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LEASEHOLD VALUATION TRIBUNAL

Sections 24 and 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")

Case Number:	**CHI/45UC/OCE/2012/0003**
Property:	**74 Annandale Avenue, Bognor Regis, West Sussex PO21 2EX**
Applicants:	**Mr Charles Spencer Bull** **Ms Nicola Claire Titchmarsh** **Ms Jenny Horn**
Respondents:	**Gordon Ian Walter Griffiths** **Dimitri Panayiotou**
Appearances for Applicants:	**Mr K Pain of Counsel** **Mr J Wilkins, Expert Witness**
Appearances for Respondent:	**Mr R Russ, Representative/ Expert Witness** **Mr C Moore, witness**
Date of hearing	**20 April 2012**
Tribunal:	**Ms E Morrison LLB JD (Lawyer Chairman)** **Mr R A Wilkey FRICS (Valuer Member)** **Lady Davies FRICS (Valuer Member)**
Date of the Tribunal's Decision:	**2 May 2012**

Summary of Decision

1. The price payable by the Applicants as Nominee Purchaser for the acquisition of the freehold of the subject premises is £17,500.00. This is calculated by applying a capitalisation rate of 6%, a deferment rate of 5.25%, and relativity of 95.1%. With respect to non-participating flats the hope value is calculated as 10% of the marriage value. No sum is payable in respect of development potential. The full calculation, setting out the relevant long leasehold values for each flat, appears at the end of this decision.

2. The costs to be paid by the Applicants to the Respondents pursuant to section 33 of the Act are £2636.00.

Introduction and Background to the hearing

3. This is an application by individuals who together comprise the nominee purchaser under section 24 of the Act. It seeks a determination of the price payable for the acquisition of the freehold of the subject premises, which contains 4 flats. The applicants are together the leaseholders of Flats 3 & 4. The Respondents jointly own the freehold and are the reversioner under the claim. The leaseholders of Flats 1 & 2 are not participating.

4. An initial notice dated 22 August 2011 was given under section 13 of the Act seeking to exercise the right to acquire the freehold under the provisions in Part 1 of the Act. The notice claimed the freehold to the specified premises, namely the building containing the flats, and additional property (then identified as the garden and access-ways). A price of £7000.00 was proposed for the building and the sum of £100.00 for the additional property.

5. In response a counter-notice dated 27 October 2011 was given under section 21 of the Act admitting that the participating leaseholders were entitled to exercise the right to enfranchise. The Respondent made counter-proposals on price: £55,000.00 for the building and £500.00 for the additional property. When no agreement was reached as to price an application dated 17 January 2012 was made to the Tribunal.

6. Directions were given on 30 January 2012 providing for exchange of valuers' reports, the subsequent filing of a joint report from the valuers setting out matters agreed/not agreed, and the filing of skeleton arguments. The joint report dated 21 March 2012 stated that the only matters agreed were the length of the unexpired lease terms (75.08 years for all 4 leases) and the relevant date of valuation, being 22 August 2011. The following issues were stated as not agreed and requiring the decision of the Tribunal:

   (i) The capitalisation rate to the utilised in valuing the ground rents;

   (ii) The deferment rate to be utilised in the valuations;

   (iii) The value of the new long leasehold interest in the units;

   (iv) The relativity percentage to be applied to the valuations;

   (v) The degree of hope value payable in respect of non-participating flats;

   (vi) The degree of hope value payable to reflect development potential of the premises;

(vii) The premium to be paid in respect of the acquisition of the freehold in the subject premises.

7. Each valuer then prepared a full report setting out his evidence with supporting documentation. On 13 April 2012 Mr Russ, the Respondents' valuer, provided a further document entitled Skeleton Argument which in fact consisted largely of further evidence in response to the report of the Applicants' surveyor Mr Wilkins. Mr Pain provided a Skeleton Argument dated 16 April 2012.

8. On 18 April 2012 Mr Russ prepared a further report which he sought to put before the Tribunal. At the outset of the hearing on 20 April, Mr Pain objected to its admission and the Tribunal heard both sides on the point. The Tribunal decided not to admit the further report. It had been prepared too late, had been sprung upon the other side who had no opportunity to respond, and there was no good reason why its contents could not have been included in Mr Russ's earlier full report.

9. No further issues were agreed before the hearing commenced on 20 April. The amount of costs payable by the Applicants under section 33 was added to the matters in dispute. Towards the end of the hearing, the parties did agree £250.00 as the price for the additional land. It had become clear that this did not include the back garden areas which were within the demise of the individual flat leases, but did include other common areas retained by the freeholder both inside and appurtenant to the building.

Inspection

10. The Tribunal inspected the subject property on the morning of 20 April 2012, immediately before the hearing. Mr Bull, Mr Wilkins and Mr Pain were present. No-one attended on behalf of the Respondents.

11. 74 Annandale Avenue is a 2-storey detached property built circa 1900, situated in an established residential area close to the centre of Bognor Regis. The northern section of Annandale Avenue, where the property is situated, is one-way for traffic and fairly heavily parked with no parking restrictions in effect. The building is of brick under a slate roof. There is a 2-storey square bay to the front elevation, the upper part of which is pebble-dashed. To the rear is a relatively modern single-storey addition forming part of Flat 2. The exterior is in generally fair to reasonable condition for its age and character but there was some evidence of peeling paintwork. There is a small shared entrance porch and hall serving flat 1 on the ground floor, and flats 3 and 4 on the first floor. Flat 2 has its own external entrance at the side. Each flat has 2 rooms and kitchen and bathroom, although the room sizes and layouts vary in each unit. To the side of the property is a concrete drive which provides a parking space for flat 2 only. The rear of the property is accessed along a shared path where each flat has its own exclusive portion of the good-sized back garden.

Representation and Evidence at the Hearing

12. The Applicants were represented by Mr K Pain of Counsel. Mr Julian Wilkins MRICS gave expert valuation evidence for the Applicants. Mr Bull (Applicant) attended the hearing but did not give evidence.

13. The Respondents were represented by Mr Roger Russ FRICS, who was also their expert valuer. Mr Griffiths (Respondent) attended but did not give evidence. Mr Chris Moore MBEng attended to give evidence.

The Leases

14. Flats 1 and 2 are held on leases for terms of 94 years. Flats 3 and 4 are held on leases for terms of 99 years. However all four terms expire on the same date. The initial ground rent was £50.00 p.a. but the leases provide for the rent to increase by £10.00 every 10 years. The current ground rent for each flat is £70.00 p.a. This will increase in 6 years time to £80.00 p.a. The freeholder is responsible for insuring the building and for the repair and maintenance of the main structure, and each lessee is required to contribute 25% of the cost by way of a service charge.

The Law

15. The price to be paid by a nominee purchaser for the freehold is governed by Schedule 6 of the Act. Paragraph 2 states:

(1) Subject to the provisions of this paragraph, where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of-
(a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,
(b) the freeholder's share of the marriage value as determined in accordance with paragraph 4, and
(c) any amount of compensation payable to the freeholder under paragraph 5.

16. It is agreed in this case that no compensation is payable under Schedule 6 paragraph 2(1)(c). However, the matters set out at paragraph 6 (i) – (vi) of this decision are directly relevant to the valuations of the freeholder's interest and the marriage value under Schedule 6 paragraph 2(1)(a) and (b).

The Capitalisation Rate

17. Mr Wilkins for the Applicants suggested that the appropriate rate was 7%, describing this as the 'default rate' for a lease with modest ground rent reviews to fixed sums at regular intervals typically every 25 years. He did not believe that the ground rent provisions in the subject leases, with fixed £10 increases every 10 years, would be attractive to an investor.

18. Mr Russ for the Respondents was of the opinion that the ground rent was relatively good for the type of property, and yet not so high that there was a risk of default. The stepped increases were more frequent than in many leases. These factors, together with current generally low rates of return for investors, supported a rate of 6%.

19. The Tribunal took into account the factors which the Lands Tribunal in *Nicholson v Goff* [2007] 1 EGLR 83 identified as relevant to determining the rate: the length of the lease term, the security of recovery, the size of the ground rent, and the provision for and nature of any rent review. The ground rent was considered to be at a reasonable level for the type of property. The 10 yearly increases are more frequent than found in many flat leases, and indeed much more frequent than the 25 years referred to by Mr Wilkins as justifying a rate of 7%. There was no corroboration of Mr Wilkins's assertion that 7% is the 'default rate', and no evidence about any problems in collecting the rent. The Tribunal prefers the submissions of Mr Russ and, finding that the property represents a reasonable investment prospect, adopts a capitalisation rate of **6%**.

The Deferment Rate

20. In *Cadogan v Sportelli* [2007] 1 EGLR 153 , the Lands Tribunal set a so-called 'generic' deferment rate of 4.75% for the leases of long term reversions. It did so by reference to three elements, namely a risk-free rate of 2.25%, less a real growth rate of 2% plus a risk premium of 4.5%. The risks covered by the risk premium were described at [75] as volatility, illiquidity, deterioration and obsolescence. The President stressed that the first two of these factors had the major effect upon the risk premium [76]. The Lands Tribunal then went on to consider five possible factors which might affect the generic rate, namely (i) the length of the term, (ii) location, (iii) obsolescence and condition, (iv) whether the investment was a house or flat and (v) transaction costs. As to factors that might justify a different risk premium the President said:

"As with location, although we do not rule out the possible need to adjust the deferment rate to take account of such matters as obsolescence and condition, we think it would only exceptionally be the case that such factors were not fully reflected in the vacant possession value and the risk premium. Evidence would be needed that they were not fully reflected in this way." [90]

21. It also considered that a relevant factor was whether the lease concerned a house or a flat, and made an adjustment of 0.25% to the generic rate to represent the additional risk of an investment in the reversion of a flat because of the additional costs generally involved in the management of flats arising out of service charge and repairs problems [96]. The Lands Tribunal therefore made an adjustment of 0.25% to the risk premium in the case of flats to produce a 'generic' deferment rate for flats of 5%. The Lands Tribunal was clear that LVTs should follow its finding on deferment rates unless there was "compelling evidence" to the contrary.

22. The properties in *Sportelli* were all in Prime Central London. On appeal the Court of Appeal agreed it was appropriate for the Lands Tribunal to set generic deferment rates and to expect leasehold valuation tribunals to follow its guidance. However, Carnwath LJ, giving the leading judgment, recognised a distinction between PCL and other parts of the country. He stated:

"The issues within the PCL were fully examined in a fully contested dispute between directly interested parties. The same cannot be said in respect of other areas. The judgement 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 other areas. The deferment rate adopted by the Tribunal will no doubt be the starting point, and its conclusion 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." [2007] EWCA Civ 1042 at [102]

23. As to the evidence required to justify a departure from the generic rates, he said:

"The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate". [123]

24. In *Zuckerman v Trustees of the Calthorpe Estate* [2009] UKUT 235 (LC) the Upper Tribunal departed from the *Sportelli* generic rates. It increased the deferment rate to 6% for flats at Kelton Court, Edgbaston, West Midlands by making three adjustments to the risk premium:

(a) An increase of 0.25% for obsolescence. This reflected the finding that it was economically viable to repair high value properties in PCL for considerably longer than for similar sized flats in Kelton Court, and as a result there was a greater risk of deterioration at Kelton Court;
(b) An increase of 0.5% to reflect different growth rates between PCL and the Midlands. This was based on a careful examination of detailed data from the Nationwide BS from 1973 onwards and the Knight Frank Index for Kensington and Chelsea from 1976. This showed that *"... the difference between past rates of long-term price increases in PCL and the West Midlands has been not slight but considerable."*
(c) An increase of 0.25% to reflect management problems regarding flats as opposed to houses. This adjustment was made as a consequence of the introduction of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations"). Although introduced before the decision in *Sportelli*, these were said to have impacted on the market at some later stage.

25. Since the decision in *Zuckerman*, there has been more readiness on the part of tribunals to depart from the generic rates, but this can only be done on a case-by-case basis and is wholly dependent on the evidence. In this case Mr Wilkins considered that a deferment rate of 6% would be appropriate, making the same adjustments as in *Zuckerman*, and for the same reasons. With respect to obsolescence, he noted that the properties in *Sportelli* had significantly higher values than the 74 Annandale Avenue flats, but that the difference in maintenance costs was relatively small. There was therefore a higher risk that the condition of these flats would deteriorate. As to growth Mr Wilkins relied on a Land Registry House Price Index comparing properties in the London Borough of Kensington and Chelsea with those in West Sussex. Between January 1995 and January 2012 prices had risen around twice as much in Kensington and Chelsea than in West Sussex. Mr Wilkins also relied on Land Registry information as regards volume of sales in West Sussex to argue that volatility had increased since the 'credit crunch'. Finally, Mr Wilkins also argued that, as in *Zuckerman*, 74 Annandale Avenue presented a higher risk than PCL flats of disputes over service charges and repairs because of its comparatively low value and the more limited means of its leaseholders. With these factors, and since the decision in *Brent LBC v Shulem B* [2011] EWHC 1663 (Ch), there was also a greater perceived risk of problems arising out of the 2003 Regulations and section 20 of the Landlord and Tenant Act 1985. The combination of all these factors meant that a rate of 6% was appropriate.

26. Mr Russ contended for a deferment rate of 5%, there being no compelling evidence to justify a departure. He submitted there were no grounds for increasing the risk premium for obsolescence as the age and nature of these flats was reflected in their reversionary values. The building was of conventional construction, perfectly functional and maintained to a reasonable level having regard to its age and location. As to growth, the graphs relied on by Mr Wilkins only showed a significant divergence in growth from early 2006 onwards. West Sussex was a resilient part of the world, and the recent growth figures for London were hard to analyse. He denied the graphs could be used to establish increased volatility in Bognor Regis and in his opinion the property market there was now stable. The graphs showed that between April and October 2011 prices in West Sussex had increased by just over 2% and were now stable. As to management issues Mr Russ submitted there were no additional risks that were not covered by the 0.25% included in the generic rate for flats above that for houses. He accepted the building would need to be re-roofed at some stage but the 2003 Regulations were now well known and, if followed, strengthened the position of freeholders.

27. While there are tribunal decisions in West Sussex which have determined a deferment rate of 6%, the rate turns on the facts and evidence in each case. In this case the Tribunal is not persuaded there are grounds to increase the risk premium for

obsolescence. This factor is generally, as stated in *Sportelli,* reflected in the reversionary value and generic risk premium. There is nothing unusual about the subject flats and building, located in an established residential street near the town centre, where properties are generally well-maintained, or about the extent of likely repairs, that increases the risk in this case. As to growth, the Tribunal heeds the advice of the Lands Tribunal in *Hildron Finance Ltd v Greenhill (Hampstead) Ltd* [2008] 1 EGLR 179 that evidence of long-term movements in value will be required to justify a departure from the *Sportelli* real growth rate. In *Zuckerman* there was evidence going back to 1973. In this case the evidence adduced dated from January 1995 and it was only from early 2006 that the growth in PCL departed markedly from that in West Sussex. Furthermore the Land Registry information covered all types of properties, not just flats. This evidence is insufficient to justify any increase to the risk premium with regard to growth. However the Tribunal finds that the deferment rate should be increased from 5% to **5.25%** to reflect the additional risks posed by the 2003 Regulations. The building will require re-roofing, probably within 10 years, and the 2003 Regulations will apply to these works. Even if the consultation procedures are followed, the freeholder may face a challenge to the consequent service charges. The 2003 Regulations still present pitfalls and traps for the unwary, and with no management company or head-lease in place the freeholder takes this risk.

Valuation of Long Leasehold Interests

28. The relevant date for valuation is 22 August 2011. Mr Wilkins proposed long leasehold values for Flats 1-4 respectively of £95,000, £100,000, £90,000 and £90,000. Mr Russ's figures were £116,000, £121,000, £110,500 and £105,250 respectively.

29. Mr Wilkins referred to 7 comparables and Mr Russ to 4 comparables (both using 25B Essex Road), all of 1-bedroom flats in Bognor Regis. Where Mr Russ's comparables related to sales of flats with unexpired terms of less than 80 years, he adjusted the sale price by applying a relativity factor to arrive at a long leasehold value. The Tribunal carefully considered all the comparables and decided that the following were the most relevant bearing in mind the nature and character of the building and the location:

    (i) 30A Wellington Road. 1-bedroom ground floor flat in semi-detached house, double-glazed, central heating with garage and garden. Sold in June 2010 for £129,000 with unexpired term of 120 years.
    (ii) Flat 3, 4 Nelson Road. 1-bedroom first floor flat in detached house, double-glazed, central heating with allocated parking space but no garden. Sold in March 2011 for £108,000 with unexpired term of 73 years.
    (iii) 14a Highfield Road. 1-bedroom ground floor flat in semi-detached house, modernised to a good standard, majority double-glazed, central heating, section of garden. Sold in October 2011 for £97,000 with unexpired term of 74 years.
    (iv) 14 Wellington Road. 1-bedroom ground floor flat in semi—detached house, double-glazed, central heating, with allocated parking space and large rear garden. Sold in October 2011 for £110,000 with unexpired term of 84 years.

30. Flat 1 at 74 Annandale Avenue is the ground floor front flat. It is the largest flat with good sized living room and bedroom, central heating, and double-glazing in the bedroom only which is a tenant's improvement. It comes with a section of the rear garden. The Tribunal disagrees with Mr Wilkins's view that the garden has little value. 30A Wellington Road is probably the best comparable, but having carefully considered all the comparables and making appropriate adjustments to reflect the differences between Flat 1 and the comparables the Tribunal came to almost the same figure as Mr Russ and therefore adopts his valuation of **£116,000.00**

31. Flat 2 is the ground floor rear flat. It has its own external entrance, central heating, double- glazed windows, direct access to the garden and an allocated parking space. The living room is behind the kitchen with no natural light and therefore somewhat gloomy. Again the Tribunal considers that 30A Wellington Road is the best comparable, but having carefully considered all the comparables and making appropriate adjustments to reflect the differences between Flat 2 and the comparables the Tribunal came to almost the same figure as Mr Russ and therefore adopts his valuation of **£121,000.00.**

32. Flat 3 is the first floor front flat. It has central heating, single-glazing, and a section of the back garden. Again the Tribunal disagrees with Mr Wilkins that the garden is of little value. Flat 3, 4 Nelson Road is probably the best comparable, but having carefully considered all the comparables and making appropriate adjustments to reflect the differences between Flat 3 and the comparables the Tribunal came to almost the same figure as Mr Russ and therefore adopts his valuation of **£110,500.00**.

33. Flat 4 is the first floor rear flat. It is double-glazed (tenant's improvement), without central heating, and again has a section of garden. It is smaller than the other flats. Again Flat 3, 4 Nelson Road is probably the best comparable, but having carefully considered all the comparables and making appropriate adjustments to reflect the differences between Flat 4 and the comparables the Tribunal came to almost the same figure as Mr Russ and therefore adopts his valuation of £**105,250.00**.

Relativity

34. On this point, both valuers relied exclusively on relativity graphs. Based on the unexpired term of 75.08 years at the relevant date, Mr Wilkins argued for a relativity of 96.08%, being the mid-point between the figure of 95.53% suggested by the graph of Andrew Pridell Associates, and the figure of 96.63% suggested by that of Austin Gray. Mr Russ used the same two graphs, but also the Beckett & Kay graph at 94.8% and the Nesbitt & Co graph at 93.5%. This produced an average of 95.1% based on unexpired term of 75 years, which he reduced to 95% on account of the extra 0.08 unexpired term.

35. Mr Wilkins stated in his report that he had not used Beckett & Kay as it was based on opinion rather than transactions. At the hearing he pointed out that the Nesbitt graph is based predominantly on transactions within Greater London and the outer suburbs. In response Mr Russ pointed to the experience of Mr Beckett and felt it was wrong to place too much reliance on Austin Gray as this was based primarily on Brighton and Hove, which had its own market. He noted that the Nesbit graph did include some south coast transactions and covered a wide time period.

36. The Tribunal notes that each relativity graph has its merits and limitations. Geographical area, property type, time span and data used varies from graph to graph. The Austin Gray graph is for flats predominantly in Brighton and Hove. The Andrew Pridell graph is for flats predominantly in the south-east and surburban London, but based on only 6 years of data. The Beckett & Kay graph is based on opinion relating to mortgage-dependent properties outside PCL "which consist generally of lower value properties". The Nesbit graph is mainly flats and predominantly in Greater London, but with an element of South Coast and Midlands properties. None of these graphs is obviously inappropriate and to smooth the biases found in each graph the Tribunal finds that it is reasonable to consider them all and to give the same weight to each of them. Substituting Mr Wilkins's more accurate figures for Austin Gray and Andrew Pridell, and making a very slight adjustment to the other two figures given by Mr Russ to take account of an unexpired term of 75.08 years, the Tribunal determines the relativity at **95.1%**.

Hope Value for Non-participating Flats

37. In *Cadogan v Sportelli* [2008] UKHL 71 the House of Lords decided that hope value, in respect of the possibility of non-participating tenants seeking to obtain new leases of their flats, could be taken into account in valuing the freeholder's interest in cases of collective enfranchisement under the Act.

38. Mr Wilkins submitted that 5% of the marriage value should be allowed. He argued that there was only a limited prospect of the two non-participating leaseholders seeking a new lease in the near future; if they wanted one they would have participated. Less value should be attributed if there were only two flats, and the unexpired term was still acceptable as mortgage security. Mr Pain referred to the authorities of *Blendcrown Ltd v Church Commissioners* [2004] 1 EGLR 143 and *Culley v Deajan Properties* [2009] UKUT 168.

39. Mr Russ argued for 25% of the marriage value. He said people are now more "switched on" to the fact it was cheaper to get a new lease sooner rather than later, even when over 80 years was unexpired. Although some older cash buyers did not have the same concerns, 74 Annandale Avenue was unlikely to attract such a buyer. He accepted 25% was "fairly radical" but argued that the "historically very low percentages are worthy of reconsideration in some cases".

40. The authorities referred to by Mr Wilkins express the view that hope value is likely to be greater if the proportion of non-participating flats is relatively large, and lower if the unexpired terms are particularly long. In *Blendcrown* the Lands Tribunal rejected the view that non-participation at time of enfranchisement indicated no interest in a new lease in the future. In that case, there were 15 non-participating tenants, with 17.2% of the aggregate value, and unexpired terms of 46.5 years. 5% of the marriage value was allowed as hope value. In *Culley*, a more recent decision and post-*Sportelli*, hope value was assessed at 10% of marriage value in respect of the two non-participating flats with unexpired terms of 65 years. There were four flats in all, as at 74 Annandale Avenue.

41. In this case the Tribunal finds no evidence or authority to support Mr Russ's argument for 25%. However, 5 % is too low. In this case 50% of the flats are non-participating and will, within a few years, require new leases if sold to a mortgage-dependent buyer. In the opinion of the Tribunal these flats are likely to be purchased by first-time buyers or investors as 'buy-to-lets', who have a clear interest in maintaining saleability. Based on its own experience, it accepts Mr Russ's view that awareness of the statutory entitlement to, and benefit of, a new lease is increasing. The Tribunal accordingly determines hope value at **10%** of the marriage value.

Hope Value in respect of Development Potential

42. It is common ground that development value arising from the freehold being acquired by the nominee purchaser should be taken into account when assessing marriage value on collective enfranchisement: *Forty-five Holdings Ltd v Grosvenor (Mayfair) Estates* [2009] UKUT 234 (LC).

43. The issue for the Tribunal in this case is whether such development value exists. Mr Russ, for the freeholder, contended in his report that there is potential to enlarge Flats 3 & 4 on the first floor to create two 2-bedroom units with en-suite shower/wc and to create a new 2 bedroom flat in the roof void. He suggested a total increase in value of £170,000.00, of which 35% (£61,250.00) was "plot value". The freeholder should receive 50% of this i.e. £30,625.00 as his share of the marriage value. Mr Russ asserted that the freeholder had retained the roof space with a view to development in the future and the foundations to the rear extension were purposefully made deep enough for adding a further storey. Other buildings in Annandale had been extended and enlarged with roof conversions.

44. On cross-examination by Mr Pain, Mr Russ accepted that (i) there was no express reservation of rights with respect to the roof-space or other indication of intent to develop in the leases (ii) there was no factual evidence as the depth of the foundations to the rear extension and in this regard Mr Russ's opinion was based on his experience (iii) he had not been inside the roof void (but was confident he could assess its structure from the outside) (iv) there was no structural assessment of the proposed development (v) any development would cause some noise and disturbance to the ground floor flats (but he thought there would be ways around this) (vi) there was no fully worked through analysis of the cost (but the figures were based on his experience and knowledge) (vii) there should be some discount from his figures for risk.

45. Appended to Mr Russ's report was an unsigned report from Mr Chris Moore, a local building consultant. Mr Moore attended the hearing and verified his report, which suggested there was potential to develop the site by extending the first floor "to perhaps an additional bedroom", to the side by adding a new ground floor unit, and converting the roof space. On cross-examination by Mr Pain, he accepted that (i) he had not addressed the probability of getting planning consent (ii) he had not provided a floor plan or structural survey (iii) he had not been inside the roof space (iv) if he was being asked to advise on whether a person should invest money in the property he would expect to go inside before advising.

46. Mr Wilkins suggested the proposed development was completely unrealistic. There was no planning consent, no evidence whether the ground floor extension was suitable for a first floor addition, and no works could take place without the consent of the non-participating flats. He thought it unlikely that there would be space to extend the first floor as suggested by Mr Russ, bearing in mind space would also need to found for a new staircase to the loft. A roof space development would only be possible with the addition of substantial dormer windows, which would be out of keeping with the locality.

47. Based on the evidence presented the Tribunal finds, for the following reasons, that any development potential is wholly speculative and as such does not merit valuation.

(a) The proposed scheme or schemes of development are simply outline ideas which, quite literally, have not even reached the drawing—board. There are no drawings or plans whatsoever.

(b) There is no evidence as to the likelihood of obtaining planning consent. One particularly relevant issue here is that any conversion involving the roof space may well require substantial dormer windows to be installed. Looking from 74 Annandale Avenue there are no such windows visible on other similar properties in the street.

(c) There is no structural survey or assessment as to whether either the first floor addition or the roof conversion is physically feasible. It is far from self-evident that either scheme is workable.

(d) Mr Moore's scheme to build on to the side of the property at ground floor level was not even valued by Mr Russ and would in any event encroach on Flat 2's parking space.

(e) Any works would to some degree constitute a breach of the covenant for quiet enjoyment as regards the ground floor leaseholders and there was no evidence as to whether their consent, on terms or otherwise, could be obtained.

(f) There is no evidence that the current freeholder has retained the roof space with a view to development. There was no witness statement from either of the freeholders. Mr Griffiths attended the hearing but did not give evidence.

(g) The costings produced by Mr Russ are so unsophisticated that they cannot be relied upon to establish the financial viability of any development.

(h) The leases were granted on the footing that there would be 4 flats in the building, as indicated by the obligation of each flat to pay 25% of the service charge, and this presents a further obstacle to be overcome.

(i) There was no evidence as to how the occupants of Flats 3 & 4 might be able to remain in occupation while the works were carried out.

Section 33 Costs

48. Under section 33 the nominee purchaser is liable to pay the reversioner's reasonable costs of and incidental to the specified matters set out in that section. Costs will only be reasonable if the reversioner would have been prepared to pay that much himself. It is specifically provided in s 33(5) that there is no liability to pay costs incurred in connection with proceedings before the LVT to determine the price.

49. Section 33 costs include the cost of any valuation of any interest in the specified premises or other property. Mr Russ claims £1200 + VAT for his initial valuation without providing a breakdown for this figure. Mr Pain, without elaboration, suggested £1000 + VAT would be reasonable. Having regard to the need to check comparables, and the different size and configuration of each flat, the Tribunal allows £1200 + VAT.

50. Turning to the costs claimed by the Respondent's solicitors, the only evidence of the amount being claimed was a letter from Thomas Eggar dated 20 March 2012 "estimating" costs at £2250 + VAT and disbursements of £44 (for office copy entries and bank transfer fee). Attached were time records up to 20 October 2011 with a value of £2250 + VAT (billed 31 January 2012) with further time spent up to 26 March 2012 valued at £1913 + VAT. As substantial work was carried out after the date of the counter-notice it appeared that the time spent included work related to the proceedings. A copy of the draft Transfer had been provided; it was completely straightforward. An hourly rate of £230 + VAT was being applied. Thomas Eggar provided no information as to the status of the fee-earner but the Applicants' skeleton argument suggested she was a licensed conveyancer with 8 years post-qualification experience, and this was not challenged.

51. Most unhelpfully, there was no statement of costs relating specifically to the work for which costs may be recovered under section 33. In those circumstances the Respondents cannot be surprised if the Tribunal takes a robust stance on assessment. The hourly rate of £230 is not reasonable. The current guideline rate for a Grade B solicitor or legal executive with 8 years experience is £192. There is nothing about this case which, from the point of view of section 33 costs, is complicated or would justify a higher rate. An hourly rate of £192 is allowed. As to time spent, based on its own knowledge and experience as to the work under section 33 and how long it takes, the Tribunal allows 5 hours. The disbursements claimed are reasonable. Accordingly the Tribunal awards the Respondents £960 + VAT + £44 disbursements for legal costs, and £1200 + VAT for the valuation. This produces a total sum of £2636.00.

Chairman Elizabeth Morrison

E Morrison

Dated: 2 May 2012

74 Annandale Avenue, Bognor Regis PO21 2EX

Freehold Enfranchisement Premium Valuation under Schedule 6, Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993

Valuation Date: 22nd August 2011

There are four flats in the building but only Flats 3 and 4 are participating
Flats 1 and 2 are each held on a 94 year lease commencing 29 September 1992
Flats 3 and 4 are each held on a 99 years lease commencing on 29 September 1987
All four leases expire on 28 September 2086. The unexpired term at the date of valuation is 75.08 years
Each flat currently pays a ground rent of £70 per annum until 2017 when the ground rent increases by £10 per annum each for the next 10 year period and then increases by a further £10 per annum for each successive 10 year period until the end of the lease.
The long leasehold value of the flats after enfranchisement is:
Flat 1 £116,000
Flat 2 £121,000
Flat 3 £110,500
Flat 4 £105,250

Relativity determined at 95.1%

Valuation

Participating flats 3 and 4:

(i) **Diminution in Freeholder's interest**

Ground rent	£140		
YP 6.08 years @ 6%	4.97		£696
Increased ground rent	£160		
YP 10 years @ 6%	7.36		
PV £1 in 6.08 years @ 6%	0.702		£827
Increased ground rent	£180		
YP 10 years @ 6%	7.36		
PV £1 in 16.08 years @ 6%		0.392	£519
Increased ground rent	£200		
YP 10 years @ 6%	7.36		
PV £1 in 26.08 years @ 6%		0.210	£322
Increased ground rent	£220		
YP 10 years @ 6%	7.36		
PV £1 in 36.08 years @ 6%		0.122	£198
Increased ground rent	£240		
YP 10 years @ 6%	7.36		
PV £1 in 46.08 years @ 6%		0.068	£ 120

Increased ground rent	£260			
YP 10 years @ 6%	7.36			
PV £1 in 56.08 years @ 6%		0.038	£ 73	
Increased ground rent	£280			
YP 9 years @ 6%	6.802			
PV £1 in 66.08 years @ 6%		0.0213	£ 41	
				£2,796
Reversion to:	£215,750			
PV £1 in 75.08 years @ 5.25%	0.021457			£4,629
				£7,425

(ii) **Marriage Value**

Value of long leasehold interests	£215,750	
Less Value of leaseholders' current interests	£205,178 (95.1%)	
Value of Freeholder's current interest	£ 7,425	
Marriage Value	£ 3,147	
Landlord's share @ 50%		£1,574
		£8,999

Non-participating flats 1 and 2

(i) **Diminution in Freeholder's interest**

Ground rent	£140			
YP 6.08 years @ 6%	4.97		£696	
Increased ground rent	£160			
YP 10 years @ 6%	7.36			
PV £1 in 6.08 years @ 6%		0.702	£827	
Increased ground rent	£180			
YP 10 years @ 6%	7.36			
PV £1 in 16.08 years @ 6%		0.392	£519	
Increased ground rent	£200			
YP 10 years @ 6%	7.36			
PV £1 in 26.08 years @ 6%		0.219	£322	
Increased ground rent	£220			
YP 10 years @ 6%	7.36			
PV £1 in 36.08 years @ 6%		0.122	£198	
Increased ground rent	£240			
YP 10 years @ 6%	7.36			
PV £1 in 46.08 years @ 6%		0.068	£ 120	
Increased ground rent	£260			
YP 10 years @ 6%	7.36			
PV £1 in 56.08 years @ 6%		0.038	£ 73	
Increased ground rent	£280			
YP 9 years @ 6%	6.802			
PV £1 in 66.08 years @ 6%		0.0213		£ 41

			£2,796
	Reversion to:	£237.000	
	PV £1 in 75.08 years @ 5.25%	0.021457	£5,085
			£7,881

(ii) No marriage value is payable for non-participating flats

Other losses

(a)	Hope value in respect of non-participating flats		
	Value of long leasehold interests	£237,000	
	Less Value of leaseholders' current interest	£225,387 (95.1%)	
	Value of Freeholder's current interest	£ 7,881	
	Marriage Value	£ 3,732	
	At 10%		£373
(b)	Value of common parts agreed by parties		£250
(c)	Development Value		Nil
			£623

Summary Valuation

Flats 3 and 4	£	8.999
Flats 1 and 2	£	7,881
Other losses	£	623
	£	17,503
say		**£17,500**