

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

Southern Rent Assessment Panel &
Leasehold Valuation Tribunal

Case No: CHI/24UP/OCE/2008/0017
Section 24, The Leasehold Reform, Housing & Urban
Development Act 1993

Address: FAIRLAWN HOUSE, 11 CHRISTCHURCH ROAD,
WINCHESTER, HAMPSHIRE SO23 9SR

Applicants: FAIRLAWN HOUSE (Winchester) MANAGEMENT Ltd

Respondents: SINCLAIR GARDENS INVESTMENTS (Kensington) Ltd

Appearances

For the Applicants: C L Beamish MBA, FRICS, MIRPM
DMA Chartered Surveyors

For the Respondents: G P Holden FRICS
Parsons, Son & Basley

Date of Directions: 19th March 2008

Date of Hearing: 13th June 2008

Date of decision: 17th July 2008

DETERMINATION: The price payable is £206,250

Members of the Tribunal

D M Nesbit JP FRICS FCI Arb – Chairman
Mrs H C Bowers MRICS

Cases referred to

<i>Arbib and Earl Cadogan</i>	- 2005	Lands Tribunal
<i>Arrowdell Ltd and Coniston Court (North) Hove Limited</i>	- 2006	Lands Tribunal
<i>Earl Cadogan and Sportelli & Others</i>	- 2007	Court of Appeal
<i>Flats 1, 3 & 4, Priestwood Close, Southampton</i>	- 2006	Southern Leasehold Valuation Tribunal
<i>27 Woodside Court, Southampton</i>	- 2006	Southern Leasehold Valuation Tribunal
<i>84 Crown Road, Buckinghamshire</i>	- 2007	Eastern Leasehold Valuation Tribunal

**FAIRLAWN HOUSE, 11 CHRISTCHURCH ROAD,
WINCHESTER, HAMPSHIRE SO23 9SR**

1. Introduction

- 1.1 This is an application by Fairlawn House (Winchester) Management Ltd, whose members comprise the long leaseholders of the flats within the building, with one non-participating tenant, for collective enfranchisement of the freehold. The application made under Section 13, Leasehold Reform, Housing & Urban Development Act 1993 (“the Act”) is to determine the price payable for Fairlawn House. The original Notice dated 16th August 2007 proposed £111,900 for the freehold interest and £100 for the additional land comprising garages, gardens and grounds.
- 1.2 The Counter Notice dated 17th October 2007 accepted the participating tenants were entitled to exercise the right of collective enfranchisement, but made counter proposals of £212,120 for the freehold and £5,000 for the additional land.
- 1.3 The original leases were for a term of 99 years from 29th September 1972 at a fixed yearly ground rent of £40, payable by equal instalments in advance on the usual quarter days.
- 1.4 The lease granted rights in common with the freeholders and the owners, and occupiers of other flats in the building, for a right of access over the roadways and footpaths to the block of garages at the rear of the site, and the use of the parking area to the front of the building.

2. Inspection

- 2.1 The Tribunal inspected the building and grounds accompanied by representatives from both parties. By prior arrangement and by invitation, the Tribunal inspected internally Flats 3, 9 and 11 and noted various improvements and replacements that had been undertaken by current and previous owners.
- 2.2 The building is a three storey brick and slate purpose built block of 12 flats constructed in the early 1970's in a pleasant and well established residential neighbourhood. The attractive grounds were a feature of the property with mature trees, established borders and a large rear lawn. There was a vehicular access with a parking area to the front of the building and a driveway to a group of garages at the rear. The property was, however, in sight and sound of the main railway line from Southampton to London.

3. Hearing

- 3.1 The Hearing took place on 13th June 2008 at Eastleigh. The applicants were represented by Mr C Beamish MBA FRICS MIRPM. The respondents were represented by Mr G Holden FRICS. Both representatives had been instructed to appear as Expert Witnesses and Advocates.
- 3.2 The Tribunal outlined and agreed with the parties the procedure for the Hearing and, specifically, to differentiate when Experts were presenting evidence or undertaking cross-examination.
- 3.3 Although the Tribunal had been informed that negotiations had taken place, there had been no prior agreement between the parties.
- 3.4 A joint Statement of Agreed Facts was included in the Hearing bundle and it was confirmed that the following matters were agreed –
 - a) The valuation date was 16th August 2007.
 - b) The unexpired term of the lease was 64 years and one month.
 - c) The ground rents were £40 per annum per flat, fixed throughout the term.
- 3.5 The following matters remained in dispute, which required the Tribunal to determine
 - i) The capitalisation rate.
 - ii) The deferment rate.
 - iii) The existing unimproved leasehold values and allowances for improvements
 - iv) The value of the gardens and grounds.
- 3.6 **The Capitalisation Rate**
Mr Beamish proposed a rate of 10% for the freehold interest. The ground rent income was not attractive due to the high costs of collection and a low annual income - £120 per quarter. Increasing costs of collection and a fixed income deteriorating due to inflation, supported his view and also based on other LVT decisions, where a yield rate varied between 7.25% and 10%.

- 3.7 Mr Holden submitted the freeholders had the potential of granting lease extensions and Deeds of Variation, having regard to the covenants in the lease, and he drew the Tribunal's attention also to LVT decisions of 7% and 8%. He referred, in particular, to the decision of Flats 1, 3 and 4, Priestwood Close, Southampton, where there was a fixed ground rent of £15 per annum for an unexpired term of 55 years, where Mr Beamish representing the applicants and in that instance proposed 10%. The Tribunal determined 8%. Mr Holden concluded that 7.5% was more appropriate for the property where all 12 flats had unextended leases.
- 3.8 **The Deferment Rate**
Mr Beamish proposed 6.5% and drew attention to the LVT decision of *84 Crown Road, Marlow, Buckinghamshire* (where a member of this Tribunal had also sat), where he represented the landlord. In that case he had proposed a 5% rate in line with the decision in *Sportelli*. The Tribunal had determined 6%.
- 3.9 Mr Beamish contended that interest rates had increased by a full percentage point since the *Crown Road* valuation date, and on the basis of consistency he therefore proposed 6.5%.
- 3.10 In his evidence, Mr Holden referred us to decisions in *Arbib* and the *Sportelli* case, and in detail submitted that Tribunals cannot ignore the *Sportelli* decision and where in that judgement the Lands Tribunal stated
- "It is obviously undesirable, and indeed it would be impossible for the sort of financial and valuation evidence that we have heard to be called and considered in every enfranchisement case. It is, in our judgement, unnecessary that it should be, because LVT's and this Tribunal are entitled to rely on their own expertise, guided by this decision. The prospect of varying conclusions on the deferment rate in different cases reached on evidence that was less comprehensive than that before us can therefore be avoided by LVT's adopting a practice of following the guidance of this Decision unless compelling evidence to the contrary is adduced."*
- 3.11 The *Sportelli* decision had been supported by the subsequent decision of the Court of Appeal, which decision noted that "it was entirely appropriate for the Tribunal to offer guidance and until the legislature intervenes, to expect Leasehold Valuation Tribunals to generally follow that lead."
- 3.12 Mr Holden outlined the Court of Appeal's guidance for decisions affecting properties outside of prime central London. He had followed that guidance, but felt that the Lands Tribunal decision and the Court of Appeal decision was persuasive, and he adopted the 5% rate for flats.
- 3.13 **The Leasehold Valuations**
Mr Beamish had analysed sale prices relating to six flats from March 2003 to April 2006 which averaged £211,746. In respect of Flat 10, which was generally unimproved, he had made an indexation allowance from the date of sale to the valuation date, whereby he assumed the value was £181,184. He

accepted the need to be careful when analysing results, but felt that actual sale prices of flats within the building was the best evidence available.

- 3.14 In respect of the highest price paid, for Flat 11 at £210,000, that would represent £238,287 at the valuation date, but the flat benefitted from many improvements. In respect of the statutory assumptions under the Act, Mr Beamish concluded that £15,000 was a reasonable deduction for “improvements”. In relation to the issue of relativity, he maintained a figure of 95% was appropriate to reflect the unexpired lease term and the decisions made by other Leasehold Valuation Tribunals, and the graph which had been included within the evidence. He further maintained that local decisions within South Hampshire were more appropriate than decisions elsewhere, and he referred to the decisions of this Panel relating to *Priestwood Close* and *27 Woodside Court*.
- 3.15 Questioned by Mr Holden, Mr Beamish agreed the best evidence of value arose from the sale of six flats within the building and it was how that information was interpreted. He maintained that £15,000 deduction for improvements was appropriate, but that modernisation for convenience was a matter of personal choice and some works may have been undertaken for marketing purposes.
- 3.16 In respect of the *Woodside Court* decision, Mr Beamish agreed there were probably first-time buyers and not the same type of buyer as for Fairlawn House, and that the landlord in that case had not been represented. Mr Holden reminded Mr Beamish that in that case Mr Beamish had sought a relativity of 88.5%.
- 3.17 Mr Holden took as his starting figure £221,086 as representing the average of the six sales, but from which he would make a deduction of 5% for the “no Act world”, and a further deduction for improvements, but those deductions should be limited having regard to the lease terms, as a result of which he proposed a figure of £210,000.
- 3.18 In respect of the relativity aspect, his views were reinforced having regard to the *Sportelli* decisions, reinforced with the case of *Arrowdell Limited* and *Coniston Court (North) Hove Limited*, determined by the Lands Tribunal. He was personally familiar with that property. He maintained that although not a Winchester based valuer, that the Brighton and Hove and Winchester areas were very similar towns with strong links with London, and by reference to the graph evidence that 88.5% was an appropriate figure.
- 3.19 In response to questions from Mr Beamish, Mr Holden maintained that the *Arrowdell* decision was regarded by experienced valuers as a benchmark. He was suspicious of the determination relating to *Woodside Court* and he accepted that where there was a lack of local and relevant evidence, then references to the graphs was the most useful.
- 3.20 Mr Beamish maintained that for the grounds £100 was a reasonable sum for the nominee purchaser to pay for, assuming the costs and liabilities which would

otherwise remain with the freeholders. He maintained there was no market for the garden and grounds, and that in addition to the lease obligations, the freeholders would have a continuing public liability.

- 3.21 Mr Holden maintained that it must be better to own the freehold rather than have rights over the land, the point accepted by the London LVT in their 12 Amersham Road decision, and which must be more than £100. He maintained the purchasers would want to buy, would have management control and by agreement could do something with the land. He conceded that £2,500 might be a correct figure, but £100 was not.

4 Consideration

- 4.1 The Tribunal reviewed all of the evidence and case papers, the opinion expressed at the Hearing and the Tribunal's own inspection and Hearing notes. Further, the Tribunal reviewed the various decisions to which they had been referred.

Capitalisation Rate

- 4.2 In respect of the capitalisation rate, the Tribunal accepted that the existing ground rent income, of a fixed amount throughout the term, was not an attractive investment. There was no growth in income, indeed there were increasing costs of recovery. The Tribunal accepted that a 10% return as proposed by Mr Beamish was appropriate.

Deferment Rate

- 4.3 The Tribunal carefully and fully reviewed the *Sportelli* decisions and, in particular, the Court of Appeal decision upholding the Land Tribunal's original determination. In particular noting that the Court of Appeal decision supported the Lands Tribunal view that their decision on a factual valuation issue was to be followed by all LVTs in subsequent cases, unless there were substantial grounds for departing from the decision.

- 4.4 We accepted the Lands Tribunal view that expert Valuers could maintain a different deferment rate to reflect the difference in location from the prime central London location, with which *Sportelli* was involved. We also reviewed the case of *Arbib and Earl Cadogan*.

- 4.5 In the current case we were not persuaded that there was any evidence before the Tribunal that suggested that there should be a departure from the deferment rate fixed in the *Sportelli* case. Accordingly, we determine that a deferment rate of 5% should be adopted in this case.

Existing Lease Value

- 4.6 In respect of the leasehold values, the Tribunal agreed that consideration of the prices of six sales were the most appropriate, but that adjustments would need to be made to reflect the individual sale dates to the valuation date of 16th August 2007.

- 4.7 The Tribunal were assisted by the inspections they had made prior to the Hearing. It appeared to the Tribunal that there had been significant improvements to Flats 3 and Flat 11, and where an adjustment for improvements was necessary. The Tribunal determined that £15,000 was an appropriate figure for deductions, and preferred the approach by Mr Beamish.
- 4.8 Relating the adjusted values of the six sales, less the deduction of £15,000, produced an average value of £206,746 per flat. We made an end adjustment of 5% to reflect the “No Act World” producing a figure of £196,409 being the unimproved existing leasehold value.
- Long Lease Value
- 4.9 In respect of the relativity percentage, whilst acknowledging the Tribunal decisions cited by Mr Beamish were more local, they were not, however, comparable in terms of the type of property and their location was inferior to the location of the subject building. Further, in one case the freeholder was absent and had not been represented.
- 4.10 After very careful consideration, the Tribunal accepted that the evidence of Mr Holden was more persuasive on that point and that the appropriate relativity would be 88.5%, and within the range shown in the graphs. This produces a long lease value of £221,931.
- Garden Land
- 4.11 In respect of the garden and grounds, the Tribunal agreed that the ownership of land must have a greater value than rights over that land, and that there were benefits to the lessees collectively in the ownership and control of that land.
- 4.12 It was clear from the evidence before us that figures had been “plucked out of the air”, but the Tribunal determined that in respect of the participating flats, a payment of £100 per flat, a total of £1,100, would be more appropriate.
- Non-Participating Flat
- 4.13 In relation to the non-participating flat, The Tribunal determines that the value of the freehold interest plus the value of the reversion produced a total figure of £10,135.
- 4.14 We attach our detailed calculations with the full valuation, and which forms part of this decision.
- 4.15 No applications were made to us in respect of the terms of Transfer or in respect of the costs arising. The parties may make a separate application within the appropriate time limits of this decision if no agreements are reached between the parties.

DETERMINATION

- 5.1 We determine that the total to be paid for the freehold interest by the Applicant shall be £206,250
(Two hundred and six thousand two hundred and fifty pounds).

Signed:..........

D M NESBIT JP FRICS FCI Arb - Chairman

Date: 17th July 2008

Re: Fairlawn House, Winchester

Sales Comparables

No	Sale Price	Date	Adjusted to Valuation Date	Improved	Deduction	Net Value
2	£160,000	28.03.2003	£204,000			£204,000
3	£210,000	07.04.2006	£233,289	Yes	- £15,000	£218,289
4	£165,000	10.11.2003	£203,445			£203,445
8	£174,500	20.02.2004	£210,273			£210,273
10	£160,000	15.11.2004	£181,184			£181,184
11	£210,000	13.12.2005	£238,287	Yes	- £15,000	£223,287
				Average		£206,746
				Less 5% end reduction		£196,409

Relativity 88.5%

Unimproved Existing Lease Value £196,409

Unimproved Long Lease Value £221,931

Valuation – Fairlawn House, Winchester

Participating Flats

Freeholder's Interest

Term

Ground Rent £440
YP 64 years 1 month @ 10% 9.9778 4,390

Reversion £2,441,241

PV of £1 in 64 years 1 month @ 5% 0.043869 107,095
£111,485

Marriage Value

Proposed Leasehold Value £2,441,241

Less

Existing Leasehold Value £2,160,499

Existing Freehold Value £111,485
£2,271,984

£169,257 £84,628
(@ 50%)

£196,113

Non-Participating Flat

Freeholder's Interest

Term

Ground Rent £40
YP 64 years 1 month @ 10% 9.9778 399

Reversion £221,931

PV of £1 in 64 years 1 month @ 5% 0.043869 9,736
£10,135

£206,248

Say £206,250