 18 April 2019. These terms did not include rights for outside tables and chairs. R1 acknowledged this agreement in the Schedule but said this was a mistake for Units 3 and 123. The leaseholders of these units had been allowed to place tables and chairs outside their premises and this use/right had existed for over 15 years. R1 contends that the absence of express rights was an obvious omission that must have been apparent to A and it can resile from the agreement. The addition of express rights would not prejudice A and the use of outside space is particularly important during the current pandemic, given the need for social distancing . A contends that the Tribunal has no jurisdiction to determine these leasebacks under s.24(1) of the 1993 Act, as all terms have been agreed.

64. At 6.30pm on 23 November 2020 the case officer received an email from R1's solicitor, attaching a letter and copies of six undated deeds of variation. The letter reads:

"The First Respondent has created Deed of Variations in respect of the following long lease commercial units namely, Units 1, 3, 5, 6, 117, 120 and 123 Meridian Place and the following Reversionary long lease commercial unit leases namely Units 1, 3, 5, 6 and 120 Meridian Place which have all been executed in Escrow by the First Respondent and the registered leaseholders of the said Units and these are attached.

These Deeds of Variation are foreshadowed in our Counsel, Philip Rainey QC's Skeleton Argument who will give an explanation of them at the Hearing.

The Applicant is copied in."

65. The reference to "*commercial unit leases*" is confusing, as all six documents are headed "*DEED OF VARIATION*". There is one deed between R1 and KGL for Units 1, 3, 5, 6 120 and 123, a second between R1 and KGL for Units 1, 3, 5, 6 and 120 and a third between R1 and Tazeen Hayat, Mr Sattar and Brian White for Unit 117. There are also counterparts of each deed. The originals have been executed by R1 and the counterparts executed by the tenants. As at the date of the hearing, none had been completed or dated. Rather, they were held in escrow by R1's solicitors. R2 and R3 are not parties to the deeds.

66. The deeds, if completed and registered, will vary the corresponding commercial leases. The proposed variations are contained in the schedules. In each case they will add a definition of "*The Outside Seating Area*" with reference to a plan and a Tenant's covenant to keep (or procure to be kept) this area clean and tidy. They will also add the following Tenant's easement:

"During such time that the Premises is open for business provided that

i) the Tenant does not substantially interfere with the rights of passage of the other leaseholders of the building in which the Premises are situated and

ii) the Tenant does not interfere with the obligations of the Landlord as to the maintenance and repair contained in any lease of the building in which the Premises are situated

The Tenant has the right to place and keep tables and chairs, umbrellas and external space heaters on the Outside Seating Area and use such area in conjunction with the Premises and the right to permit the occupier for the time being of the Premises so to do"

67. The deeds were foreshadowed in Mr Rainey's skeleton argument. He submitted that R1 could grant express easements and rely on these as a change of circumstances, since the time terms were agreed. This could lead to a modification of those terms by the Tribunal, pursuant to s.24(4)(b)(i).

68. At the time of the Tribunal's inspection, in October 2018, the kiosk at the front of Unit 123 was operating as a café and external tables and chairs were in use. These can be seen in one of the photographs in R1's bundle, as can tables and chairs outside Unit 1.

69. In her oral submissions, Ms Muir reiterated that terms had been agreed on 18 April 2019 and the Tribunal has no jurisdiction. If the leaseholders of Units 3 and 123 have implied rights for tables and chairs, based on long usage, then there is no need for express rights. The current leases do not include such rights and they are unnecessary, as Unit 123 is now vacant and Unit 3 is used as a language school. Only Units 1 and 6 are currently used as cafes and these were not addressed in the Schedule. Further, the deeds have not been completed or registered so the rights in those deeds are not legal easements.

70. Ms Muir submitted there has been no change of circumstances for the purposes of s.24(4)(b)(i), as the express rights are yet to be granted and (on R1's case) the tenants already have implied rights. Further, the use of the word "*may*" in this subsection means the Tribunal has a discretion whether to determine alternative terms. In any event, the grant of express rights would be a breach of s.19(1) and the deeds will be void, as an easement is an interest within s.101.

71. A has no particular objection to Units 1 or 6 putting out tables and chairs, if they already have implied rights. However, it does not want furniture all the way along the front concourse as this would obstruct other leaseholders' rights of way and furniture outside Unit 123 could block any fire escape for Flat 59.

72. Mr Rainey explained that there are three deeds, as the existing commercial leases are of differing lengths. He accepted that terms had been agreed in April 2019 but this agreement is deemed subject to contract. It does not prevent the Tribunal from investigating those terms, as established in ***Broomfield Freehold Management Ltd v Meadow Holdings Ltd [13/11/2007]***, an unreported decision of the Lands Tribunal. In that case HHJ Reid QC upheld the LVT's decision that it had jurisdiction to determine the freehold price where surveyors had 'agreed' a price, without considering the effect of s.62 of the Law of Property Act 1925. Their failure to consider s.62 rights, when quantifying the diminution in value of retained land, meant there was no agreement as to the price.

73. Mr Rainey submitted that the Tribunal could look behind the April 2019 agreement, as the existence of outside tables and chairs was common knowledge and had been overlooked when agreeing the leasebacks. This was an obvious mistake by A and R1.

74. Mr Rainey submitted that table and chair rights will be a change of circumstances for the purposes of s.24(4)(b)(i). The deeds can be completed and registered prior to completion of the freehold purchase. The date for determining which easements to include is the "*appropriate time*" under paragraph 1(1) of schedule 9, being completion, rather than the "*relevant date*" as defined in s.1(8). Registration would make good any current deficiency, as to the status of the new easements. In that event, the leasebacks should include easements in the same form as the deeds. These include a proviso not to interfere with other leaseholders' rights of passage, which addresses A's concern.

75. Mr Rainey accepted that the grant of an easement can, in certain circumstances, be a disposal for the purposes of s.19(1)(a)(i) but not in this case. R1 will not dispose of a freehold interest when granting the deeds; rather it will vary leasehold interests.

76. Mr Rainey submitted that a change of circumstances application can be made to Tribunal without a prior application to the Court. There is no authority on the point but s.24(4)(b)(i) does not restrict the timing of the application. Further, the wording makes it clear that such an application can be made where terms have been agreed.

77. As to discretion, the word "*may*" means the Tribunal must first look at whether it is necessary to revisit the terms agreed or determined. If there has been a change of circumstances, as is the case here, then it must determine the terms in the light of that change. The subsection allows a party to go back on an agreement and, in Mr Rainey's words "*change the rules of the game halfway through*".

78. In response, Ms Muir distinguished the facts in ***Broomfield***. Neither surveyor had considered s.62 rights in that case whereas here the leasebacks were agreed in their entirety. Further, the omission of table and chair rights was not an obvious mistake as no such rights appear in the existing commercial leases. In the case of Unit 123, the existing lease was only granted in 2012 so the tenant (KMG) is unlikely to have acquired an implied easement for tables and chairs.

79. Ms Muir submitted that the deeds of variation will breach s.19(1), as R1 will sever its interest in the "*specified premises*", by granting rights over its freehold land. The deeds will take effect as variations to the existing leases; rather than surrenders and re-grants.

80. As to s.24(4)(b)(i), Ms Muir pointed out that the Tribunal has a discretion when determining the terms of a leaseback (under Schedule 9). It follows that the Tribunal has a discretion as to any variation, following a change of circumstances. It is not obliged to reopen a decision or agreement every time a party says there has been a change.

The Tribunal's decision

81. The Tribunal has no jurisdiction to determine the terms of the commercial leasebacks.

82. The Tribunal makes no determination under s.24(4)(b)(i) of the 1993 Act.

Reasons for the Tribunal's decision

83. The terms of the leasebacks, including Units 3 and 123, were agreed by solicitors on 18 April 2019. R1 is not entitled to resile from that agreement. The facts of ***Broomfield***, where neither surveyor considered a legal issue outside their field of expertise, can be distinguished. In this case, A and B1 were legally represented with experienced enfranchisement solicitors on both sides. The terms of the leasebacks were negotiated and agreed by those solicitors. There is no evidence of a mutual mistake. R1 acknowledged a mistake in the Schedule but there was no suggestion that A was similarly mistaken. The existing leases do not include table and chair rights so their omission from the leasebacks is unsurprising. This was not an obvious mistake, as advanced by Mr Rainey.

84. Mr Oberoi's statement made no mention of a mistake in agreeing the leasebacks. He said s.62 rights were already enjoyed, based on instructions from Mr Sattar. He sought express rights due to an escalation of issues with external tables and chairs and their recent damage and removal. All of this suggests that express rights were an afterthought; only raised when Mr Oberoi learned of these issues.

85. The Tribunal is only able to "*determine the matters in dispute*", under s.24(1). The terms of the leasebacks are not matters in dispute, having been agreed in April 2019. The Tribunal has no jurisdiction under this subsection.

86. The Tribunal then considered if it could determine modified terms pursuant to s.24(4)(b)(i). R1 contends there has been a change of circumstances due to the easements in the deed of variation. However, those deeds had not been completed, let alone registered, at the date of the hearing. The leaseback terms were agreed back in April 2019. R1 and its tenants had 19 months to vary the leases, to include express rights for tables and chair, if they considered this necessary. At the very latest, R1 was aware of the issue by the time the Schedule was filed on 07 October 2020. However, the deeds were only disclosed the evening before the hearing, which was far too late.

87. The existence of signed deeds, held in escrow, is not a change in circumstances. They had not been completed or registered, meaning the new express easements are not effective. If the deeds are completed then they will need to be registered. A will be given notice of any application to register, by virtue of the unilateral notice registered against the freehold title (protecting the.13 notice). At that point it can challenge the deeds, if it considers it appropriate, under s.19. It will then be for the County Court or F-tT (Property Chamber) (Land Registration) to determine if the easements are void, within separate proceedings. This Tribunal cannot do so, as the deeds had not been completed at the date of the hearing.

88. There is nothing in s.24(b)(i) to suggest an application to the Tribunal, to determine modified terms, can only be made after an application to the Court. However, such an application is contingent on there being a change in circumstances. The existence of the incomplete deeds it not a change in circumstances and the Tribunal cannot consider an application under this subsection. Rather there would need to be as separate application to the Tribunal, as and when the deeds are completed and registered.

Name: Tribunal Judge Donegan **Date:** 12 April 2021

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

CHAPTER 1 COLLECTIVE ENFRANCHISEMENT IN CASE OF TENANTS OF FLATS

Preliminary

Section 1 The right to collective enfranchisement

(1) This chapter has effect for the purpose of conferring on qualifying tenants of flats contained in premises to which this Chapter applies on the relevant date the right, exercisable subject to and in accordance with this Chapter, to have the freehold of those premises acquired on their behalf -

(a) by a person or persons appointed by them for the purpose, and

(b) at a price determined in accordance with this Chapter;

and that right is referred to in this Chapter as "the right to collective enfranchisement".

(2) Where the right to collective enfranchisement is exercised in relation to any such premises ("the relevant premises") -

a) the qualifying tenants by whom the rights is exercised shall be entitled, subject to and in accordance with this Chapter, to have acquired, in like manner, the freehold of any property which is not comprised in the relevant premises but to which this paragraph applies by virtue of subsection (3); and

(b) section 2 has effect with respect to the acquisition of leasehold interests to which paragraph (a) or (b) of subsection (1) of that section applies.

(3) Subsection (2)(a) applies to any property if at the relevant date either –

(a) it is appurtenant property which is demised by the lease held by a qualifying tenant of a flat contained in the relevant premises; or

(b) it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises (whether those premises are contained in the relevant premises or not).

(4) The right of acquisition in respect of the freehold of any of such property as is mentioned in subsection (3)(b) shall, however, be taken to be to satisfied with respect to that property, if on the acquisition of the relevant premises in pursuance of this Chapter, either –

(a) there are granted by the person who owns the freehold of that property –

(i) over that property, or

(ii) over any other property,

such permanent rights as will ensure that thereafter the occupier of the flat referred to in that provision has as nearly may be the same rights as those enjoyed in relation to that property on the relevant date by the qualifying tenant under the terms of his lease; or

(b) there is acquired from the person who owns the freehold of that property the freehold of any other property over which any such permanent rights may be granted.

(5) A claim by qualifying tenants to exercise the right to collective enfranchisement may be made in relation to any premises to which this Chapter applies despite the fact that those premises are less extensive than the entirety of the premises in relation to which those tenants are entitled to exercise that right.

(6) Any right or obligation under this Chapter to acquire any interest in property shall not extend to underlying minerals in which that interest subsists if –

(a) the owner of the interest requires the minerals to be excepted, and

(b) proper provision is made for the support of the property as it is enjoyed on the relevant date.

(7) In this section –

"appurtenant property", in relation to a flat, means any garage, outhouse, garden, yard or appurtenance belonging to it or usually enjoyed with, the flat;

"the relevant premises" means any such premises as are referred to in subsection (2).

(8) In this Chapter "the relevant date", in relation to any claim to exercise the right to collective enfranchisement, means the date on which notice of the claim is given under section 13.

...

Section 13 Notice by qualifying tenants of claim to exercise right

The initial notice

(1) A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving notice of the claim under this section.

(2) A notice given under this section ("the initial notice") –

(a) must

(i) in a case to which subsection 9(2) applies, be given to the reversioner in respect of those premises; and

(ii) in a case to which section 9(2A) applies, be given to the person specified in the notice as the recipient; and

(b) must be given by a number of qualifying tenants of flats contained in the premises as at the relevant date which –

(i) ...

(ii) is not less than one-half of the total number of flats so contained;

...

(3) The initial notice must -

(a) specify and be accompanied by a plan showing –

(i) the premises of which the freehold is proposed to be acquired by virtue of section 1(1),

(ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and

(iii) any property over which it is proposed that rights (specified in the notice) should be granted in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a)

...

Section 19 Effect of initial notice as respects subsequent transactions by freeholder etc.

(1) Where the initial notice has been registered in accordance with section 97(1), then so long as it continues in force -

(a) any person who owns the freehold of the whole or any part of the specified premises or the freehold of any property specified in the notice under section 13(3)(a)(ii) shall not -

(i) make any disposal severing his interest in those premises or in that property

(ii) grant out of that interest any lease which, if it had been granted before the relevant date, the interest of the tenant would to any extent have been liable on that date to acquisition by virtue of section 2(1)(a) or (b); and

(b) no other relevant landlord shall grant out of his interest in the specified premises or in any property so specified any such lease as is mentioned in paragraph (a)(ii);

and any transaction shall be void to the extent that it purports to effect any such disposal or any such grant of a lease as is mentioned in paragraph (a) or (b).

...

Section 21 Reversioner's counter-notice

(1) The reversioner in respect of the specified premises shall give a counter-notice under this section to the nominee purchaser by the date specified in the initial notice in pursuance of section 13(3)(g).

(2) The counter-notice must comply with one of the following requirements, namely –

(a) state that the reversioner admits that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises;

(b) state that, for such reasons as are specified in the counter-notice, the reversioner does not admit that the participating tenants were so entitled;

(c) contain such a statement as is mentioned in paragraph (a) or (b) above but stat that an application for an order under subsection (1) of section 23 is to be made by such an appropriate landlord (within the meaning of that section) as is specified in the counter-notice, on the grounds that he intends to redevelop the whole or a substantial part of the specified premises.

(3) If the counter-notice complies with the requirement set out in subsection (2)(a), it must in addition

(a) state which (if any) of the proposals contained in the initial notice are accepted by the reversioner and which (if any) of those proposals are not so accepted, and specify –

(i) in relation to any proposal which is not so accepted, the reversioner's counter-proposal, and

(ii) any additional leaseback proposals by the reversioner;

(b) if (in a case where any property specified in the initial notice under section 13(3)(a)(ii) is property falling within section 1(3)(b) any such counter-proposal relates to the grant of right or the disposal of any freehold interest in pursuance of section 1(4), specify –

(i) the nature of those rights and the property over which it is proposed to grant them, or

(ii) the property in respect of which it is proposed to dispose of any such interest, as the case may be;

(c) state which interests (if any) the nominee purchaser is required to acquire in accordance with subsection (4) below;

(d) state which rights (if any) any relevant landlord desires to retain–

(i) over any property in which he has any interest which is included in the proposed acquisition by the nominee purchaser, or

(ii) over which any property in which he has any interest which the nominee purchase is to be required to acquire in accordance with subsection (4) below,

on the grounds that the rights are necessary for the proper management or maintenance of property in which he is to retain a freehold or leasehold interest; and

(e) include a description of any provision which the reversioner or any other relevant landlord considers should be included in any conveyance to the nominee purchaser in accordance with section 34 and Schedule 7.

...

Section 24 Applications where terms in dispute or failure to enter contract

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser -

(a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period two months beginning with the date on which the counter-notice or further counter-notice was so given, the appropriate tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser.

(3) Where –

(a) the reversioner has given the nominee purchaser such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all of the terms of acquisition have been either agreed between the parties or determined by the appropriate tribunal under subsection (1),

but a binding contract incorporating those terms has not been entered into by the end of the appropriate period specified in subsection (6), the court may on the application of either the nominee purchaser or the reversioner, make such order under subsection (4) as it thinks fit.

(4) The court may under this subsection make an order –

(a) providing for the interests to be acquired by the nominee purchaser to be vested in him on the terms referred to in subsection (3),

(b) providing for those interests to be vested in him on those terms, but subject to such modifications as –

(i) may have been determined by the appropriate tribunal on the application of either the nominee purchaser or the reversioner, to be required by reason of any change in circumstances since the time when the terms were agreed or determined as mentioned in that subsection, and

(ii) are specified in the order; or

(c) providing for the initial notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6);

and Schedule 5 shall have effect in relation to any such order as is mentioned in paragraph (a) or (b) above.

...

Section 34 Conveyance to nominee purchaser

(1) Any conveyance executed for the purpose of this Chapter, being a conveyance to the nominee purchaser of the freehold of the specified premises, of a part of those premises or of any other property, shall grant to the nominee purchaser an estate in fee simple absolute in those premises, that part of those premises or that property, subject only to such incumbrances as may have been agreed or determined under this Chapter to be incumbrances subject to which that estate should be granted, having regard to the following provisions of this Chapter.

(2) Any such conveyance shall, where the nominee purchaser is to acquire any leasehold interest in the specified premises, the part of the specified premises or (as the case may be) in the other property to which the conveyance relates, provide for the disposal to the nominee purchaser of any such interest.

(3) Any conveyance executed for the purposes of this Chapter shall have effect under section 2(1) of the Law of Property Act 1925 (conveyances overreaching certain equitable interests etc.) to overreach any incumbrance capable of being overreached under section 2(1)—

(a) as if, where the interest conveyed is settled land for the purposes of the Settled Land Act 1925, the conveyance were made under the powers of that Act, and

(b) as if the requirements of section 2(1) as to payment of the capital money allowed any part of the purchase price paid or applied in accordance with section 35 below or Schedule 8 to this Act to be so paid or applied.

(4) For the purposes of this section "incumbrances" includes—

(a) rentcharges, and

(b) (subject to subsection (5)) personal liabilities attaching in respect of the ownership of land or an interest in land though not charged on that land or interest.

(5) Burdens originating in tenure, and burdens in respect of the upkeep or regulation for the benefit of any locality of any land, building, structure, works, ways or watercourse shall not be treated as incumbrances for the purposes of this section; but any conveyance executed for the purposes of this Chapter shall be made subject to any such burdens.

(6) A conveyance executed for the purposes of this Chapter shall not be made subject to any incumbrance capable of being overreached by the conveyance, but shall be made subject (where they are not capable of being overreached) to—

(a) rentcharges redeemable under sections 8 to 10 of the Rentcharges Act 1977, and

(b) those falling within paragraphs (c) and (d) of section 2(3) of that Act (estate rentcharges and rentcharges imposed under certain enactments),

except as otherwise provided by subsections (7) and (8) below.

(7) Where any land is to be conveyed to the nominee purchaser by a conveyance executed for the purposes of this Chapter, subsection (6) shall not preclude the person who owns the freehold interest in the land from releasing, or procuring the release of, the land from any rentcharge.

(8) The conveyance of any such land ("the relevant land") may, with the agreement of the nominee purchaser (which shall not be unreasonably withheld), provide in accordance with section 190(1) of the Law of Property Act 1925 (charging of rentcharges on land without rent owner's consent) that a rentcharge—

(a) shall be charged exclusively on other land affected by it in exoneration of the relevant land, or

(b) shall be apportioned between other land affected by it and the relevant land.

(9) Except to the extent that any departure is agreed to by the nominee purchaser and the person whose interest is to be conveyed, any conveyance executed for the purposes of this Chapter shall—

(a) as respects the conveyance of any freehold interest, conform with the provisions of Schedule 7, and

(b) as respects the conveyance of any leasehold interest, conform with the provisions of paragraph 2 of that Schedule (any reference in that paragraph to the freeholder being read as a reference to the person whose leasehold interest is to be conveyed, and with the reference to the covenants for title implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 being read as excluding the covenant in section 4(1)(b) of that Act (compliance with terms of lease).

(10) Any such conveyance shall in addition contain a statement that it is a conveyance executed for the purposes of this Chapter; and any such

statement shall comply with such requirements as may be prescribed by land registration rules under the Land Registration Act 2002.

...

Section 36 Nominee Purchaser required to grant leases back to former freeholder in certain circumstances

(1) In connection with the acquisition by him of a freehold interest in the specified premises, the nominee purchaser shall grant to the person from the interest is acquired such leases of flats or other units contained in those premises as are required to be so granted by virtue of Part II or III of Schedule 9.

(2) Any such lease shall be granted so as to take effect immediately after the acquisition by the nominee purchaser of the freehold interest concerned.

(3) Where any flat or other unit demised under such lease ("the relevant lease") is at the time of that acquisition subject to any existing lease, the relevant lease shall take effect as a lease of the freehold reversion in respect of the flat or other unit.

(4) Part IV of Schedule 9 has effect with respect to the terms of a lease granted in pursuance of Part II or III of that Schedule.

...

Section 38 Interpretation of Chapter I

(1) In this Chapter (unless the context otherwise requires) -

...

"qualifying tenant" shall be construed in accordance with section 5;

...

"unit" means –

(a) a flat;

(b) any other separate set of premises which is constructed or adapted for use for the purposes of a dwelling; or

(c) a separate set of premises let, or intended for letting, on a business lease.

...

Section 90 Jurisdiction of county courts

(1) Any jurisdiction expressed to be conferred on the court by this Part shall be exercised by the county court.

(2) There shall also be brought in the county court any proceedings for determining any question arising under or by virtue of any provisions of Chapter I or II or this Chapter which is not a question falling within

its jurisdiction by virtue of subsection (1) or one falling within the jurisdiction of the appropriate tribunal (within the meaning of section 91) by virtue of that section.

(3) Where, however, there are brought in the High Court any proceedings, which, apart from this subsection, are proceedings within the jurisdiction of the High Court, the High Court shall have jurisdiction to hear and determine any proceedings joined within those proceedings which are proceedings within the jurisdiction of the county court by virtue of subsection (1) or (2).

(4) Where any proceedings are brought in the county court by virtue of subsection (1) or (2), the court shall have jurisdiction to hear and determine any other proceedings joined with those proceedings, despite the fact that, apart from this subsection, those other proceedings would be outside the court's jurisdiction.

Section 91 Jurisdiction of tribunals

(1) …Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal.

(2) Those matters are –

(a) the terms of acquisition relating to –

(i) any interest which is to be acquired by the a nominee purchaser in pursuance of Chapter I, or

(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b) the terms of any lease which is to be granted to a tenant in pursuance of Chapter II;

(c) the amount of any payment falling to be made by virtue of section 18(2);

(ca) the amount of any compensation payable under section 37A;

(cb) the amount of any compensation payable under section 61A;

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e) the apportionment between two or more persons of any amount (whether costs or otherwise) payable by virtue of any such provision.

(3)-(8)…

(9) The appropriate tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice;

(10) ...

(11) In this section –

"the nominee purchaser" and "the participating tenants" have the same meaning as in Chapter I;

"the terms of acquisition" shall be construed in accordance with section 24(8) or section 48(7), as appropriate;

(12) For the purposes of this section, "appropriate tribunal" means –

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.

...

Section 101 General Interpretation of Part I

(1) In this Part –

...

"interest" includes estate;

...

SCHEDULE 7

CONVEYANCE TO NOMINEE PURCHASER

Interpretation

1 In this Schedule—

(a) "the relevant premises" means, in relation to the conveyance of any interest, the premises in which the interest subsists;

(b) "the freeholder" means, in relation to the conveyance of a freehold interest, the person whose interest is to be conveyed;

(c) "other property" means property of which the freehold is not to be acquired by the nominee purchaser under this Chapter; and

(d) "the appropriate time" means, in relation to the conveyance of a freehold interest, the time when the interest is to be conveyed to the nominee purchaser.

General

2 (1) The conveyance shall not exclude or restrict the general words implied in conveyances under section 62 of the Law of Property Act 1925, or the all-estate clause implied under section 63 of that Act, unless—

(a) the exclusion or restriction is made for the purpose of preserving or recognising any existing interest of the freeholder in tenant's incumbrances or any existing right or interest of any other person, or

(b) the nominee purchaser consents to the exclusion or restriction.

(2) The freeholder shall not be bound—

(a) to convey to the nominee purchaser any better title than that which he has or could require to be vested in him, or

(b) to enter into any covenant for title beyond those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee;

and in the absence of agreement to the contrary the freeholder shall be entitled to be indemnified by the nominee purchaser in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).

(3) In this paragraph "tenant's incumbrances" includes any interest directly or indirectly derived out of a lease, and any incumbrance on a lease or any such interest (whether or not the same matter is an incumbrance also on any interest reversionary on the lease); and "incumbrances" has the same meaning as it has for the purposes of section 34 of this Act.

Rights of support, passage of water etc.

3(1) This paragraph applies to rights of any of the following descriptions, namely—

(a) rights of support for a building or part of a building;

(b) rights to the access of light and air to a building or part of a building;

(c) rights to the passage of water or of gas or other piped fuel, or to the drainage or disposal of water, sewage, smoke or fumes, or to the use or maintenance of pipes or other installations for such passage, drainage or disposal;

(d) rights to the use or maintenance of cables or other installations for the supply of electricity, for the telephone or for the receipt directly or by landline of visual or other wireless transmissions;

and the provisions required to be included in the conveyance by virtue of sub-paragraph (2) are accordingly provisions relating to any such rights.

(2) The conveyance shall include provisions having the effect of—

(a) granting with the relevant premises (so far as the freeholder is capable of granting them)—

(i) all such easements and rights over other property as are necessary to secure as nearly as may be for the benefit of the relevant premises the same rights as exist for the benefit of those premises immediately before the appropriate time, and

(ii) such further easements and rights (if any) as are necessary for the reasonable enjoyment of the relevant premises; and

(b) making the relevant premises subject to the following easements and rights (so far as they are capable of existing in law), namely—

(i) all easements and rights for the benefit of other property to which the relevant premises are subject immediately before the appropriate time, and

(ii) such further easements and rights (if any) as are necessary for the reasonable enjoyment of other property, being property in which the freeholder has an interest at the relevant date.

Rights of way

4 Any such conveyance shall include—

(a) such provisions (if any) as the nominee purchaser may require for the purpose of securing to him and the persons deriving title under him rights of way over other property, so far as the freeholder is capable of granting them, being rights of way that are necessary for the reasonable enjoyment of the relevant premises; and

(b) such provisions (if any) as the freeholder may require for the purpose of making the relevant premises subject to rights of way necessary for the reasonable enjoyment of other property, being property in which he is to retain an interest after the acquisition of the relevant premises.

Restrictive covenants

5(1) As regards restrictive covenants, the conveyance shall include—

(a) such provisions (if any) as the freeholder may require to secure that the nominee purchaser is bound by, or to indemnify the freeholder against breaches of, restrictive covenants which—

(i) affect the relevant premises otherwise than by virtue of any lease subject to which the relevant premises are to be acquired or any agreement collateral to any such lease, and

(ii) are immediately before the appropriate time enforceable for the benefit of other property; and

(b) such provisions (if any) as the freeholder or the nominee purchaser may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of any such lease or collateral agreement as is mentioned in paragraph (a)(i), being either—

(i) restrictions affecting the relevant premises which are capable of benefiting other property and (if enforceable only by the freeholder) are such as materially to enhance the value of the other property, or

(ii) restrictions affecting other property which are such as materially to enhance the value of the relevant premises; and

(c) such further restrictions as the freeholder may require to restrict the use of the relevant premises in a way which—

(i) will not interfere with the reasonable enjoyment of those premises as they have been enjoyed during the currency of the leases subject to which they are to be acquired, but

(ii) will materially enhance the value of other property in which the freeholder has an interest at the relevant date.

(2) In this paragraph "restrictive covenant" means a covenant or agreement restrictive of the user of any land or building.

...

SCHEDULE 9

PART I

GENERAL

1(1) In this Schedule -

"the appropriate time", in relation to a flat or other unit contained in the specified premises, means the time when the freehold of the flat or other unit is acquired by the nominee purchaser;

"the demised premises", in relation to a lease granted or to be granted in pursuance of Part II or III of this Schedule means –

(a) the flat or other unit demised or to be demised under the lease, or

(b) in the case of such a lease under which two or more units are demised, both or all of those units or (if the context so permits) any of them;

"the freeholder", in relation to a flat or other unit contained in the specified premises, means the person who owns the freehold or the flat or other unit immediately before the appropriate time;

"housing association" has the meaning given by section 1(1) of the Housing Associations Act 1985;

"intermediate landlord", in relation to a flat or other unit let to a tenant, means a person who holds a leasehold interest in the flat or other unit which is superior to that held by the tenant's immediate landlord;

"other property" means property other than the demised premises.

(2) In this Schedule any reference to a flat or other unit, in the context of the grant of a lease of it, includes any yard, garden, garage, outhouses and appurtenances belonging to or usually enjoyed with it and let with it immediately before the appropriate time.

...

PART III

RIGHT OF FREEHOLDER TO REQUIRE LEASEBACK OF CERTAIN UNITS

Flats without qualifying tenants and other units

5(1) Subject to sub-paragraph (3), this paragraph applies to any unit failing within sub-paragraph 1 which is not immediately before the appropriate time a flat let to a person who is a qualifying tenant of it.

(1A) A unit falls within this sub-paragraph if –

(a) the freehold of the whole of it is owned by the same person, and

(b) it is contained in the specified premises.

(2) Where this paragraph applies, the nominee purchaser shall, if the freeholder by notice requires him to do so, grant to the freeholder a lease of the unit in accordance with section 36 and paragraph 7 below.

...

Provisions as to terms of lease

7(1) Any lease granted to the freeholder in pursuance of paragraph 5 or 6, and any agreement collateral to it, shall conform with the provisions of Part IV of this Schedule except to the extent that any departure from those provisions –

(a) is agreed by the nominee purchaser and the freeholder; or

(b) is directed by the appropriate tribunal on an application made by either of those persons.

(2) The appropriate tribunal shall not direct any such departure from those provisions unless it appears to the tribunal that it is reasonable in the circumstances.

(3) In determining whether any such departure is reasonable in the circumstances, the tribunal shall have particular regard to the interest of any person who will be the tenant of the flat or other unit in question under a lease inferior to the lease to be granted to the freeholder.

(4) Subject to the preceding provisions of this paragraph, any such lease or agreement as is mentioned in sub-paragraph (1) may include such terms as are reasonable in the circumstances.

PART IV

TERMS OF LEASE GRANTED TO THE FREEHOLDER

Duration of lease and rent

8 The lease shall be a lease granted for a term of 999 years at a peppercorn ground rent.

General rights to be granted

9 The lease shall not exclude or restrict the general words implied under section 62 of the Law of Property Act 1925, unless the exclusion or restriction is made for the purpose of preserving or recognising an existing right or interest of any person.

Covenants for title

9A The lessor shall not be bound to enter into any covenant for title beyond –

(a) those implied from the grant; and

(b) those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee.

Rights of support, passage of water etc

10(1) This paragraph applies to rights of any of the following descriptions, namely –

(a) rights of support for a building or part of a building;

(b) rights to the access of light and air to a building or part of a building;

(c) rights to the passage of water or gas or other piped fuel, or to the drainage of disposal of water, sewage, smoke or fumes, or to the use or maintenance of pipes or other installations for such passage, drainage or disposal; and

(d) rights to the use or maintenance of cables or other installations for the supply of electricity, for the telephone or for the receipt directly or by landline of visual or other wireless transmissions;

and the provisions required to be included in the lease by virtue of sub-paragraph (2) are accordingly provisions relating to any such rights.

(2) The lease shall include provisions having the effect of –

(a) granting with the demised premises (so far as the lessor is capable of granting them) –

(i) all such easements and rights over other property as are necessary to secure as nearly as may be for the benefit of the demised premises the same rights as exist for the benefit of those premises immediately before the appropriate time, and

(ii) such further easements and rights (if any) as are necessary for the reasonable enjoyment of the demised premises; and

(b) making the demised premises subject to the following easements and rights (so far as they are capable of existing in law), namely –

(i) all easements and rights for the benefit of other property to which the demised premises are subject immediately before the appropriate time, and

(ii) such further easements and rights (if any) as are necessary for the reasonable enjoyment of other property, being property in which the lessor acquires an interest at the appropriate time.

Rights of way

11 The lease shall include –

(a) such provisions (if any) as the lessee may require for the purpose of securing to him, and persons deriving the title under him, rights of way over other property (so far as the lessor is capable of granting them), being rights of way that are necessary for the reasonable enjoyment of the demised premises; and

(b) such provisions (if any) as the lessor may require for the purpose of making the demised premises subject to rights of way necessary for the reasonable enjoyment of other property, being property in which the lessor acquires an interest at the appropriate time.

Common use of premises and facilities

12 The lease shall include, so far as the lessor is capable of granting them, the like rights to use in common with others any premises, facilities or services as are enjoyed immediately before the appropriate time and enforceable for the benefit of other property.

Covenants affecting demised premises

13 The lease shall include such provisions (if any) as the lessor may require to secure that the lessee is bound by, or to indemnify the lessor against breaches of, restrictive covenants (that is to say, covenants or agreements restrictive of the use of any land or premises) affecting the demised premises immediately before the appropriate time and enforceable for the benefit of other property.

Covenants by lessor

14(1) The lease shall include covenants by the lessor –

(a) to keep in repair the structure and exterior of the demised premises and of the specified premises (including drains, gutters and external pipes) and to make good any defect affecting that structure;

(b) to keep in repair any other property over or in respect of which the lessee has rights by virtue of this Schedule;

(c) to ensure, so far as practicable, that the services which are provided by the lessor and to which the lessee is entitled (whether alone or in common with others) are maintained at a reasonable level, and to keep in repair any installation connected with provision of any of those services.

(2) The lease shall include a covenant requiring the lessor –

(a) to insure the specified premises for their full reinstatement value against destruction or damage by fire, tempest, floor or any other cause against risk of which it is the normal practice to insure;

(b) to rebuild or reinstate the demised premises or the specified premises in the case of any such destruction or damage.

Covenants by lessee

15 The lease shall include a covenant by the lessee to ensure that the interior of the demised premises is kept in good repair (including decorative repair).

Contributions by lessee

16(1) The lease may require the lessee to bear a reasonable part of the costs incurred by the lessor in discharging or insuring against the obligations imposed by the covenants required by paragraph 14(1) or in discharging the obligation imposed by the covenant required by paragraph 14(2)(a).

(2) Where a covenant required by paragraph 14(1) or (2)(a) has been modified to any extent in accordance with paragraph 4 or 7, the reference in sub-paragraph (1) above to the obligations or (as the case may be) the obligation imposed by that covenant shall be read as a reference to the obligations or obligation imposed by that covenant as so modified.

Assignment and sub-letting of premises

17(1) Except where the demised premises consist of or include any unit let or intended for letting on a business lease, the lease shall not include any provision prohibiting or restricting the assignment of the lease or the sub-letting of the whole or part of the demised premises.

(2) Where the demised premises consist of or include any such unit as is mentioned in sub-paragraph (1), the lease shall contain a prohibition against –

(a) assignment of sub-letting the whole or part of any such unit, or

(b) altering the user of any such unit,

without the prior written consent of the lessor (such consent not to be unreasonably withheld).

Restrictions on terminating lease

18 The lease shall not include any provision for the lease to be terminated otherwise than by forfeiture on breach of any term of the lease by the lessee.