LRA/29/2006

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT – deferment rate – application of guidance in* Cadogan v Sportelli *to flat in Birmingham – held no reason for taking deferment rate other than 5% – observations on different factors applying to capitalisation of ground rents

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLANDS RENT ASSESSMENT PANEL

BY

SIR CHARLES CHRISTIAN NICHOLSON BARONET
SIR MICHAEL BUNBURY BARONET KCVO
and
WILLIAM HENRY GEORGE WILKS

Re: Flat 1,
Cropthorne Court
Calthorpe Road
Edgbaston
Birmingham

Before: The President and Andrew J Trott FRICS

Sitting at Birmingham County Court, Priory Courts,
33 Bull Street, Birmingham B4 6DS
on 4 January 2007

Anthony Radevsky instructed by Boodle Hatfield for the appellant landlords
The tenant did not respond to the appeal

The following cases are referred to in this decision:

Arbib v Earl Cadogan [2005] 3 EGLR 139
Cadogan v Sportelli (Lands Tribunal reference LRA/50/2005)

DECISION

1. This is an appeal by the landlords of Flat 1, Cropthorne Court, Calthorpe Road, Egbaston, against a decision of the Leasehold Valuation Tribunal for the Midlands Rent Assessment Panel which determined the premium to be paid for a new lease of the flat under section 48 of and Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993. The LVT granted the appellants permission to appeal against one element of the determination, the deferment rate. The tenant does not respond to the appeal.

2. Cropthorne Court is a purpose-built development of ground floor retail shops and eleven flats on the floors above. It was built in about 1931 and is located at the north-eastern extremity of the Calthorpe Estate at Five Ways Island, a major road junction about two kilometres from Birmingham city centre. The flat is on the first floor and the accommodation comprises hall, living room, kitchen, three bedrooms and bathroom. There is a lift and limited car parking. The Calthorpe Estate is almost 600 hectares (1500 acres) in extent and contains about 3500 houses and 1750 flats together with office blocks, shops, hotels, leisure and recreational uses. The estate contains a mixture of residential property. Following the hearing we viewed the exterior of Cropthorne Court and other parts of the Calthorpe Estate.

3. The lease was for a term of 99 years from 25 March 1931 at a fixed rent of £50 pa. The new lease to be acquired is at a peppercorn rent for a term expiring 90 years after the term date of the lease. It is thus a lease for 115 years (unexpired term 25 years, plus 90 years) as at the valuation date of 8 April 2005.

4. The hearing before the LVT took place on 10 November 2005, after the Lands Tribunal's decision (of 15 September 2005) in *Arbib v Earl Cadogan* [2005] 3 EGLR 139. The LVT identified three issues – the value of the tenant's new/extended lease, the value of the tenant's existing lease and the deferment rate and yield. On the first issue the LVT accepted the figure contended for by the landlords' valuer (£140,000), on the second issue it accepted the figure contended for by the tenant's valuer (£88,000), and on the third it adopted the figure of 7%, which was between the figures contended for by the two valuers. The valuation is at Appendix 1.

5. The landlords applied for permission to appeal on the deferment rate only. In granting permission the LVT said this:

> "While we accept that the effect of *Cadogan* was addressed at some length at the hearing and the LVT addressed the case in its determination, we decide that a resolution by the LT of the effect of the guidance (as opposed to findings of fact) on the deferment rate in *Cadogan* on the market outside the Prime Central London residential area is: (a) of general importance; and (b) would be likely to encourage parties to settle their differences without referring the premium payable to a LVT."

6. Before the LVT there was agreement between the valuers that the yield rate for capitalising the ground rent was the same as the deferment rate. (We return to this matter below.) For the landlords, their valuer, Mr K F Davis FRICS, contended for a rate of 6%. In his report lodged in the present appeal he adopted a rate of 5.5%; and in a supplementary report of 24 October 2006 (following the decision of this Tribunal on 15 September 2006 in *Cadogan v Sportelli* (Lands Tribunal reference LRA/50/2005) he substituted a rate of 5%. His valuation, incorporating the 5% rate, is at Appendix 2.

7. In *Sportelli* the Tribunal concluded that a deferment rate of 5% for flats and 4.75% for houses was generally to be applied. At paragraph 123 it 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."

8. Mr Davis was invited to address the *Sportelli* decision in his evidence before us, and his response was to produce a supplementary report and a revised valuation in which he applied a deferment rate of 5%. This supplementary report was served on the tenant, even though he was not a respondent to the appeal. Mr Davis also appended to his report a decision of the Midlands LVT of 18 September 2006 relating to section 48 applications on six flats on the Calthorpe Estate. At the hearing counsel for both parties had drawn the LVT's attention to the decision in *Sportelli*. They invited the tribunal to determine the deferment at 5%, and it did so. Mr Davis expressed the view that in the present case there were no special factors that would make it appropriate to adopt a deferment rate of other than 5% for this flat lease with 25 years unexpired. We see no reason to doubt this judgment, and we accordingly determine that a deferment rate of 5% should be applied.

9. In his valuation Mr Davis adopted the same rate for capitalising the ground rent as for the deferment rate, it having been agreed between the valuers at the LVT that this was appropriate. In *Sportelli* at paragraph 8 the Tribunal said that nothing in its decision had any direct application to capitalisation rates, which were determined by different criteria from those that were relevant to the deferment rate. We asked Mr Davis why he had adopted the same rate here. He said that it was a matter of valuers' convention in the West Midlands to adopt the same rate for capitalisation as for deferment. With Mr Radevsky he identified as the factors relevant to the capitalisation rate: the length of the lease term, the security of recovery, the size of the ground rent (a larger ground rent being more attractive), whether there was provision for review of the ground rent and, if there was such provision, the nature of it. Mr Davis said that, where the ground rent was substantial, there was a case for considering the capitalisation rate separately from the deferment rate, but where, as here, the ground rent was small it was appropriate to apply the convention of taking the same rate for each.

10. The factors that are relevant to the determination of the capitalisation rate (which, we accept, are correctly identified above) are so manifestly different from those that are relevant to the deferment rate that there can be no valuation rationale to justify adopting a rate for capitalisation simply because that rate is being taken for deferment. Moreover the application of the factors affecting the capitalisation rate, unlike the application of the factors affecting the deferment rate, is likely to vary in every case. It is, of course, the case, that if the ground rent is small and the unexpired term is not long there will be no significant difference in adopting one particular rate rather than another. In the present case, if Mr Davis had taken 7% rather than 5% it would have reduced his valuation of £47,023 by £60. It would clearly be disproportionate for valuers to dispute capitalisation rates in such circumstances, and agreement on the rate to be applied, whatever its basis, is undoubtedly appropriate. In view of the agreement between the valuers in the present case there is no reason for us not to follow what Mr Davis has done.

11. In the light of these conclusions we accept Mr Davis's valuation, and we allow the appeal. We determine the price to be paid for the new lease at £47,023.

Dated 8 January 2007

George Bartlett QC, President

Andrew J Trott, FRICS

Appendix 1

Valuation of Leasehold Valuation Tribunal

Diminution in value – Freehold interest			
Term			
Ground rent receivable	£ 50 pa		
YP 25 years (the unexpired term) @ 7%		11.6536	£ 583
Reversion			
Value of new/extended lease	£140,000		
PV £1 in 25 years @ 7%		0.1842492	£25,795
Value of Freehold interest		**[A]**	**£26,378**
To which we add to derive the price payable, the Freeholder's proportion of the marriage value (B)			
Marriage value			
Value of new/extended lease	£140,000		
Less:			
Freehold value (A) £26,378			
Value of Tenant's existing Lease £88,000			
	£114,378		
Marriage value			£25,622
50% share marriage value		**[B]**	**£12,811**
Total premium payable by the Tenant (A + B)			**£39,189**

Appendix 2

Valuation by Kenneth Frederick Davis FRICS

Diminution in value of freehold interest

Term		
Ground Rent Receivable, pa	£50	
YP 25 years @ 5%	14.09	£704
Reversion		
Value of Flat Extended Lease	£140,000	
PV £1 in 25 years @ 5%	0.2953	£41,342
Value of Freehold Interest	**[A]**	**£42,046**
Marriage Value		
Value of Flat Extended Lease	£140,000	
Less		
Freehold Value [A]	(£42,046)	
Value of Tenant's Existing Lease	(£88,000)	
Marriage Value	£9,954	
Share Marriage Value	X 50% **[B]**	£4,977
Total premium payable by the Tenant (**[A]** + **[B]**)		**£47,023**