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HM COURTS & TRIBUNALS SEVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of Applications under
Section 24(1) of the Leasehold Reform Housing and Urban Development Act 1993
And Sections 27A and 20C of the Landlord and Tenant Act 1985

Case Nos.	**CHI/29UG/OCE/2011/0037** **CHI/29UG/LSC/2011/0160**
Property:	**100 Darnley Road** **Gravesend** **Kent** **DA11 0SN**
Between:	
	100 Darnley Road (Freehold) Ltd. **("the Applicant Company")**
	Mr. A. Nikolic **Mr. R.S. & Mrs. K.K. Cheema** **Mr. H.V. Roberts** **Mr. K. Singh** **Mr. R. Marteno** **Mr. P.A. Egbe** **("the Applicants")**
	and
	Southern Land Securities Ltd. **("the Respondent")**
Date of Hearing:	**8th March 2012**
Date of consideration of Further evidence:	**9th May 2012**
Members of the Tribunal:	**Mr. R. Norman** **Mr. R. Athow FRICS MIRPM**
Date Decision Issued:	**31st May 2012**

100 DARNLEY ROAD, GRAVESEND, KENT DA11 0SN

Determination

1. The price payable for the collective enfranchisement of 100 Darnley Road, Gravesend, Kent DA11 0SN ("the subject property") is £33,049.33. In addition, 100 Darnley Road (Freehold) Ltd ("the Applicant Company") will be liable for the costs of enfranchisement in accordance with Section 33 of the Leasehold Reform, Housing and Urban Development Act 1993.

2. The following items of service charge which were challenged by Mr. A. Nikolic, Mr. R.S. & Mrs. K.K. Cheema, Mr. H.V. Roberts, Mr. K. Singh, Mr. R. Marteno and Mr. P.A. Egbe ("the Applicants") are payable:

	£
Repairs and General Maintenance:	646.63
Accountancy Charges:	298.00
Surveyors and Professional Fees:	117.50
Building Insurance Premium:	3,013.47
Managing Agents' Fee:	1,340.00
Schedule of Repairs to Building:	1,161.56

3. The charge of £1,569.52 in respect of the communal electricity supply is not payable. Southern Land Securities Ltd ("the Respondent") is to prepare final accounts dealing with any balance due to the Lessees of the subject property in respect of such supply charges.

4. No order is made under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act")

5. No order is made as to costs.

Background

6. An application was made by the Applicant Company under Section 24(1) of the Leasehold Reform Housing and Urban Development Act 1993 for a determination of the price payable in respect of the purchase of the freehold interest in the subject property. The Respondent is the freeholder of the subject property.

7. A further application was made by the Applicants who are the lessees of the subject property, under Section 27A of the 1985 Act for a determination of liability to pay and reasonableness of service charges and for a limitation of costs order under Section 20C of the 1985 Act.

8. In advance of the hearing on 8th March 2012 documents were provided on behalf of the Applicant Company, by the Applicants and by the Respondent.

9. Initially, the Applicant Company and the Applicants were represented by Mr. Mike Stapleton FRICS of Mike Stapleton & Co. Chartered Surveyors but at a stage before the hearing the Tribunal was informed that instructions had been withdrawn and that Mr. Roberts, assisted by Mr. Cheema and Mr. Nikolic would be representing the Applicant Company and the Applicants, with the exception of Mr. Marteno who wished to withdraw from the proceedings.

Inspection

10. On 8th March 2012, in the presence of Mr. Roberts, Mr. Cheema and Mr. Nikolic on behalf of the Applicant Company and the Applicants and Mr. Taylor from Hamilton King Management Limited, the managing agents, on behalf of the Respondent, the Tribunal inspected the subject property which is a detached house converted into seven flats.

11. To the side of the building there is a drive shared with the adjacent property which leads to the rear of the building and to a yard with garages. Each lease includes one garage. Access to all the flats, except Flat 3, is by a door at the front of the building. Access to Flat 3 is by a door from the shared drive.

12. Flat 1 is on the ground floor and comprises a lounge, bedroom, kitchen and bathroom/WC and has the front garden and at the rear a garden and patio area with a gate into the yard.

13. Flat 2 is on the ground floor. The Tribunal was told, Flat 2 has a lounge/kitchen, bedroom and bathroom/WC but it was only the lounge/kitchen which the Tribunal was able to inspect.

14. Flat 3 is a studio on the ground floor. It comprises a living/sleeping/kitchen area, a shower room and a WC.

15. Flat 4 is on the first floor. It could not be inspected but the Tribunal was told that it was similar to Flat 3.

16. Flat 5 is on the second floor. It comprises a kitchen/lounge, bedroom and bathroom/WC.

17. Flats 6 and 7 could not be inspected.

18. It was pointed out that the bushes in the yard had not been cut. One garage was open and there appeared to be a roof leak. The Tribunal was told that the roofs of the other garages also leak and that rubbish in the yard had not been cleared. As to the building, it could be seen that some roof slates had slipped, the render to the rear wall was cracked, the flat roof facia needed repair and at the front of the building guttering needed attention.

Hearing

19. The hearing was attended by Mr. Roberts, Mr. Cheema, Mr. Nikolic and Mr. Taylor who gave evidence and made submissions.

20. The Tribunal announced that the application in respect of service charges would be dealt with first.

Applications under Sections 27A and 20C of the 1985 Act and Application for costs

21. Repairs and General Maintenance £646.63

(a) The charge of £646.63 was in respect of the maintenance agreement for the fire alarm system at the subject property. Mr. Roberts submitted that:
(i) There was a system of overcharging and that work was not done for the benefit of the property.
(ii) There was no need to have such a complicated fire alarm in place and the invoice related to inspections which he was pretty confident had not taken place. The type was not appropriate. Something requiring less maintenance would be adequate. He had a quote for a system but had not brought it with him. A smoke detection system was not required. The Fire Brigade say a block of 7 flats does not require such a complicated system but he had nothing in writing from the Fire Brigade.

(b) Mr. Nikolic said that when he purchased Flat 2 on 29th August 2010 he had made enquiries about this bill including contacting the Respondent's agents Hamilton King Management Limited and then the Respondent but had received no satisfaction.

(c) Mr. Taylor referred to the Respondent's statement of case, the invoice and the agreement with Internal Communication Systems Ltd, the company which carries out the maintenance of the fire alarm system. He submitted that legislation requires there to be a fire alarm system in a block of flats. The information from Internal Communication Systems Ltd was that they inspected in August 2010 and had been refused access in February 2011. Mr. Nikolic said that the company was not refused access; it never got that far with them. In February 2011 he had said he would not allow access. Mr. Taylor produced an email from the company which referred to the problems of obtaining access. He submitted that a fire alarm was needed for safety.

22. Communal Electricity Supply

(a) Mr. Nikolic stated that he had contacted Hamilton King Management Limited and that they could not even tell him where the meter was and they did not challenge the receipt of such a huge bill for 3 light bulbs. The overcharging had now been reimbursed but it showed the problems and overcharging. The managing agents were not helpful.

(b) Mr. Taylor stated that the managing agents always knew the meter was in Flat 2 but the flat was rented out and access was never allowed. Once he started negotiations with Mike Stapleton & Co. they managed to have the meter read and a large credit was obtained which will be credited to the account.

(c) Mr. Cheema, the lessee of Flat 2 stated that he had never been approached about access to read the meter but Mr. Nikolic accepted that meter readers do not normally make appointments they just come round and read.

23. Accountancy charges.

(a) Mr. Roberts was concerned that there were two invoices and no explanation. He queried the standard of accountancy if large bills were getting through and not being spotted.

(b) Mr. Taylor explained that there were two invoices because one, for £113.40 was from JL Information Services Ltd for preparation and collation of information to send to the Chartered Accountants Crawfords who charged £184.60 for the certification of accounts. It would have been more expensive if everything had been given to the Chartered Accountants to collate and certify. The lease at Clause 2(3)(a) provides that accounts have to be certified.

(c) Mr. Nikolic pointed out that Clause 2(3)(a) provided that either accountants or auditors could be used at the discretion of the lessor. The Respondent had decided to use JL Information Services Ltd and Crawfords but in his submission accountants were not needed for this work.

(d) Mr. Roberts submitted that the accountants did not know what they were doing if they were letting large bills get through to the accounts.

(e) Mr. Taylor was happy with what had been certified.

24. Surveyors and professional fees.

(a) These are at pp 12 and 13 of the Respondent's bundle and refer to an asbestos inspection at a cost of £117.50. Mr. Roberts submitted that because of the type of premises an inspection was not needed. He referred to the 2012 Regulations and considered that the common parts needed regular inspection but that the garages did not because they were not work premises. This was a voluntary act of the landlord to carry out inspections, nobody was seen to come and inspect and he suspected that the lessees were paying for something that had not been done.

(b) As far as Mr. Taylor was aware the fact that there was asbestos in the garage roofs meant that an inspection was needed every year and that if just the garages were to be inspected the surveyor would not knock on the door to the building, he would just go round and inspect. The certificate is dated 12th January 2010. If a workman was instructed to work on the garages and fell through the roof and broke the asbestos then there would be trouble if there had not been an inspection.

(c) Mr. Nikolic suggested that a surveyor just going in and out would be of no use. A surveyor had never been seen. The garages are normally locked. One had been opened for the Tribunal's inspection. He could not say that he was on site on 12th January 2010 and nobody came but he was concerned that there were ghost inspections.

25. Building Insurance.

(a) Mr. Roberts referred to p 14 of the Respondent's bundle and p 10 of the Applicants' bundle and questioned how much it was reasonable to pay. There had been no claims.

(b) Mr. Taylor stated that there had been a claim in the service charge year 2009/2010 for impact damage and in support of this produced a ledger print out which

appeared to relate to the subject property. Mr. Nikolic asked for details of the claim and Mr. Taylor said he could obtain them over the lunchtime adjournment.

(c) Mr. Nikolic in relation to the quote he had obtained from Direct Line said he had a list of perils which were the same as AXA. Mr. Taylor had not seen the list and had asked for the list of perils many times. He had asked Mr. Stapleton for the list but he could not send it as the Applicants had not sent it to him. Mr. Taylor referred to the emails at p 15 of the Respondent's bundle. A list of perils had been requested but was never provided.

(d) Mr. Taylor said he went on the internet to try to get a similar quote from Direct Line and found that they would not insure blocks where any flats were rented out. The flats had to be owner occupied and the owners to be in employment or receiving disability benefit. That is why the quotes were so low. Also if the building was in multiple occupation Direct Line would not insure. Having ticked the boxes the instruction came to telephone. He produced the print out to show what he had done. Mr. Nikolic stated that he had given the correct information to obtain the quote. Mr. Taylor asked why a list of perils had not been produced because if they had been the same he would have been happy to insure with Direct Line. Mr. Nikolic said that at the time of the emails on 13th and 14th December 2011 he did not have a list of perils but had asked other lessees to check with mortgagees and had been told it was all right. Mr. Taylor submitted that there must have been a list of perils with the quote and stated that it was company policy that if cheaper like for like insurance were found the insurance would be changed. That is why he had asked for the list of perils.

(e) Mr. Cheema stated that he owned another leasehold property in a purpose built block of 18 flats constructed at a later date and with no garages, run by a management company. The property is built to a high standard and was a lot more expensive to purchase than the flat at the subject property. He had no comparable figures for insurance but assumed that the insurance premium in respect of the other property would be much higher and that therefore more cover was being obtained at a cheaper price than that obtained for the subject property.

26. Managing agents' fees

(a) Mr. Roberts submitted that general maintenance had not been undertaken and therefore the managing agents' fees were being charged for not dealing with maintenance and must be based on bills which were inflated and a percentage of expenditure. Fees were being charged for the subject property not being properly managed.

(b) Mr. Taylor explained that the fees were not based on a percentage but were a set fee for building management as shown at p 16 of the Respondent's bundle. The fees charged were £163 per unit + VAT = £191.52 per unit per annum. There was a lot of work behind the scenes that the lessees were not aware of such as preparation of budgets and accounts, arranging insurance, contractors etc. There was quite a lot of work involved. The subject property had been managed since January 2005 without any problems until Flat 1 was sold and the subject property then became difficult to manage. Every time the managing agents tried to do anything, entry and access was refused. Mr. Taylor went through the work which the charge covered.

(c) Mr. Cheema referred to his other leasehold property in a purpose built block where the service charges had not increased as much as those payable in respect of the subject property. At the other property, the car park and emergency lighting were maintained, there was a printed schedule of when cleaners came and went, the lawns and hedges were maintained to a high standard and he is contacted regularly if refuse is left outside the designated area. However, he was not sure of the managing agents' charges.

(d) Mr. Nikolic stated that when he realised he was overpaying, that was why it was decided to buy the freehold. Nothing which was supposed to be done had been done and it was the final straw when major works were proposed.

(e) Mr. Roberts said that service charges as a whole had doubled but the standard of maintenance had gone down.

(f) Mr. Taylor again explained that every time they try to do anything they are not allowed access. There may be areas at the back of the subject property which need maintenance but access is not allowed. There were no problems until about August 2010. He disputed the comments made.

(g) Mr. Cheema said that some issues with the subject property were long standing but access issues were recent, since August 2010.

27. Schedule of repairs to the subject property

(a) Mr. Robert submitted that large and unjustifiable bills had been presented. He was not aware that works were needed and others had said that works were unnecessary.

(b) Mr. Taylor explained that the Respondent is not asking for £10,466 which would have been the cost of repairs but just for the items shown at pp 17, 18 and 19 of the Respondent's bundle, amounting to £1,161.56 including VAT where applicable.

	£
Surveyors' fees	492.33
Scaffolding	620.00
Managing agents' fees	49.23
	1,161.56

There is also a charge for solicitors' fees of £1,150 in respect of the major works but that had not yet been billed to the lessees. In the Respondent's bundle is a chronological list of events in relation to the major works and the consultation procedure under Section 20 of the 1985 Act. At that time Mr. Nikolic was not a lessee.

(i) The surveyors' fees are in respect of professional services up to tender support stage.
(ii) The scaffolding charge is in respect of taking scaffolding to the site, labour for men who attended with the intention of erecting the scaffolding and taking the scaffolding away again.

(iii) The managing agents' fees are for dealing with the proposed major works (10% of the surveyors' fees).

(c) Mr. Nikolic stated that when he moved in he knew nothing of major works. He received a letter from the managing agents and contacted them but he was told it was a closed book and that he had no input to it. He started writing letters and making telephone calls. He even wrote to the Respondent but was stonewalled. They were not helpful and said they had lost his letters. He then started sending letters and obtaining post office receipts. He managed to get the electricity sorted out. He said he would not allow builders on site. The managing agents laughed it off. He told the man who arrived with the scaffolding that they were not wanted on site. There were two big men and they started shouting. Mr. Nikolic was standing in front of the subject property. The men had a telephone conversation with the managing agents. Mr. Nikolic had written a letter saying the men would not be allowed on site until the dispute was over. They were there 15 minutes. He had letters he had written from 2010 saying the builders would not be allowed on site. The Respondent's solicitors said there was no dispute and that he must allow them on site but he did not. The solicitors warned him that the managing agents might sue him but when the Respondent applied for an injunction to allow workmen on site the case was thrown out. Mr. Nikolic claimed that when buying the flat had his solicitor known about the proposed major works she would have told him but Mr. Taylor stated that when pre-contract enquiries were made the solicitor was told of the Section 20 procedure and that his colleague had sent to Mr. Nikolic's solicitor a major works pack. Mr. Nikolic also claimed that his solicitor had not given him a copy of the lease, the last three years accounts or an insurance schedule. He considered that the works were not needed.

(d) Mr. Roberts and Mr. Cheema accepted that they had received the Section 20 Notices and had not responded to them and that Mr. Nikolic was not a lessee at that time. Mr. Roberts stated that he assumed the Respondent knew what it was doing in relation to the works but now objected to the sums claimed if they were unnecessary.

28. The application for an order under Section 20C of the 1985 Act.

(a) Mr. Roberts submitted that there was nothing in the lease to justify charging to the service charges the costs incurred or to be incurred by the Respondent in connection with these proceedings. He was aware of the provisions of paragraph 3 of the third schedule to the lease but considered that all it included was the running of the subject property in the normal manner of things. If there was a power to charge such costs to the service charges then Mr. Roberts asked the Tribunal to exercise its discretion in the Applicants' favour and to bear in mind what had been heard at the hearing about information not getting to Mr. Nikolic, although it was not known who was responsible for that, and the reason for bringing the application.

(b) Mr. Taylor submitted that paragraph 3 of the third schedule was quite broad and would cover the charging of such costs to the service charges.

29. Application by the Respondent for costs.

(a) Mr. Taylor had spent 5 days dealing with this matter since the instructions to the surveyor who was acting for the Applicants were withdrawn. It was thought that agreement had been reached and Mr. Taylor had tried to deal with the points in dispute before the hearing but without success and attendance at the hearing was necessary. He suggested that the Applicants had acted vexasiously. They had instructed a surveyor to deal with the matter and had then withdrawn the instructions and not provided a valuation for enfranchisement. As to the major works the Applicants would not allow the contractor to do the work and Mr. Taylor had spent many hours with the Applicants' surveyor trying to narrow the issues and then he was dismissed. Mr. Taylor and the surveyor had tried their best to resolve the matter and had just about resolved everything except the insurance. Mr. Taylor had requested a list of perils and it had not been supplied.

(b) Mr. Roberts submitted the Applicants had not been vexatious, they had tried to negotiate a figure for the service charges and for the freehold. The surveyor had not kept in touch with them and so was dismissed. It was not done to frustrate attempts at a compromise and was not vexatious.

(c) Mr. Roberts submitted that part of negotiation is to refuse some items and agree others but Mr. Taylor stated that there had been three months to negotiate and Mr. Nikolic always said he was not going to pay for any item when it was discussed. That was not negotiation.

(d) Mr. Roberts pointed out that by proceeding the Applicants had got the electricity charges refunded and the Respondent had backed off on the major works.

Reasons in respect of the applications under Sections 27A and 20C of the 1985 Act and Application for costs

30. The Tribunal considered all the documents which had been supplied by the parties and all the evidence given and submissions made at the hearing and made findings of fact on a balance of probabilities.

31. Repairs and General Maintenance £646.63. This sum was in respect of the maintenance of the fire alarm system. The Tribunal was not satisfied that the system was too complicated for the subject property. The system had to be inspected and checked and the sum charged for that was reasonable. £646.63 is payable.

32. Communal Electricity Supply. The sum of £1,569.52 was no longer claimed and it was accepted on behalf of the Respondent that a credit would be due to the Applicants. The Respondent must provide closing accounts dealing with any balance due to the Lessees of the subject property in respect of such supply charges.

33. Accountancy charges £298.00. The Tribunal was satisfied that the way in which the managing agents dealt with the certification of accounts was reasonable and at a reasonable cost. £298.00 is payable.

34. Surveyors and professional fees £117.50. The Tribunal was satisfied that the garages were a workplace and that an asbestos survey and inspection were required. The Applicants had not seen the inspection take place. That is often the case when

access to the inside of the premises is not required. The inspection will usually take place during the normal working day when most of the occupiers will be at work, shopping, etc. and it would not have been necessary for the surveyor to knock on any doors to alert anybody of his presence. The charge of £117.50 is reasonable and payable.

35. Buildings insurance £3,013.47. The Applicants had been requested to provide a list of perils covered by the Direct Line quote and had had ample opportunity to do so but had not done so. The Tribunal did not accept that the quote from Direct Line was on a like for like basis. Mr. Cheema referred to insurance in respect of another property which he said was built to a high standard and was a lot more expensive to purchase than the subject property. He assumed that the insurance premium would be much higher and that more cover was being obtained at a cheaper price than that obtained for the subject property. There was little information about the other property but apparently it was a purpose built block of flats and generally a property which has been converted, as is the case in the subject property, attracts a higher premium. For example, the fire risk in a purpose built block is much less. The Applicants challenged the premium charged but did not provide sufficient evidence in support of that challenge. The sum of £3,013.47 is payable.

36. Managing agents' fees £1,340.00. The level of fees was low and the Tribunal was satisfied they were reasonable. £1,340.00 is payable.

37. Schedule of repairs to the subject property. The original charge of £10,466 is not being pursued. In view of the Applicant Company's proposal to purchase the freehold, that company will be in a position to arrange for repairs. The only items being charged are:

	£
Surveyors' fees	492.33
Scaffolding	620.00
Managing agents' fees	49.23
	1,161.56

Those charges are in respect of expenses which had been incurred in contemplation of carrying out the works and which the Applicants prevented the Respondent from completing. Although the Applicants accepted that some works were required they were not satisfied that so much work was necessary. However, there is no dispute that the consultation procedure under Section 20 of the 1985 Act was carried out and that the lessees at the time did not respond to the notices served. That was the time to make representations about the work and to suggest contractors who should be approached to tender for it but that opportunity was not taken. When Mr. Nikolic bought his flat the consultation procedure had been completed and it was too late for him to object to it. The Respondent was justified in claiming for the surveyors' fees, the cost in connection with the scaffolding and the managing agents' fees. They were all reasonably incurred and the total of £1,161.56 is payable.

38. There is before the Tribunal an application for an order under Section 20C of the 1985 Act. Paragraph 3 of Schedule 3 to the lease could be construed to allow costs incurred or to be incurred by the Respondent in connection with these proceedings to be regarded as relevant costs to be taken into account in determining

the amount of any service charge payable by the Applicants. The Tribunal finds that it is just and equitable in the circumstances not to make such an order. The Tribunal accepted the evidence of Mr. Taylor that a negotiated settlement had almost been achieved when the Applicants withdrew instructions from their representative. In respect of two items a figure less than that originally claimed has been found to be payable. The charge for electricity has had the benefit of a refund which will be credited to the lessees and the sum in the schedule of repairs to buildings has been reduced to the costs incurred before the work was prevented from continuing. The remainder have been found to be payable in full.

39. An application for costs has been made on behalf of the Respondent on the basis that the Applicants acted vexatiously in connection with the proceedings. Although the Tribunal found that the Applicants could have made more effort to reach a negotiated settlement, the Tribunal was not satisfied that the conduct of the Applicants was vexatious. Consequently no order for costs is made.

Purchase of the freehold.

40. At the hearing on 8th March 2012 there was before the Tribunal the Respondent's calculation of the price to be paid but no calculation from the Applicant Company.

41. Mr. Taylor stated that the Respondent was asking for £39,282.39 plus £1,000 for the appurtenant area and that he had agreed this with the Applicant Company's surveyor who, when he referred that back to his Client, was dismissed.

42. Mr. Roberts did not have a valuation but submitted that two matters ran throughout the calculations namely: the freehold vacant possession price of Flats 1-6 and 7 separately and relativity in respect of both. He stated that, without prejudice, the Applicant Company's figure was about £21,000 which was lower than the figure of £27,200 plus £100 for the appurtenant area put forward by the Applicants in the initial notice.

43. It was agreed that the only matter required to be determined by the Tribunal was the price to be paid for the freehold.

44. The Tribunal considered the lack of a calculation from the Applicant Company and the lack of evidence produced to challenge the Respondent's calculation and decided that in the interests if justice the Applicant Company be given until 4.00 pm on 22nd March 2012 to submit a statement of case setting out reasons for disagreeing with the figure proposed by the Respondent and for the Respondent to be given until 4.00 pm on 5th April 2012 to respond to that. It was agreed that the Tribunal would then consider the documents produced by the parties and reach a decision.

45. On 20th March 2012 the Tribunal received from Mr. Roberts on behalf of the Applicant Company a valuation and supporting documents. On 3rd April 2012 the Tribunal received from Mr. Taylor on behalf of the Respondent a response. In the letter enclosing the response he stated that a copy had been sent to the Applicant Company.

46. On 9th May 2012 the Tribunal considered the documents received.

47. Both parties' evidence showed inconsistencies in various areas.

48. The Applicant Company's evidence at page 13 of the submission gave individual valuations which totalled £358,000 for flats 1 – 6, and £82,000 for flat 7. In the valuations at pages 2 – 5 these were stated as £322,000 and £84,000 respectively. The periods over which the figures were capitalised were inaccurate. The only lease supplied was for Flat 1. The lease commencement dates were stated to be 24th June 1981 and this was confirmed as being the case on flats 1 - 6, but the Land Registry Office Copy Entries for the Freehold show the start date as 30th June 1986 for flat 7. The Tribunal was placed in some degree of difficulty as a result. Also there were no definitive ground rent review dates for this flat. Additionally, the valuations showed a figure of £22,409.98 for the freehold and £400 for the property as indicated in paragraph 2 of the Notice. This was different from the sums of £27,200 and £100 stated in the Notice. There was no explanatory note as to the reason for the change of figure.

49. The Respondent's evidence showed similar anomalies as far as the lease commencement date was concerned. Additionally, there were two differing valuations submitted. The first was under the cover of a letter dated 29th February 2012, whilst the second was dated 2nd April 2012. The sum of the values of flats 1 – 6 was stated as £460,000 in the February valuation and £466,000 in the April one. The reason for this was stated that the latter figure had been agreed with the valuer employed by the Applicants, but the Applicants stated that this was done without their instruction or approval, and that the valuer had subsequently been dismissed.

50. The Respondent's submission quoted 3 flat sales recorded in HM Land Registry files, but on searching the Registry the Tribunal found there were 5 flats with their sale prices recorded. It is recognised that although this database is useful it is not always accurate. The Tribunal found that the recorded sale price for flat 6 was shown as £79,995 on 19th December 2003, but after investigation and with the Tribunal's own knowledge, felt this to be unreliable and was not in line with sale prices of other similar flats. The Applicant Company's evidence of Mouseprice as values for property in Darnley Road was of no use to the Tribunal as there was no specific evidence, but purely an overview of values of all types of property in the road.

51. The Land Registry database was of use to a certain degree and with the lack of more firm sale price evidence from either party the Tribunal was left with very little other evidence of sale prices in the area. The submissions made by both parties quoting asking prices was of very limited use as the Tribunal was only concerned with actual sale prices to use as the basis for assessing true values of property.

52. The report from Mike Stapleton FRICS that was included in the Applicant Company's submissions has been ignored. It is not a formal valuation, but it is a letter of recommendations to the Applicant Company, and as such is a discussion document to be used by the Applicant Company and its author. Indeed, Mr Stapleton specifically wrote to the Tribunal on 22nd March 2012 stating that the report was to be disregarded in its totality.

53. Both parties had used 6.5% as the Capitalisation Rate. Consequently this figure is adopted by the Tribunal.

54. The Respondent had used 5.0% as the accepted Deferment Rate, whereas the Applicant Company proposed 6%. The Tribunal found no evidence that 6% was correct, but using its knowledge that 5% was the accepted rate in Prime Central London and 5.25% was widely accepted in outlying areas, adopted the rate of 5.25% as appropriate in this case.

55. The Applicant Company proposed a rate of 92.5% for Relativity whilst the Respondent proposed 90.0%. The Tribunal was not persuaded by the Applicant Company's arguments and adopted a figure of 90.0%.

56. The evidence submitted on behalf of the Applicant Company claimed that there was little demand for ground rent investments and gave two cases of lots that were to be offered by auction. No results were given and as a result the Tribunal was unable to use this information. Such evidence is of no use to a Tribunal, and even if the results had been provided, the full terms of the leases would be necessary to enable a full interpretation of the figures to be made.

57. The valuation was not assisted by the fact that the Tribunal was unable to inspect the interior of Flats 4, 6 and 7 and was able to inspect the interior of Flat 2 to only a very limited extent.

58. The Applicant Company had included 50% of the marriage value in respect of the non-participating Flat 7 and the Respondent appeared to have included 10% of 50% of the marriage value. The Tribunal was satisfied that the correct approach was not to include any marriage value in respect of Flat 7.

59. The Tribunal came to the conclusion that a nominal £400 was appropriate in respect of the appurtenant area in paragraph 2 of the notice of claim.

Valuation

Flats 1-6, 100 Darnley Road

Term of leases: 99 years from 24th June 1981

First period of ground rent:	£180
Second period of ground rent from 25th December 2010:	£360
Third period of ground rent from 25th December 2043:	£720

Lease end: 23rd June 2080
Valuation date: 6th May 2011
Unexpired term: 69.1335 years

Capitalisation Rate:	6.50%
Deferment Rate:	5.25%
Relativity:	90.00%

	£
Flat 1	82,000
Flat 2	75,000
Flat 3	50,000
Flat 4	50,000
Flat 5	70,000
Flat 6	70,000
	397,000

	£
Flat values with long leases:	397,000
Flat values with present leases:	357,300

Valuation of freeholder's existing interest:

		£	£	£
Ground rent 1:	£180.00			
YP	- 0.35415			
		0.00		
Ground rent 2:	£360.00			
YP	13.45901			
PV £1	1.0187			
		4,935.67		
Ground rent 3:	£720.00			
YP	13.83955			
PV £1	0.1882			
		1,875.73		
			6,811.41	
Reversion to freehold value				
Improved value of Flats:	£397,000.00			
Deferred	0 .02909			
			11,547.80	
				18,359.21

Marriage Value Calculation:			
Improved leasehold value:	£397,000.00		
Less current leasehold value:	-£357,300.00		
Less freeholder's interest:	-£ 18,359.21		
		21,340.79	
		50.00%	10,670.40
		TOTAL	**29,029.60**

Flat 7, 100 Darnley Road

Term of lease: 99 years from 30th June 1986

First period of ground rent:	£ 30
Second period of ground rent from 25th December 2010:	£ 60
Third period of ground rent from 25th December 2043:	£120

Lease end: 29th June 2085
Valuation date: 6th May 2011

Unexpired term: 74.15 years

Capitalisation Rate:	6.50%
Deferment Rate:	5.25%
Relativity:	90.00%

	£
Flat value with long lease:	110,000
Flat value with present lease:	99,000

Valuation of freeholder's existing interest:

		£	£	£
Ground rent 1:	£30.00			
YP	- 0.35415			
		0.00		
Ground rent 2:	£60.00			
YP	13.45901			
PV £1	1.0187			
		822.61		
Ground rent 3:	£120.00			
YP	14.25821			
PV £1	0.1882			
		322.08		
			1,144.69	
Reversion to freehold value				
Improved value of Flat:	£110,000.00			
Deferred	0 .02250			
			2,475.03	
				3,619.72
			TOTAL	**3,619.72**

Flats 1-6	29,029.60
Flat 7	3,619.72
Appurtenant area	400.00
TOTAL	**33,049.33**

Signed

R. Norman

Chairman