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HM Courts & Tribunals Service

Leasehold Valuation Tribunal

In the matter of Sections 48 (1) & 91 (2) and Sch 13 Part II
Leasehold Reform, Housing and Urban Development Act 1993.

DECISION AND REASONS

LVT Case Numbers:	CHI/45UH/OLR/2011/0133 CHI/45UH/OLR/2011/0134 CHI/45UH/OLR/2011/0136 CHI/45UH/OLR/2011/0159
Properties:	Flats 3,4,6 & 24 Sunningdale Court Jupps Lane Goring by Sea WORTHING West Sussex BN12 4TU
Applicants:	Gary & Linda Tucker (Flat 3) Sandra Coppard (Flat 4) Vera Cuthell (Flat 6) Victoria Lacey (Flat 24)
Represented by:	Mr C T N Spratt BSc FRICS (C G Spratt & Son) Assisted by Ms V Knight
Respondent:	Dependable Homes Ltd
Represented by:	Ms G Mariner BSc (Hons) MRICS (Strettons)
Date of Inspection and Hearing:	29 June 2012
Tribunal Members:	Mr B H R Simms FRICS MCIArb (Valuer Chairman) Miss C D Barton BSc MRICS (Valuer Member)
Date of this Decision:	23 July 2012

DECISION

1. The premium payable by the tenant for the grant of the new lease is, in each case, as follows:

2. Flat 3, Sunningdale Court - £17,645

3. Flat 4, Sunningdale Court - £18,590

4. Flat 6, Sunningdale Court - £17,800

5. Flat 24, Sunningdale Court - £17,490

REASONS

BACKGROUND

6. This case Follows Applications by Rosemary E Hensby, Solicitors in respect of the Tenants of Flats 3, 6 & 24 and by Burnand Brazier Tisdall, Solicitors in respect of the Tenant of Flat 4 for the determination of the premium to be paid by the tenant for a new lease. By agreement the cases were heard together.

7. A Hearing was held at the Residential Property Tribunal Offices in Chichester on Friday 29 June. The Tenants and Landlord were represented.

LAW

8. The statutory valuation provisions are contained in Schedule 13 to the Act. In particular, paragraph 2 of Part II of Schedule 13 states:

The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of:
(a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,
(b) the landlord's share of marriage value as determined in accordance with paragraph 4, and
(c) any amount of compensation payable to the landlord under paragraph 5.

9. Paragraph 3 states, so far as material:

3(1) The diminution in value of the landlord's interest is the difference between –

(a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
(b) the value of his interest in the flat once the new lease is granted.

~~*(2) Subject to the provisions of this paragraph, the value of any such interest of*~~ *the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the [valuation] date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions …*[and there follows certain valuation assumptions dealing with tenure, title, the valuation being made in a "no Act world" and the disregard of any increase in value attributable to tenant's improvements].

LEASE

10. The Tribunal was provided with a copy of the lease in respect of each flat. The terms of the existing leases are not in dispute and facts in respect of each lease are agreed. Each lease was originally for a term of 99 years paying a ground rent. The tenant is responsible for maintaining the flat and pays a specified share of the costs the landlord expends in managing the building and estate .

11. During the course of proceedings it became apparent that further leases had been granted inserting an interest between the freeholder and the lessee to provide a management company. The Tribunal was not provided with copies of any of these leases.

AGREED FACTS

12. The surveyors representing the parties had agreed a Schedule of Agreed Facts and included a signed document in their bundles of papers.

13. Prior to the Hearing the Tribunal presented the parties surveyors with a Schedule of further facts which appeared to be agreed, extracted from their written proofs, which it asked the surveyors to agree or comment upon. At the commencement of the Hearing the surveyors confirmed their agreement to all the facts presented which are summarised as follows:

14. Unexpired Terms at valuation date/claim date:

Flat 4 - 50.5 yrs;
Flats 3, 6 & 24 - 50.75 yrs

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15. Ground Rents:

Flat 4 - £14.70 p.a.;
Each of Flats 3, 6 & 24 - £12.60 p.a.

16. Capitalisation Rate: 7%

17. Long Lease Values having taken account of any relevant improvements:

    Flat 3 - £141,250;
    Flat 4 - £148,250;
    Flat 6 - £142,500
    Flat 24 - £140,000

18. Dates of Claim and Valuation Dates:

    Flat 3 - 25 March 2011
    Flat 6 - 3 April 2011
    Flat 4 - 16 May 2011
    Flat 24 - 4 April 2011

19. It is agreed that the valuations are not to take account of the value of the freeholder's interest at the end of the long lease in 140 years or so.

INSPECTION

20. Members of the Tribunal inspected the estate generally, the exterior of the buildings and the interior of Flats 4, 6 & 24. There was no access available to Flat 3. The Applicant was present in those flats inspected but the Respondent was not present or represented.

21. Each flat has two bedrooms a kitchen and bathroom. Only Flat 4 has a garage held on a separate lease. The accommodation is described in detail in the representative's proofs. There are differences between each flat but the parties have agreed the relevant long lease valuations.

22. The estate comprises 48 flats in six, 3-storey blocks built in the early 1960s. The buildings are of brick construction with flat or mono-pitch roofs. The windows in all the subject flats have been replaced with modern double glazed units Some common parts still have steel window frames with wire-cast glazing.

THE HEARING

23. The Tribunal had regard to the written statements presented to it and the oral evidence of the parties valuers presented at the Hearing.

24. The Tribunal has been greatly assisted by the agreement between the parties of many of the relevant facts.

25. There are only two issues in dispute: Mr Spratt argues for a deferment rate of 6% with Ms Mariner at 5.125% and Mr Spratt speaks to relativity at 81% and Ms Mariner is at 67.5%. When entered into the calculations these differences produce differing values for the premiums as follows:

	Spratt	Mariner
Flat 3	£17,180	£28,650
Flat 4	£18,100	£30,575
Flat 6	£17,330	£28,900
Flat 24	£17,025	£28,400

The Applicants' Case

Relativity

26. Mr Spratt refers to a Lands Tribunal decision in respect of Flat 21 Sunningdale Court, ***Dependable Homes Ltd v Mann*** [2009] LRA/49/2008. The Member, A J Trott FRICS, concluded that the relativity for an unexpired lease of 54 years at that time would be 83%. Mr Spratt sees no reason to depart from that relativity but he adjusts the figure to take account of the shorter leases and has adopted 81% for each of the Flats. He explained that his calculation assumed a straight line adjustment at approximately 0.65 percentage point for each year difference.

27. He considers that this correlates with the CEM graph at 82.76% and the Savills graph at 80.7%, both of which graphs he produced.

Deferment Rate

28. He referred to the now familiar generic deferment rate established in the Lands Tribunal and Court of Appeal "Sportelli" cases at 5%. There have subsequently been departures from the "Sportelli" rate to 6% in two stated cases ***Zuckerman v Calthorpe Estate Trustees*** [2009] UKUT 235 (LC) and ***Ashdown Hove Ltd v Remstar Properties*** CHI/00ML/OCE/2008/0025.

29. He summarised the reasons for departure from the "Sportelli" rate firstly in respect of the total risk premium, set in "Sportelli" at 4.75%, (risk premium 4.5% plus flats management 0.25%) with an addition of 0.25% for the growth rate (risk free 2.25% less real 2%).

30. He indicates that the stated cases establish an increase in the risk premium rate of 0.5%. In support of a similar rate for the subject properties he produced Land Registry statistics comparing capital growth in West Sussex to London which he says establishes that capital growth would be less in Sussex giving rise to the conclusion that a risk premium increase of 0.5% at Sunningdale Court would not be unreasonable.

31. In addition he considers that a similar addition as that in the stated cases of 0.25% should be made for obsolescence. The subject blocks are old and have maintenance issues because of the flat roof, metal windows, concreted drives and proximity to the sea.

32. His third addition also of 0.25% in the stated cases was as a result of management problems which Mr Spratt believes also apply to Sunningdale Court.

33. He supports his proposed 6% by reference also to a schedule of agreements that he has negotiated in the locality in the range of 5.5% to 6%.

The Respondent's Case

Relativity

34. Ms Mariner refers to the ***RICS Graphs of Relativity*** but colours this research with a comment from ***Nailrile Ltd v Earl Cadogan*** [2006] LRA/114/2006: *"...it is necessary for the Tribunal to do the best it can with any evidence of transactions that can usefully be applied, even though such transactions take place in the real world rather than the no act world".*

35. She therefore offers the market evidence of a sale of a short 50 year lease of 48 Sunningdale at £105,000 in December 2011. She was not involved with this transaction and could not offer any details of the circumstances. Her client confirms that there was no Statutory Notice served prior to the sale. This a flat of similar accommodation to Flat 24 and reflects a relativity figure of 75% in the real world. *Nailrile* used an adjustment of 7.5% to allow for the "no act world" and Ms Mariner makes the same adjustment arriving at 67.5% which is the figure she adopts.

36. She contrasts her figure with 83% set by the Upper Tribunal for 21 Sunningdale which she believes is based on the *Pridell* graph which was pre "credit crunch". She offers in further support an average of the London and Rest of England graphs at 76% for 50 years unexpired.

37. She quotes the Council of Mortgage Lenders website as stating that the majority of lenders requiring a minimum of 60/70 years unexpired on the term. She then goes on to describe her view of the market in Goring by Sea and in such coastal towns. Her view being that there is a more frugal market in short leases being purchased by the elderly.

38. She also offers the mortgage dependent Beckett and Kay graph which she says supports 58% relativity. She expands her views in detail in her written proof.

Deferment Rate.

39. Ms Mariner adopts 5.125%. She refers to *"Sportelli"* and *Zuckerman* and identifies the issues of location, obsolescence and management much in the same way as Mr Spratt but reaches different conclusions. As a preliminary basis she describes decisions in LVT cases with varying rates but concludes that these do not in themselves give rise to a departure from *"Sportelli"*. As Mr Spratt has departed from this rate she addresses the various issues at length in her proof.

40. Firstly the potential for capital growth. She also produces an index, in graph form, from the Land Registry comparing West Sussex with the City of Westminster rather than London as a whole. She believes that this index establishes that the growth rates are comparable. She considers therefore that there is no compelling reason for her to depart from "Sportelli".

41. Then she deals with deterioration and obsolescence which she says "Sportelli" believes should only be reflected in the deferment rate in exceptional circumstances as these deficiencies are usually reflected in the property values. She discusses the constructional details of the blocks at Sunningdale but concludes that the blocks are "...of good design...and maintained to a reasonable standard." She concedes that there might be a case for an adjustment for roof design but she restricts this to 0.125% over "Sportelli".

42. The third element she addresses is management issues. In the "Sportelli" decision 0.25% is included as an adjustment to allow for flats rather than houses. *Zuckerman* added a further 0.25% because of the increased management responsibilities stemming from new Regulations. In this case there is are head Management Leases which isolates the freeholder from all repairing liability and management of the service charges. The Residents' Management Company divorces the role of the day-today management from the freeholder.

43. Because of this difference no additional allowance for management is warranted.

CONSIDERATION

44. The Tribunal has carefully considered the detailed written evidence and the oral evidence presented at the hearing. Both parties and the Tribunal had an opportunity of cross examination and the Tribunal raised queries with the parties as required.

45. It is agreed that the two variables in the calculation of the premium are the relativity percentage to be applied to the agreed long leasehold values of the flat and the deferment rate to be applied when calculating the reversion. All other matters are agreed between the parties and have not been considered by us.

46. The appropriate relativity rate to be applied in cases such as this is not easy to determine. There have been numerous graphs and indexes produced based upon varying criteria and the parties have referred to these throughout their evidence but there is little consistency between the figures produced. There are two reasons for this, firstly, the criteria adopted when producing the graphs varies from author to author, and the value/location adjustment is difficult to extract from the regional graphs.

47. The Applicant relies upon a decision of the Upper Tribunal in respect of Flat 21 at the same development as the subject premises. That decision followed evidence from Mr Spratt, the Applicant's surveyor in this case, and Mr Pridell for the Respondent. In summary Mr Pridell argued at that time for a relativity of 84% based upon the "graph of graphs", and Mr Spratt spoke to 89% based upon market comparables adjusted for improvements and the "no act world". The conclusion in the Flat 21 case was that Mr Spratt's approach relying upon previous LVT Decisions and analysis of comparables was not of assistance. The member rejected any reliance upon previous LVT Decisions. Part of the members' summary criticises the analysis of actual transactions for not adjusting for benefits of the act. The member also took issue with the application of a percentage deduction to allow for the "no act world".

48. The Upper Tribunal explored the comparable evidence in detail but concluded that the analysis of relativities based upon comparable transactions as presented was incomplete and inadequate and could not be relied upon. In the end the member accepted the graph of graphs as a basis for relativity and no further adjustment for the benefits of the act were required.

49. We have similar concerns regarding the market evidence presented to us by Ms Mariner. Although she attempts to persuade us that the conclusion she reaches of a relativity of 67.5% is supported by the various published graphs, she has been selective in her presentation and certainly such a low figure is not within the general range produced by the graph of graphs. She wrongly asserted that the 83% from the Upper Tribunal was based on the *Pridell* graph but the graph of graphs was preferred in that case.

50. As there is only a single transaction quoted by Ms Mariner but it is not from her personal knowledge. She also goes to great lengths to support her opinion by describing the market in Goring-by-Sea and the special market created for purchase by the elderly. Under cross examination she admitted that she had not before dealt with any properties in Goring-by-Sea before and the nearest of which she had had personal contact was in Kent. She produced no evidence in support of her general opinions and the Tribunal gives them little weight.

51. Mr Spratt adjusts the Flat 21 decision at 83% for 54 years unexpired to take account of the reduced lease lengths in this case of 50 or 50.75 years and has adopted 81% for each of the flats.

52. We prefer Mr Spratt's evidence and the evidence of the decision of the Upper Tribunal in Flat 21 and confirm relativity at 81%.

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53. Turning now to the deferment rate, we are content that the calculation in "Sportelli" for flats in prime central London at 5% was based upon a risk free rate of 2.25% less a real growth rate of 2% plus a risk premium of 4.5% plus an increased management risk for flats of 0.25%.

54. There is no doubt that there is sufficient case evidence to show that a variation of the "Sportelli" 5% rate is permitted subject to the party producing sufficient evidence.

55. Both parties in this case approached the matter in a similar way but reached differing conclusions. Neither of them disputed the growth rate established in the "Sportelli" at 0.25% although the eventual mathematics appear to indicate that Mr Spratt is dealing both with the growth rate and the risk premium rate together. Mr Spratt's conclusion is that a general addition of 0.5% to the risk premium produces a figure of 5.25% which we consider incorporates the growth rate.

56. Both parties present Land Registry evidence with Mr Spratt indicating that the capital growth rate at Sunningdale Court is likely to be less than in London. Ms Mariner choses a different comparator and arrives at the conclusion that the growth rate at Sunningdale would be no less than in London. This is clearly not the case although neither index comparasons were compelling. We are content that the *Zuckermann* approach would apply at Sunningdale Court.

57. In "Sportelli" and Zuckerman additions are made to allow for obsolescence and specific management problems.

58. Mr Spratt refers to the constructional details of the property and from its inspection the Tribunal is satisfied that Sunningdale Court has many features which would increase maintenance responsibilities. Ms Mariner appears to be inspecting the premises through rose tinted spectacles but concedes an adjustment of 0.125% for obsolescence.

59. Ms Mariner makes no further addition for the management issues as, rather late in the day, she introduces the fact that there are seven separate management leases in place inserting a management company between the freeholder and the lessees. Because of this separation it is Ms Mariner's suggestion that the management issues allowed for in "Sportelli" for the management of flats would not apply in this case. Mr Spratt takes the opposite view and sees no difference between the leasehold arrangements

at Sunningdale Court to other blocks of flats and still wishes to allow the 0.25% addition for management.

60. We cannot see that the additional leasehold interests in any way reduce the increased management risks for blocks of flats and the 0.25% addition used in Sportelli must still be relevant in this case.

61. We had some difficulty in separating obsolescence and management and could not see that separate additions of 0.25% would apply to the subject premises.

62. We therefore add 0.25% for increased maintenance responsibilities and for increased management responsibilities related to flats. On this basis therefore our determination is a deferment rate of 5.75% which we have applied in our calculations.

63. We therefore conclude that the premiums payable are those set out in the decision and we attach in the appendix our calculations in support of these premium figures.

Dated 23 July 2012

[signed]

Brandon H R Simms FRICS MCIArb
Chairman

Appendix

The Tribunal's calculations

Address **Flat 3 Sunningdale**

Facts used

Value of new very long lease (unimproved)	£141,250			
Value of existing lease (unimproved)	£114,413			
Relativity	81.00%			
Valuation date	16/05/11			
yield	7.00%			
deferment rate	5.750%			
Unexpired term at valuation date	50.75	years		
Ground Rent	12.60	for	50.75	yrs

				£	£	£
Value of landlord's interest						
Capitalise ground rent for current term						
			Ground rent		£12.60	
	YP	7.00%	50.75 years		13.82474	174
	plus landord's reversion to new lease					
			Capital value of new lease		141,250	
	x Pv	5.75%	50.75 years		0.058583	8,275
			Value of landlord's existing interest lost			8,449

Landlord's share of marriage value

	Capital value of new extended lease	141,250		
	Value of landlord's interest after grant of new lease	nil	141,250	
Less	Capital value of existing lease	£114,413		
	Value of landlord's interest lost	8,449	122,862	
	Marriage value		18,388	
	Landlord's share of marriage value at 50%			9,194
	Compensation			nil
	Price payable			17,643
	Say			**17,645**

Address **Flat 4 Sunningdale**

Facts used

Value of new very long lease (unimproved)	£148,250			
Value of existing lease (unimproved)	£120,083			
Relativity	81.000%			
Valuation date	16/05/11			
yield	7.00%			
deferment rate	5.750%			
Unexpired term at valuation date	50.5	years		
Ground Rent	14.70	for	50.5	yrs

Value of landlord's interest

			£	£	£
Capitalise ground rent for current term					
			Ground rent	£14.70	
YP	7.00%	50.5 years		13.81688	203
plus landord's reversion to new lease					
		Capital value of new lease		148,250	
x Pv	5.75%	50.5 years		0.059407	8,807
		Value of landlord's existing interest lost			9,010

Landlord's share of marriage value

	Capital value of new extended lease	148,250		
	Value of landlord's interest after grant of new lease	nil	148,250	
Less	Capital value of existing lease	£120,083		
	Value of landlord's interest lost	9,010	129,093	
	Marriage value		19,157	
	Landlord's share of marriage value at 50%			9,579
	Compensation			nil
	Price payable			18,589
	Say			**18,590**

Address **Flat 6 Sunningdale**

Facts used				
Value of new very long lease (unimproved)	£142,500			
Value of existing lease (unimproved)	£115,425			
Relativity	81.00%			
Valuation date	16/05/11			
yield	7.00%			
deferment rate	5.750%			
Unexpired term at valuation date	50.75	years		
Ground Rent	12.60	for	50.75	yrs

<u>Value of landlord's interest</u>

			£	£	£
Capitalise ground rent for current term					
			Ground rent	£12.60	
YP	7.00%	50.75 years		13.82474	174
plus landord's reversion to new lease					
			Capital value of new lease	142,500	
x Pv	5.75%	50.75 years		0.058583	8,348
			Value of landlord's existing interest lost		8,522

<u>Landlord's share of marriage value</u>

	Capital value of new extended lease	142,500		
	Value of landlord's interest after grant of new lease	nil	142,500	
Less	Capital value of existing lease	£115,425		
	Value of landlord's interest lost	8,522	123,947	
	Marriage value		18,553	
	Landlord's share of marriage value at 50%			9,276
	Compensation			nil
	Price payable			17,799
	Say			**17,800**

Address **Flat 24 Sunningdale**

Facts used

Value of new very long lease (unimproved)	£140,000			
Value of existing lease (unimproved)	£113,400			
Relativity	81.00%			
Valuation date	16/05/11			
yield	7.00%			
deferment rate	5.750%			
Unexpired term at valuation date	50.75	years		
Ground Rent	12.60	for	50.75	yrs

				£	£	£
Value of landlord's interest						
Capitalise ground rent for current term						
			Ground rent		£12.60	
	YP	7.00%	50.75 years		13.82474	174
	plus landord's reversion to new lease					
			Capital value of new lease		140,000	
	x Pv	5.75%	50.75 years		0.058583	8,202
			Value of landlord's existing interest lost			8,376

Landlord's share of marriage value

	Capital value of new extended lease	140,000	
	Value of landlord's interest after grant of new lease	nil	140,000
Less	Capital value of existing lease	£113,400	
	Value of landlord's interest lost	8,376	121,776
	Marriage value		18,224

Landlord's share of marriage value at 50%	9,112
Compensation	nil
Price payable	17,488
Say	**17,490**