

LON/00AN/OLE/2007/0001**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATION UNDER SECTION 24 OF
THE LEASHOLD REFORM, HOUSING & URBAN
DEVELOPMENT ACT 1993 (AS AMENDED)**

Address: 1 Mall Villas, Mall Road, Hammersmith, London,
W6 9DQ

Applicants: Mr & Mrs Gilloway

Respondent: Mr S S Surridge

Application: 18 December 2006

Inspection: 27 June 2007

Hearing: 26-27 June 2007

Appearances:**Tenants**

-Mr B Maunder Taylor FRICS, MAE	Maunder Taylor, Chartered Surveyors
Mr Oberoi	HPLP, Solicitors
Ms Gilloway	Leaseholder
	For the Applicant

Landlord

Mr Shapiro BSc (Est Man), FRICS, IRRV	Moss Kay Pembertons Ltd,
FCI Arb	Chartered Surveyors
Wallace LLP	Solicitors for the Respondent
	For the Respondent

Members of the Tribunal: Mr I Mohabir LLB (Hons)
Miss M Krisko BSc(EstMan)BA, FRICS
Mrs S F Redmond BSc(Econ), MRICS

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AN/OCE/2007/0001

**IN THE MATTER OF 1 MALL VILLAS, MALL ROAD, HAMMERSMITH,
LONDON, W6 9DQ**

**AND IN THE MATTER OF SECTION 24 OF THE LEASEHOLD REFORM,
HOUSING & URBAN DEVELOPMENT ACT 1993**

BETWEEN:

**1 MALL VILLAS (FREEHOLD) LIMITED
(as nominee purchaser)**

Applicant

-and-

STUART SPICER SURRIDGE

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is an application by the Applicant, as nominee purchaser, pursuant to s.24 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") to determine the purchase price to be paid by the participating tenants to enfranchise and acquire the freehold interest in the property known as 1 Mall Villas, Mall Road, London, W6 9DQ ("the subject property").
2. The subject property is comprised of 4 flats (A, 1, 2 and 3) located on the ground/lower ground, first and second floors and in the Mansard roof respectively. Of the 4 flats only Flats A (ground floor) and 2 (second floor)

participate in this application (“the participating tenants”). The lessee of both flats appears to be Trudie Jane Galloway. It was a matter of common ground that the leases of each of the 4 flats were granted for a term of 99 years from 29 September 1971 and expiring in September 2070. The aggregate ground rent for the two participating flats is £120 per annum and £100 per annum for the two non-participating flats.

3. By an initial notice dated 28 April 2006 served on the Respondent pursuant to s.13 of the Act, the participating tenants exercised the right to acquire the freehold interest in the subject property. The proposed purchase price was £15,012 for the freehold interest and £385 for appurtenant land. By a s.21 counter notice dated 30 June 2006, the Respondent admitted the right of the participating tenants to collectively enfranchise and counter proposed a purchase price of £79,566. Principally, the parties were unable to agree the purchase price to be paid for the freehold interest and on 18 December 2006, the Applicant issued this application.

The Issues

4. The Statement of Agreed Facts and Issues prepared by the respective valuers instructed by the parties set out the following:

Matters Agreed

- (a) the valuation date is 28 April 2006.
- (b) the unexpired term of the leases was 64.42 years as at the valuation date.
- (c) the participating flats are Flats A and 2. The non-participating flats are Flat 1 and 3.
- (d) the rate for capitalising the ground rent was 7%.
- (e) although initially in dispute, the capital values of the flats were agreed at the hearing as follows.

Flat	Virtual Freehold	Existing Lease
A	320,000	268,000
1 & 2	290,000	243,000
3	276,000	231,000

- (f) that there was no other compensation payable under paragraphs 2(1)(c) and 5 of Schedule 6 of the Act.
- (g) the Respondent's costs were £1,000 plus VAT.

Matters not Agreed

- (a) the deferment rate.
- (b) hope value, if any.

The Tribunal's determination was, therefore, limited to these two issues.

Inspection

5. The Tribunal inspected the subject property on 27 June 2005. The property is a late 19th century semi-detached house on three floors plus a top floor mansard addition and a basement. The lessee of the ground floor has added a bedroom and a shower room in the basement. To the front of the property is a small paved area with pedestrian access to the rear garden along the side of the building. The Tribunal noted the overflowing downpipe from the roof and the bay window and the blocked manhole at the front of the building. The Tribunal inspected the ground floor flat together with the lessees and Mr. Maunder Taylor. The lessees' improvements in the basement were noted, as was the condition generally, as well as the evidence of damp. Although convenient to both Hammersmith town centre and the river, this location suffers from excessive noise from the A4 roadway and the Hammersmith flyover. It is set well away from the river and its substantial embankment and consequently does not obviously present a flooding risk. However, no evidence was produced of flood maps to confirm this historically.

Hearing

6. The hearing in this matter took place on 26 June 2007. The Applicant and Respondent were represented by Mr Maunder Taylor and Mr Shapiro

respectively. Their evidence was set out in their respective reports dated 20 June 2007 and 4 June 2007.

(a) Deferment Rate

7. Mr Shapiro simply contended that the Tribunal should adopt a rate of 5% as decided in *Earl Cadogan & Cadogan Estates Ltd v Sportelli* [LRA/50/2005] and other consolidated appeals. He, therefore, adduced no evidence on this issue.
8. Mr Maunder Taylor made a number of general submissions in relation to *Sportelli*. Firstly, that the calculation of the premium payable in that case had not been carried out on the basis of the statutory assumptions set out in Schedule 6, paragraph 3 of the Act because it ignored a market evidence approach. Instead, the Lands Tribunal had relied on a “*money market approach*”. Mr Maunder Taylor submitted that this approach was wrong. Any valuation had to be based on land market evidence and not on other considerations, see: *Finkel v Simon & Milbern Investments Ltd* [LR/84/1973], which cited with approval the dicta of Sir Edward Sachs in *Gallagher Estates Ltd v Walker*, CA.
9. Secondly, Mr Maunder Taylor submitted that *Sportelli*, being a Lands Tribunal decision was not binding on the Tribunal. The decision of another Tribunal set a pattern and should not be followed regardless of the evidence before it nor should findings of fact or opinion of another Tribunal be regarded as evidence of value, see: *Delaforce v Evans & Evans* [LR/1/1970], *Finkel* and *Arbib v Earl of Cadogan* [LRA/23/2004]. Indeed, the Lands Tribunal in the recent decision of *Arrowdell v Coniston Court (North) Hove Ltd* [LRA/72/2005] restated, at paragraph 23, that a Tribunal’s determination must primarily be based on the evidence before it. The Lands Tribunal decision in *Sportelli*, on the face of it, appeared to contradict the general approach taken in *Delaforce* and *Arrowdell* by seeking to caution any other Tribunal from departing from the generic deferment rates adopted in that case. Mr Maunder Taylor went on to invite this Tribunal to clarify to what extent Lands Tribunal

decisions are regarded as binding, if at all, on LVTs. That matter is dealt with below.

10. Thirdly, Mr Maunder Taylor submitted that the public interest required that parties have their disputes determined by Tribunals on the basis of the evidence and not solely upon an earlier Lands Tribunal decision. He further submitted that the Tribunal had a right and a duty to decide matters of valuation based on the evidence adduced. He went on to also invite the Tribunal to clarify whether the public interest was a matter that influenced its decisions and, if so, to what extent. In short, the answer to this question is, self-evidently, that public interest forms no part of *this* Tribunal's considerations. The Tribunal is a statutory body and its determination can only be carried out in accordance with Schedule 6 of the Act, based upon the particular facts, evidence and all the circumstances of any given case it hears. Matters of policy are not within the Tribunal's jurisdiction. In any event, any such views expressed by another Tribunal do not bind this Tribunal.
11. For the reasons set out above, Mr Maunder Taylor submitted that *Sportelli* had little or no application and that the Tribunal should consider the issue of the deferment rate based on the market evidence adduced on behalf of the Applicant.
12. Mr Maunder Taylor contended for a deferment rate of 8%. By way of market evidence, he referred to the sale of Tamar House, Tavistock Place, Bloomsbury, London, WC1H 9RA. This was a superior property in a superior location. He said the both he and Mr Shapiro had analysed this sale and arrived at deferment rates of 6.5% and 6.59% respectively. This supported a deferment rate of 8% for the subject property bearing in mind the following:
 - (a) its age of 190 years at the termination of the existing leases.
 - (b) the fact that 4 flats was the maximum the site would carry because of the perceived risk of flooding between now and reversion. It would have to be rebuilt without any basement accommodation and with the ground floor set at a higher level.

- (c) the poor layout of the internal accommodation.
- (d) that the structure did not meet today's environmental standards thereby requiring the building to be rebuilt on termination of the leases. The value therefore should be to site value.
- (e) the ongoing disputes concerning water damage to the front elevation of the property.

13. Mr Maunder Taylor went on to consider the sale of the freehold interest of Selwyn Court, Barnhill Road, Wembley, HA9 9BP, which he submitted was in an approximately similar area to the subject property. The unexpired term of the lease here was 49 years, thereby attracting a marriage value in the "with Act" world. His analysis, on a term and reversion basis only, provided a deferment rate of 5% approximately. However, he went on to submit that this rate had to be adjusted upwards to reflect the fact that freehold investments of this type in the "with Act" world are necessarily higher than would be achieved in the "no Act" world. He submitted that the Act encouraged leaseholders to seek lease extensions, which allowed investors to obtain their half share of the marriage value. This would not be possible without the Act. Indeed, this was recognised in *Sportelli* where the Lands Tribunal stated that the market was inevitably influenced by the expectation of what an LVT might determine the enfranchisement price to be under the Act. Moreover, the Act provides certainty to investing in this way by allowing a calculation to be made of what a leaseholder should pay and a freehold investor to receive upon enfranchisement. In the "no Act" world this had to be discounted. Accordingly, there had to be an upward adjustment for the "effect of the Act" and that adjustment was greater as the lease term became shorter.

14. Mr Maunder Taylor was supported in his contention for 8% by his analysis of the LVT decision in the matter of Marlborough Court, Pembroke Road, Kensington, London, W8 (LON/ENF/1754/06), where the Tribunal found for a rate of 6% with an unexpired term of 50.7 years. In another LVT decision in the matter of 9/16 Stamford Hill Mansions, London, N16 5TL, both Mr Maunder Taylor and Mr Shapiro had agreed a yield rate of 8.5% for both term and reversion without any consideration of hope value. The Tribunal then

reduced the rate to 7.5% to reflect hope value. Taking all of these matters together, Mr Maunder Taylor submitted, in this particular instance, the evidence supported a deferment rate of 8%.

15. The Tribunal firstly dealt with Mr Maunder Taylor's request for clarification on whether its decision in this case was based on land market rates and whether the Tribunal was bound by the Lands Tribunal decisions and, in particular *Sportelli*. Both of these matters were considered together because, plainly, one has a direct relationship to the other. If this Tribunal concluded that it was bound by *Sportelli* then it follows that its determination would be based on the money market rates adopted by the Lands Tribunal in that case.
16. The Tribunal agreed with Mr Maunder Taylor's submission that the decisions of the Lands Tribunal did not *strictly* bind this or any other LVT. Nevertheless, as the appellate body from the LVT, the decisions of the Lands Tribunal are at the very least highly persuasive authorities and it seems that both this and any other Tribunal must be mindful of any relevant decisions made by it when considering applications such as this one. It is for this reason that this Tribunal in this instance adopted the deferment rate of 5% in *Sportelli* for flats as the starting point. In so doing, this is not to say that this is the general approach to be adopted by other LVT's in applications of this kind. As Mr Maunder Taylor is well aware, the approach taken by this Tribunal cannot bind any other LVT when deciding other applications. In each case, that will be a matter for that particular Tribunal having regard to all the circumstances of the case.
17. That said, the Tribunal also agreed with Mr Maunder Taylor's broad submission that this application could not be blindly considered without having regard to the evidence before it. In this instance, the Tribunal decided that there was sufficient evidence to depart from a deferment rate of 5%. Mr Maunder Taylor's analysis of the sale of the freehold interest in Selwyn Court, Tamar House and Marlborough Court (*supra*), when taken together tended to support a "no Act" world deferment rate greater than 5%. An upward adjustment was, therefore, necessary.

18. The Tribunal had regard to two other material factors. Firstly, the management difficulties that would be encountered in managing such as small block of flats. A larger firm of managing agents would be reluctant to manage such as small block because of the disproportionate time required in relation to the fees charged and the perceived difficulty in recovering service charges under residential leases of this type. These matters were accepted by Mr Shapiro as essentially being correct.
19. Secondly, the subject property was located very near to the Hammersmith flyover and was in a very noisy location. It was, therefore, a very different property from those considered in *Sportelli*. The Tribunal considered that this matter was inevitably bound to affect future capital value with the increasing noise and pollution that would result. The deferment rate must reflect the quality of the investment and problems associated with it. Taking all of these factors together, the Tribunal determined that a deferment rate of 6% was appropriate for the subject property and not 8% as contended by Mr Maunder Taylor.
20. For the avoidance of doubt, the Tribunal paid no regard to the possibility or risk of flooding in the future, as it considered this to be too remote and speculative at present. The matter of obsolescence was considered to be reflected in the capital values agreed by the parties. In addition, the decisions of other LVT's that departed from *Sportelli* and referred to by Mr Maunder Taylor did not set any precedent for this Tribunal because those decisions, for the reasons set out above, do not bind this Tribunal. Moreover, those cases were decided on the basis of other evidence other than that relied on in this case.

(b) Hope Value

21. Mr Shapiro contended that the Respondent was also entitled to claim hope value in addition to the marriage value. The hope value in this instance was the hope of selling lease extensions to one or more of the non-participating tenants. Mr Shapiro relied on the fact that one of the non-participating

tenants, Mr Bates, had purported to serve an invalid s.42 notice after the valuation date. However, Mr Shapiro acknowledged that in *Sportelli* the Lands Tribunal decided that hope value could not be claimed in addition to marriage value. He submitted that this was unfair to landlords generally.

22. Mr Maunder Taylor concurred with the decision made in *Sportelli* regarding hope value. He stated that in several earlier cases the Lands Tribunal has considered and rejected this argument. He submitted that hope value for non-participating tenants cannot be claimed under Schedule 6 of the Act because in the “no Act” world, it was not possible to differentiate between the participating and non-participating tenants. He further submitted that a landlord could not claim both a share of the reversion and hope value. He could only have one or the other.
23. The Tribunal agreed entirely with the submissions made by Mr Maunder Taylor for the reasons advanced by him and, therefore, determined that hope value could not be claimed by the Respondent in addition to the marriage value.
24. Accordingly, for the reasons stated above, the Tribunal determined that the price to be paid by the Applicant for the freehold in the subject property is **£72,165**. The Tribunal’s valuation is annexed to this Decision.
25. However, both parties invited the Tribunal to provide an alternative valuation, which included hope value. The reason for this is that they, and the Tribunal, were mindful that the Court of Appeal was very shortly going to consider this point on appeal from the Lands Tribunal in *Sportelli*. In the event that the appeal was allowed on this point, the alternative valuation may prevent an appeal to the Lands Tribunal from this Decision, thereby saving the parties both time and costs. The Tribunal also took account of the fact that Mr Bates (Flat 1) had purported to serve a s.42 notice and intended to seek a lease extension at some point in the future and if the Court of appeal allowed the appeal on hope value, then this ought to be included in the valuation. The Tribunal’s alternative valuation, including hope value, is also annexed to this

Decision and values the freehold interest at **£74,195**. It should be made clear that this alternative valuation is provided entirely without prejudice to the Tribunal's finding on hope value.

Dated the 1 day of August 2007

CHAIRMAN..... *I. Mohabir*
Mr I Mohabir LLB (Hons)

**LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993
VALUATION FOR FREEHOLD ENFRANCHISEMENT
1 Mall Villas, Mall Road, London W6 9DQ**

Facts and Matters agreed:

Valuation date: 28/04/2006

4 flats with leases of 99 years from 29/9/71- 64.42 years unexpired

Capitalisation of ground rent at 7%

<u>Flat No:</u>	<u>Participating</u>	<u>Virtual freehold value</u>	<u>Existing lease</u>	<u>Ground Rent</u>
A (ground)	yes	£320,000	£268,000	£70 p.a.
1 (first)	no	£290,000	£243,000	£50 p.a.
2 (second)	yes	£290,000	£243,000	£50 p.a.
3 (top)	no	£276,000	£231,000	£50 p.a.

Matters determined:

Deferment rate for reversion at 6%

Hope value for flat 1 at 10% of Freeholder's share of MV

1. Diminution in Value of Freeholder's interest

	£	£	£	£
Ground rent of participating flats			120	
YP 64.42 years @ 7%			<u>14.1029</u>	1,692
Ground rent of non-participating flats			100	
YP 64.42 years @ 7%			14.1029	1,410
Reversion to virtual freehold value of 4 flats			1,176,000	
deferred 64.42 years @ 6%			<u>0.023431</u>	<u>27,555</u>
Diminution in Value of Freeholder's interest				30,657

2. Marriage Value of participating flats

Virtual Freehold of flats A and 2			610,000	
Less:				
Leaseholders' current interest				511,000
Freeholder's current interest: value of ground rent				1,692
Reversion to				
Existing lease value of flats A and 2		610,000		
deferred 64.42 years @ 6%		<u>0.023431</u>	14,293	<u>526,985</u>

Marriage Value				<u>83,015</u>	
50% of marriage value attributed to freeholder, say					41,508
Element of hope value for non-participating leases:					
Virtual Freehold of flat 1				290,000	
Less:					
Leaseholders' current interest		243,000			
Freeholder's current interest: value of ground rent		705			
Reversion to					
Existing lease value of flats 1	243,000				
deferred 64.42 years @ 6%	0.023431	5,694	249,399		
Marriage Value				<u>40,601</u>	
50% of marriage value that would be attributed to freeholder, say				20,301	
Hope of flat 1 seeking early lease extension @ 10% of landlord's share of MV					2,030
3. Other Compensation					<u>Nil</u>
Total Enfranchisement price payable					<u><u>£74,195</u></u>

**LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993
VALUATION FOR FREEHOLD ENFRANCHISEMENT
1 Mall Villas, Mall Road, London W6 9DQ**

Facts and Matters agreed:

Valuation date: 28/04/2006

4 flats with leases of 99 years from 29/9/71- 64.42 years unexpired

Capitalisation of ground rent at 7%

<u>Flat No:</u>	<u>Participating</u>	<u>Virtual freehold value</u>	<u>Existing lease</u>	<u>Ground Rent</u>
A (ground)	yes	£320,000	£268,000	£70 p.a.
1 (first)	no	£290,000	£243,000	£50 p.a.
2 (second)	yes	£290,000	£243,000	£50 p.a.
3 (top)	no	£276,000	£231,000	£50 p.a.

Matters determined:

Deferment rate for reversion at 6%

Hope value relating to non-participators - nil

1. Diminution in Value of Freeholder's interest

	£	£	£	£
Ground rent of participating flats YP 64.42 years @ 7%			120 <u>14.1029</u>	1,692
Ground rent of non-participating flats YP 64.42 years @ 7%			100 14.1029	1,410
Reversion to virtual freehold value of 4 flats deferred 64.42 years @ 6%			1,176,000 <u>0.023431</u>	<u>27,555</u>
Diminution in Value of Freeholder's interest				30,657

2. Marriage Value of participating flats

Virtual Freehold of flats A and 2	610,000
Less:	
Leaseholders' current interest	511,000
Freeholder's current interest: value of ground rent	1,692
Reversion to	

Existing lease value of flats A and 2 deferred 64.42 years @ 6%	610,000			
	<u>0.023431</u>	14,293	526,985	
Marriage Value			<u>83,015</u>	
50% of marriage value attributed to freeholder, say				41,508
3. Other Compensation				<u>Nil</u>
Total Enfranchisement price payable				<u><u>£72,165</u></u>