SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/19UG/OCE/2007/0043

BETWEEN:

KINGSBERE COURT MANAGEMENT LIMITED

Applicant

- and -

JOHN L G SHEFFIELD AND MARK H ARMOUR (TRUSTEES OF R G DRAX AMR 1987 SETTLEMENT TRUST)

Respondents

PREMISES:	Flats 1-6 Kingsbere Court 3 Turberville Road Bere Regis Dorset BH20 7HA ("the Property")
TRIBUNAL:	MR D AGNEW LLB, LLM (Chairman) MR T E DICKINSON BSc FRICS IRRV
HEARING:	6th November 2007

DETERMINATION AND REASONS

Determination

The Tribunal determines that the price payable by the Applicant to the Respondent for the freehold of that part of the Property to be transferred to the Applicants under the terms of the draft transfer agreed between the parties is £35,832.00.

Reasons

1. The Application

1.1 On 18th July 2007 solicitors for the Applicant applied to the Tribunal to determine the price and terms on which the freehold of the Property is to be sold to the nominee purchaser Kingsbere Court Management Limited, under Sections 24 (1) and 92(2)(d) of

the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") and to determine the costs payable under Section 33 of the 1993 Act.

1.2 The qualifying tenants had served an initial notice under Section 13 of the 1993 Act upon the Respondents dated 25th January 2007. The Respondents served a counter notice admitting that the participating tenants were on the date of initial notice entitled to exercise the right to collective enfranchisement under the 1993 Act but the price was not admitted.

1.3 By the time the matter came before the Tribunal for hearing the parties had agreed the form of transfer and the only matters remaining to be decided by the Tribunal were the price for the acquisition by the Applicants of the freehold and costs. The Tribunal was asked by the parties not to determine the costs payable at the hearing on 6th November 2007 as the parties anticipated agreeing the same.

2. Inspection

2.1 The Tribunal inspected the Property immediately prior to the hearing on 6th November 2007. This comprises a two storey development of 6 self-contained flats and maisonettes located in a cul-de-sac close to the centre of the town of Bere Regis, Dorset. The accommodation comprises:-

Flat 1: 1 bedroom first floor flat
Flat 2: 2 bedroom first floor flat
Flat 3: 2 bedroom maisonette
Flat 4: originally a 2 bedroom maisonette but an additional bedroom has been created in the roof space
Flat 5: 2 bedroom maisonette
Flat 6: 2 bedroom maisonette

There is access by an archway under flat 2 to a tarmaced courtyard area at the rear. There is parking for 6 small cars and a store room. The four maisonettes have a small garden area to the rear of each unit. One maisonette has had replacement double glazing otherwise the windows of all the units have the original wooden frames. The leaseholder of flat 4 has recently refitted the kitchen with a range of base and wall units and worktops.

3. Other agreed facts

3.1 The following facts were agreed between the parties' surveyors:-

i. that the valuation date shall be 17th November 2006;

ii. that the valuation date the unexpired lease term was 73 years 1 month;

iii. that all 6 tenants are participating in the purchase;

iv. that there was no element of compensation payable;

v. that the creation of the additional room in the roof space of flat 4 is not a tenant's improvement and that its additional value is £10,000.00.

4. The hearing

4.1 This took place at the Kings Arms Hotel, East Street, Dorchester on 6th November 2007. Present were Mr G P Holden FRICS for the Applicant and Mr G D Bevans FRICS for the Respondents. They both appeared as advocates and as expert witnesses for the respective parties. Both had supplied the Tribunal with valuation reports: that of Mr Holden was dated 17th October 2007 and that of Mr Bevans was dated 28th September 2007.

5. The evidence and submissions of the parties

5.1 **The Applicant's case.** During the course of the hearing Mr Holden was prepared to agree with Mr Bevans that the existing leasehold value of the property was £830,000.00.

5.2 Mr Holden then proceeded to deduct 5% from this value to allow for some tenants improvements and to exclude the tenant's statutory rights to reflect the "non Act world".

5.3 As far as the capitalisation rate is concerned, Mr Holden sought to adopt an all risk yield of 8%. He produced a summary of collective enfranchisement cases in the Southern LVT area which he concluded showed that none of the yields applied were lower than 6.5%.

5.4 With regard to the deferment rate, Mr Holden referred to the decision of the Court of Appeal in the case of Cadogan Estates Limited – v – Sportelli and in particular to paragraph 102 of the judgment of in which it states: "The judgment that the same deferment rate should apply outside the PCL area was made and could only be made, on the evidence then available. That must leave the way open to the possibility of further evidence being called by other parties in other cases directly concerned with different areas. The deferment rate adopted by the Tribunal will no doubt be the starting point: and their conclusions on the methodology, including the limitations of market evidence are likely to remain valid. However, it is possible to envisage other evidence being called, for example, on issues relevant to the risk premium for residential property in different areas. That will be a matter for those advising future parties and for the Tribunal to consider as such issues arise."

5.5 Mr Holden concluded that the Court of Appeal were making a distinction between Prime Central London (PCL) and elsewhere. Whilst the generic rate established by the Sportelli decision was a starting point he submitted that the Tribunal should examine evidence as to why these premises should be different. In his submission there were four factors making these premises different from Prime Central London typical cases. They are as follows:-

i. Location (to which he had attributed a difference from Prime Central London of ½%);
ii. The fact that there was no management company which restricted the freeholders income to ground rents with no opportunity for achieving an income from insurance commission or from the management of the property to which he attributed a difference of 1% from the generic rate;
iii. The future of the site. In this respect the reversioners' requirement was to retain virtually half the site preventing the site being redeveloped which he said must have an impact on the price an investor would pay. He attributed a further 1% for this factor;
iv. By virtue of the retention by the freeholder of the courtyard area the repairing obligations will continue in respect thereof. For this factor he attributed a difference from the usual generic deferment rate of ½%. This made a total different of 3% bringing the deferment rate up from 5% to 8%.

5.6 With regard to the relativity, Mr Holden thought there should be a 5% uplift to reflect the fact that the leases concerned had still 73 years left to run.

5.7 After some debate the two valuers agreed a marriage value uplift of 5½%.

6. The respondent's evidence and submission

6.1 Mr Bevans proposed a capitalisation rate of 6 ½% as this was the figure that in his experience he agrees with other valuers both at Tribunals and in settlements outside Tribunals.

6.2 As far as the deferment rate is concerned Mr Bevans accepted that the Court of Appeal had left open the door for different rates outside Prime Central London but he said that the judgment of the Court of Appeal indicated that there would have to be relevant evidence as to the risk premium for each particular property for the Tribunal to depart from the generic rate laid down in Sportelli. Mr Bevans did not accept that there were any issues relevant to the risk premium in this particular case. The location factor is already reflected in the leasehold value.

6.3 Mr Bevans accepted under cross-examination that these leases with 73 years left were saleable and that in 2006 the market was strong. He was not prepared to accept that investors were interested in income from sources other than ground rent, for example insurance commission and management fees. Investors he said were mindful that management could be taken away from the freeholder overnight. He said that his investment clients were looking for ground rent income and they did not want the problem of management nor were they particularly concerned to receive insurance commission. Again under cross-examination Mr Bevans stuck to his opinion that he did not think that there were any factors which justified the Tribunal moving away from the generic deferment rate established in Sportelli.

7.

7.1 In final submissions Mr Holden conceded that his 8% deferment rate might be on the high side in view of the fact that he had accepted that location had already been reflected in the leasehold values and that it may be the appropriate rate should be 7-7½%.

8. <u>The determination</u>

8.1 Capitalisation rates. The Tribunal noted that of the 11 auction sales details which had been supplied by Mr Holden the average gross initial yield was 5.38% which was substantially lower than the capitalisation rate of 8% which Mr Holden had argued for. Of the Tribunal decisions referred to by Mr Holden only four were decided in 2006. One was at 8%, two were at 7% and one was at 6.5%. In all the circumstances and using their own knowledge and experience the Tribunal preferred Mr Bevans figure of 6.5% as being the appropriate capitalisation rate in this case.

8.2 The deferment rate. With regard to the four reasons why according to Mr Holden, the Sportelli deferment rate is not appropriate in this case, location has already been reflected in the leasehold value as Mr Holden himself conceded. The Tribunal did not accept that any of the other three factors were sufficiently persuasive to justify the Tribunal departing from the generic rate put forward in the Sportelli case of 5% as the starting point.

8.3 Both valuers agreed during the course of the hearing that the value of the leasehold interest in a no Act world was £790,000.00.

8.4 Both valuers also agreed in the course of the hearing that the marriage value uplift would be 5.5%. Mr Bevans argued that this should be added. as a matter of logic, to the existing leasehold value whereas Mr Holden argued that it should be added to the no Act world valuation. Neither valuer produced any authority but during the course of its determination the Tribunal noted the following extract from 4th addition of "Leasehold

Enfranchisement" by Hague at page 440 – "It seems to have been intended that the same assumptions should be made in valuing the freehold and any intermediate leasehold interest throughout the marriage value calculation as are adopted in valuing the freeholder's interest. However, it is arguable that, in valuing the existing leases of the participating tenants, the relevant disregards (the most important being improvements and 1993 Act rights) are not taken into account. The main reason for this argument is that, in the case of a new lease claim, the Act now makes it clear that the same disregards are to apply to the valuation of the leaseholder's interest as to that of the freeholder. By omission, therefore, it can be contended that these disregards are not to apply in the collective enfranchisement calculations. Moreover, so it is argued, this is only just; a participating tenant, in negotiating in the market with the freeholder, would, for example, take into account the improvements to the flat which he had paid for. Support for this argument is to be found in a leasehold valuation decision [Donath v Grosvenor Estate Belgravia (1997)1 EGLR 203]. The argument in favour of disregarding improvements and statutory rights throughout the calculation relies on making the same assumptions as in 1967 Act cases, and adopting what is said to be a fair and consistent approach. The increase representing the marriage value is based on the same assumptions as under paragraph 3(1). An authoritative decision of the Land Tribunal of Court of Appeal is required."

It is therefore open to the Tribunal to adopt either Mr Holden's or Mr Bevans' stance on this point and the Tribunal prefers the approach of Mr Holden which is consistent in applying the same assumptions throughout the marriage value calculation.

8.6 The Tribunal's calculation of the price to be paid for the freehold of that part of the Property to be acquired by the Applicant in accordance with the agreed draft transfer is set out in the Appendix hereto.

Dated this 22nd **day of** November **2007**

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D. Agnew LLB, LLM
Chairman

APPENDIX

A. Freeholder's interest

	£	£
Ground Rents	180	
YP 14yrs 1 month @ 6.5%	9.065785179	1,632
	300.00	
YP 33yrs @ 6.5%	13.4590885	
PV 14.3 @ 6.5%	0.410723963	1,658
	450.00	
YP 26.04 @ 6.5%	12.39990046	
PV 47.13 @ 6.5%	0.051405902	1,457
Present value	833,450	
Reversion to freehold VP value		
Present value £73.17 @ 5%	0.028156521	23,467
Total excluding marriage value is	£28,214	28,214

B. Marriage value

Participator's interest after acquisition		833,450
Less:-		
Value of existing leases	790,000	
Freehold interest before	28,214	818,214
		15,236
	50%	7,618
Total Consideration		
Price of freehold in specified premises	28,214	
Marriage value to freeholder in specified premises	7,618	
Total for freehold premises	35,832	