UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2009] UKUT 158 (LC)
LT Case Number: LRA/1/2008

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT – collective enfranchisement – price – deferment rate – whether departure from Sportelli starting point justified for 88 year reversions – additional value, if any, attributable to developable land – appeal allowed on development value – price reduced from £248,825 to £205,000.

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

BETWEEN **SHERWOOD HALL (EAST END ROAD) MANAGEMENT COMPANY LIMITED** **Appellant**

and

MAGNOLIA TREE LIMITED **Respondent**

Re: Flats 1-12, 12A, 14-36,
Sherwood Hall,
East End Road,
London, N2 0TA

Before: N J Rose FRICS

Sitting at 43-45 Bedford Square, London, WC1B 3AS
on 20 and 21 July 2009

Gary Cowen, instructed by Alan Edwards & Co, solicitors for Appellant
Ellodie Gibbons, instructed by direct access, for Respondent

The following cases are referred to in this decision:

Arbib v Earl Cadogan [2005] 3 EGLR 139
Cadogan v Sportelli [2007] 1 EGLR 153
Cadogan v Sportelli [2008] 1 WLR 2142
Maryland Estates Ltd v 63 Perham Road Ltd [1997] 35 EG 94
Stokes v Cambridge Corpn (1961) 13 P&CR 77
Arrowdell Ltd v Coniston Court (North) Hove Ltd [2007] RVR 39

The following cases were also referred to:

Deajan Investments Limited v The Holt (Freehold) Limited LRA/133/2006, unreported
Wellcome Trust Limited v Romines [1999] 3 EGLR 229
Hildron Finance Limited v Greenhill Hampstead Ltd [2008] 1 EGLR 179
Cik v Chavda LRA/111/2007, 23 July 2008
Cadogan v 2 Herbert Crescent Freehold Limited LRA/91/2007, unreported
IRC v Grey [1994] 2 EGLR 185

DECISION

Introduction

1. This is an appeal by Sherwood Hall (East End Road) Management Company Limited against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Committee, determining the price payable by the appellant for the freehold interest in 36 flats, arranged in four blocks and known as Sherwood Hall, East End Road, London, N2 0TA, under the provisions of section 24 of the Leasehold Reform, Housing and Urban Development Act 1993, at £248,825. Permission to appeal by way of rehearing was granted by the President on 3 March 2008. The appellant's case was that the price should be £119,012 and the respondent freeholder, Magnolia Tree Limited, contended for a figure of £246,907.

2. Mr Gary Cowen of counsel appeared for the appellant. He called one expert witness, Mr B R Maunder Taylor FRICS, MAE. Counsel for the respondent, Ms Ellodie Gibbons, called Mr E F Shapiro BSc (Est Man), FRICS, IRRV, FCIArb to give expert evidence. A factual witness statement by Mr B Mehmet, company secretary of the respondent, was submitted and not challenged. By arrangement with the parties I visited the site of the appeal property, unaccompanied, on 17 August 2009 and made an external inspection of the four blocks of flats and its grounds.

Facts

3. In the light of the evidence and my site inspection I find the following facts. The appeal property is located on the north side of East End Road in the London Borough of Barnet, approximately midway between East Finchley London Underground station to the south east and the North Circular Road to the north west. East End Road forms the northern boundary of Hampstead Garden Suburb in a mixed inner London residential suburb, with local shops immediately adjacent to and opposite the appeal property and within easy distance of shopping facilities in the centre of the Suburb in Lyttelton Road to the south and Temple Fortune and Brent Cross to the south west.

4. The appeal property comprises four blocks of flats, two containing twelve units each and two with six flats each, together with twelve lock-up garages, ancillary gardens and parking areas and a small undeveloped area at the rear of the site.

5. Access into the estate is via a front service road, entered at the western end of the East End Road frontage. This service road is also used for car parking. It leads to the central service road, which in turn gives access to the two rear blocks, the lock-up garages and the undeveloped site; it too is used for car parking. The estate was developed during the late 1920s or early 1930s. The flats are arranged on ground and two upper floors in facing brickwork beneath pitched tiled roofs, the second floors projecting forward slightly and faced with vertical tile hanging. All the flats contain similar accommodation, with a bay window to

the principal room and with two flats on each landing. The entrance hall and stairs are basic and there are no lifts. Each ground floor entrance provides front access and a secondary rear access to the gardens.

6. Internally the flats each comprise a reception room, kitchen, two bedrooms and bathroom/wc. The approximate dimensions are as follows:

Reception room	4.14m x 3.71m
Kitchen	2.9m x 2.31m
Bedroom 1	3.38m x 3.30m
Bedroom 2	3.28m x 2.57m
Bathroom/wc	

7. The following matters are agreed. The valuation date is 1 August 2005. The ground rent income should be capitalised at 6%. The value of the long leasehold interest in each flat was £230,000 unimproved. These values should be uplifted by £1,000 to reflect the freehold value. The freehold value of each of the two garages included in a flat lease was £5,000 and that of each of the untied garages was £10,000. The existing lease values of flats 9 and 36 were £202,400.

Issues

8. At the rehearing there were two principal issues. Firstly, the deferment rate for those flats with an unexpired lease term of 87.6 years. The appellant argued for a rate of 7% and the respondent supported the LVT's decision to adopt 5%. The LVT also applied a deferment rate of 5% to those flats with 47.8 and 66.6 years outstanding and that conclusion was not challenged. The lease of one flat had 177.6 years unexpired. The LVT attached no reversionary value to that flat and that decision is also not disputed. The second issue relates to the development value, if any, to be attributed to part of the site, for which planning permission was granted on appeal for the erection of two flats. The appeal decision was dated 27 March 2006, some eight months after the valuation date. The respondent agreed with the LVT's decision to attribute £50,000 to this land and the appellant contended for a nil value.

Deferment rate

9. Mr Shapiro considered that the LVT had been right to conclude that there was no reason to deviate from the decision of the Lands Tribunal in *Cadogan v Sportelli* [2007] 1EGLR 153 that a deferment rate of 5% should be adopted when valuing flats with unexpired lease terms of more than 20 years. Subsequent decisions of the Tribunal, relating to properties in Greater London but outside the Prime Central London area (PCL) with which *Sportelli* was concerned,

had applied the same deferment rate and there was no justification for applying a different rate in the case of the appeal property.

10. Mr Maunder Taylor noted that, in *Sportelli*, the Tribunal had been concerned with properties in the PCL area with reversions of up to a maximum of 71 years. He considered that the deferment rate should start to increase with leases of 75 years unexpired and increase further at 80 years. Reversions which were 100 or more years distant had no value. In support of this approach he cited differences between the strategies of landlords in the PCL area and elsewhere and to the Lands Tribunal's observation in *Arbib v Earl Cadogan* [2005] 3 EGLR 139 (para 169) that

> "there may be reason to increase the deferment rate also where there is more than 80 years unexpired."

11. Mr Maunder Taylor attached significance to the fact that, when the appeal property was offered for sale by auction in 2004, the sale catalogue referred to the short leases as having a valuable reversion, but no such description was applied to the long leases. He also referred to LVT decisions in which a higher rate than the *Sportelli* 5% had been applied and to two settlements, which he said showed a similar pattern.

12. I start by considering the weight to be given, in the context of the current appeal, to the guidance provided by the Lands Tribunal in *Sportelli*. As I have said, that case was concerned with a number of properties in the Prime Central London area (PCL). The Tribunal concluded that the generic deferment rate should be 4.75% (para 79) and that this should be increased by 0.25% for flats (para 95). In para 85 the Tribunal said:

> "Our conclusion is that the deferment rate is constant beyond 20 years. Below 20 years we accept the view of Mr Dumas, Professor Lizieri and Mr Orr Ewing that the rate would need to have regard to the property cycle at the time of valuation. Beyond 75 years we see no reason on the evidence before us to conclude that the rate would be either higher or lower."

13. In para 123 the Tribunal (George Bartlett QC, President, HH Michael Rich QC and P R Francis FRICS) 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."

14. The decision in *Sportelli* was appealed. In the Court of Appeal [2008] 1 WLR 2142 Carnwath LJ agreed that this general guidance was appropriate. At para 99 he said:

> "I agree with the Tribunal that an important part of its role is to promote consistent practice in land valuation matters. It was entirely appropriate for the Tribunal to offer guidance as they have done in this case, and, unless and until the legislature intervenes, to expect leasehold valuation tribunals to follow generally that lead."

15. This approval by the Court of Appeal, however, was qualified. In para 102 Carnwath LJ said:

> "The Tribunal's later comments on the significance of their guidance do not distinguish in terms between the PCL area and other parts of London or the country. However, there must in my view be an implicit distinction. 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 judgment 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 different areas. The deferment rate adopted by the Tribunal will no doubt be the starting point; and their conclusions 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. That will be a matter for those advising future parties, and for the tribunals, to consider as such issues arise."

16. The property which forms the subject of the present appeal is outside the PCL area and the deferment rate in issue relates to leases with unexpired terms of approximately 88 years. The appellant accepts that, so far as leases with 66.6 and 47.8 years unexpired are concerned, the *Sportelli* rate of 5% is applicable, despite the fact that the appeal property lies outside the PCL area. It seeks to depart from the *Sportelli* deferment rate when valuing the flats with 87.6 years outstanding, on the grounds that this period is outside the range of unexpired terms considered by the Tribunal in *Sportelli*, namely 21.25 to 71.05 years. In the light of the comments of Carnwath LJ at para 102, I am satisfied that it is indeed open to a party to call evidence seeking to demonstrate that a different deferment rate is appropriate in the case of longer dated reversions, such as those with which I am here concerned.

17. Mr Shapiro's view was that there could be no such evidence. He described the suggestion that the deferment rate could change depending on the length of the unexpired term as a fundamental error of valuation. He said that the present value of a reversion, discounted at the appropriate deferment rate, automatically declined as the length of term increased. To reduce that present value further by increasing the deferment rate would therefore constitute double counting.

18. I do not think that approach is correct. It is clear from *Sportelli* that there are a number of components to the deferment rate – the risk free rate, real growth and the risk premium. An assessment of the latter involves a consideration of the risks of investment in long reversions, namely volatility, illiquidity, deterioration and obsolescence. Whether one or more of these risks increase over a period of time is a matter for evidence. If the evidence demonstrated that

there was an increased risk, it would not constitute double counting to reflect it in the yield as well as in the period of deferment. Indeed, to ignore any increase in risk would itself amount to a valuation error.

19. I therefore turn to Mr Maunder Taylor's evidence in support of an increase in the deferment rate. Firstly, he said that many residential ground rent investments in the PCL area were owned by landlords, commonly known as the great estates. In the no Act world those landlords would sell relatively short lease extensions or hold their investments to term date. This was not the approach of landlords outside the PCL. In Mr Maunder Taylor's opinion, landlords of non-prime residential ground rent investments had a shorter term view than those interested in prime property in prime locations.

20. The identity of the hypothetical purchaser of a long-dated reversion was considered by the Tribunal in *Sportelli* in the following terms:

> "76. It is, in our judgment, the combined effect of the other components, volatility and illiquidity, that must have the major impact on the risk premium. If the market was composed, or contained a substantial number, of people who intended to hold the reversion to term the fluctuations in the residential property prices and the illiquidity of the investment would have very little influence. The investor would simply lock away the investment, and the passage of time would iron out the fluctuations. The illiquidity would have no influence because the investment would not be sold. Mr Cullum's assessment was based, it appears to us, on the assumption of a market very much of this sort, and he identified pension funds and the great estates as the likely purchasers. We do not, however, accept that in the market that we have to envisage there would be any significant number of investors who would be looking to hold these very long term assets throughout their lives. The attraction of the investment would be its relative security, the prospect of growth and the opportunity for both long-term retention and earlier sale. Tradeability would, we think, be important as one of its components, and it is this that would make the volatility of the housing market and the relative illiquidity of the investment significant factors in the mind of a purchaser."

Contrary to Mr Maunder Taylor's assumption, therefore, the *Sportelli* deferment rate did not reflect the requirements of the great estates.

21. Mr Maunder Taylor also referred to the following evidence as to the purchasing strategy of investors in residential ground rents, given to the Lands Tribunal in *Maryland Estates Ltd v 63 Perham Road Ltd* [1997] 35 EG 94 by Mr Bebbington, a director of the landlord company:

> "Mr Bebbington contrasted the auction market and the results (prices) achieved with those by private treaty sales involving serious investors and specialist brokers or agents. He said that investors did not capitalise and defer future increases in ground rent and that length of lease was seen as relevant only if it was less than 80 years unexpired. He put in evidence a schedule of private treaty sales of reversions during 1996 in various categories, for example ground rent only receivable, insurance commission also receivable and where in addition the freeholder manages the

> premises. This schedule of transactions negotiated by the Ground Rent Brokers, said to be the largest agent active in this specialised market, included both single reversions and 'parcels' or portfolios. Mr Bebbington stressed that these were sales between investors and that at the point of sale full relevant information was available as to the position between the vendor and the lessees of flats; this situation contrasted markedly with the circumstances prevailing at auction."

Mr Maunder Taylor relied on Mr Bebbington's evidence to support his view that investors required a higher deferment rate where leases had more than 80 years unexpired.

22. In his decision in *Maryland* the Member (Dr T Hoyes FRICS) accepted Mr Bebbington's evidence. In stating his conclusions on the value of the freehold interest, he said:

> "The evidence therefore supports and favours the approach of Mr Angel [Mr Bebbington's expert] in annexure 2 save that, as Mr Bebbington said, the market pays no material regard to prospective, but somewhat distant, increases in ground rent. In the instant appeal their capitalisation and deferment produced only de minimis amounts."

23. Mr Angel's annexure 2 contained the following valuation of the freeholder's interest:

> "*Ground rent income*
>
> | | | |
> |---|---|---|
> | 4 x £75 pa = | £ 300 | |
> | YP @ 14.28% | 7 | £2,100 |
> | *Reversion* | | |
> | Flat 3 1 x £300 pa = | £ 300 | |
> | YP in perp. @ 14.28% | 7 | |
> | PV £1 in 56 years @ 14.28% | 0.0006 | £ 1 |
> | Flats 1,2 & 4 Reversion to | £230,000 | |
> | PV £1 in 89 years @ 14.28% | 0 | £ 0 |
> | Insurance Commission | | |
> | Premium £765.44 | | |
> | Commission at 20% | £ 153.08 | |
> | 6 years purchase | 6.0 | £ 918 |
> | | | £3,019 |
> | Freehold value = say | | £3,020" |

24. Insofar as any weight is to be attributed in this appeal to the evidence given in *Maryland*, it does not in my view support Mr Maunder Taylor's contention that a higher deferment rate is

appropriate for leases with long unexpired terms. In that case the present capital values of flats 1, 2 and 4, deferred 89 years, and the ground rent from flat 3, deferred 56 years were de minimis, not because a higher deferment rate was applied to either but because, with a deferment rate of 14.28% in each case, the values produced by the calculation were vanishingly small.

25. Mr Maunder Taylor also referred a number of post-*Sportelli* LVT decisions, relating to properties subject to long leases, which he considered to be of assistance. The first concerned 50 Wilton Crescent, London, SW1, where he said that a deferment rate of 5.5% was determined for a house, and the second concerned 220 Ladbroke Grove, London, W10, where the LVT deferred the reversion to five flats at 5.25%. In oral evidence in chief Mr Maunder Taylor confirmed that the rate determined for 50 Wilton Crescent was in fact 5.0%.

26. 50 Wilton Crescent was subject to a lease with 180 years outstanding. The LVT said this:

> "*Sportelli* however, was not concerned with a freehold reversion 180 years in the future and it does seem to the Tribunal that a reversion so far distant would persuade an investor that a slightly higher return was appropriate."

27. In the case of 220 Ladbroke Grove the unexpired term was 123 years. It is plain from para 42 of the LVT's decision that they decided to add 0.25% to the *Sportelli* starting point because of the property's location, not the length of the lease.

28. In my judgment, neither of these decisions provides any support for Mr Maunder Taylor's contention that the circumstances of the appeal property justify an addition of 2% to the *Sportelli* rate for leases with 88 years unexpired.

29. In his supplementary report Mr Maunder Taylor produced two further LVT decisions. The first related to a block of 429 flats plus some commercial space known as Nell Gwynn House, Sloane Avenue, London, SW3 and the second to seven blocks of 150 flats and a small leisure complex, known as King and Queen Wharf, Rotherhithe Street, London, SE16. The unexpired lease terms were a mixture of 92 and 120 years at Nell Gwynn House and 106 years in the case of King and Queen Wharf. In both cases the freeholder contended for a deferment rate of 5%. Mr Maunder Taylor gave evidence for the nominee purchaser at both hearings. He deferred the reversions at King and Queen Wharf at 7%. For Nell Gwynn House he contended for 7% for those leases with 91.68 years unexpired and nil reversionary value where the unexpired term was 119.68 years.

30. Although the King and Queen Wharf hearing took place first, the LVT decision on Nell Gwynn House was published before that of King and Queen Wharf. The Nell Gwynn House LVT said of Mr Maunder Taylor's evidence that "it may not be overwhelming but it was much better than none." It determined the deferment rate at 6.5% for the shorter leases, with no reversionary value attributed to the longer leases.

31. Mr Maunder Taylor sent a copy of the Nell Gwynn House decision to the King and Queen Wharf LVT before the latter had finalised its decision. The LVT said this of the Nell Gwynn House decision:

> "In *Nell Gwynn House* Mr Maunder Taylor's arguments based on his analysis of auction sales met with a measure of success. That decision, by a particularly strongly constituted tribunal, is clearly one of very considerable importance. However, the actual finding by the Tribunal in that case is of little evidential value. Notwithstanding that Mr Maunder Taylor's evidence found favour with the Tribunal in that case, having considered his report and listened with great care to his oral evidence both in examination in chief and cross examination, we do not reach the same conclusion on the facts. Whereas the Tribunal in *Nell Gwynn House* did not find Mr Maunder Taylor's evidence *overwhelming*, following the very thorough and skilful cross examination by Mr Letman we have found it less than convincing. We have not had the opportunity to investigate what evidence the Tribunal had before it and how it had treated it. Moreover, as we have stated above, it is incumbent upon the expert to provide sufficient particulars to substantiate the reliability of the material upon which the opinion is based. In this instance, we were not persuaded as to the reliability of the material produced by Mr Maunder Taylor."

32. Although Mr Maunder Taylor did not draw them to my attention in either of his written reports for the present appeal, it emerged that he had presented a similar argument at several further recent LVT hearings, but without success apart from in the *Nell Gwynn House* case.

33. As the LVT indicated in its decision on King and Queen Wharf, decisions of other tribunals are of little or no evidential value. The position was considered by the Lands Tribunal (George Bartlett QC, President and N J Rose FRICS) in *Arrowdell Limited v Coniston Court (North) Hove Limited* [2007] RVR 39. At para 37 the Tribunal said:

> "In our judgment LVT decisions on relativity are not inadmissible, but the mere percentage figure adopted in a particular case is of no evidential value. The reason for this is that each tribunal decision is dependent on the evidence before it, and thus, in order to determine how much weight should be attached to the figure adopted in a decision, it would be necessary to investigate what evidence the LVT had before it and how it had treated it. Such a process of investigation is potentially lengthy, and it is inherently undesirable that LVT hearings should resolve themselves into rehearings of earlier determinations.
>
> 38. It is certainly understandable that valuers negotiating the settlement of an enfranchisement claim should have regard to LVT decisions on relativity, since these might seem to them to be the best guide of the likely outcome if they were unable to reach agreement, even though, as Mr Pridell said, the decisions are disparate and fail to show any established pattern. But the decisions themselves can constitute no useful evidence in subsequent proceedings."

34. I consider that those observations apply to LVT decisions on the deferment rate as much as to those on relativity. None of the recent LVT decisions which have considered Mr

Maunder Taylor's theory of an increased deferment rate for long dated reversions add to the weight of the other evidence before me. Nor do I obtain assistance from the price which Mr Maunder Taylor negotiated for the freehold in Alexandra Court, Chase Road, London N14, where the freeholder's decision was influenced by personal circumstances.

35. At the end of Mr Maunder Taylor's evidence I questioned him about changes which had been made to the appellant's pleadings. In its statement of case dated 15 May 2008 the appellant said:

> "7. The subject property is in East Finchley and certainly not in PCL. The Applicant's expert witness, Bruce Maunder Taylor FRICS gave evidence before the LVT and will give evidence before the Lands Tribunal that the subject property has greater risks associated with volatility and illiquidity than PCL property. In addition, the property has greater risk of obsolescence and deterioration than property in PCL.
>
> 8. The applicant submits that the LVT ought to have adopted a deferment rate of 7% for the subject property."

36. The statement of case was amended on 5 August 2008. The words in para 7 after "Lands Tribunal" were deleted and the following two paragraphs added:

> "5. It is accepted for the purposes of this appeal that for the leases in the block with less than 80 years unexpired, the relevant deferment rate ought to be 5%. The Appellant does not seek to overturn the LVT's decision on that one relatively narrow aspect.
>
> 6. However, the decision in *Sportelli* was expressly limited to leases with less than 75 years unexpired. The 1993 Act as amended by the Commonhold and Leasehold Reform Act 2002 expressly recognises that leases with in excess of 80 years unexpired have no marriage value. Mr Maunder Taylor will provide evidence that for leases in excess of 80 years unexpired, the appropriate deferment rate should not be 5% and that such leases ought to be treated differently to those with less than 80 years left unexpired."

37. Para 8 in the original statement of case was also amended to read:

> "7. The Applicant submits that the LVT ought to have adopted the following deferment rates:-
>
> (a) 5% for flats 9, 29 and 36 (as determined by the LVT and in respect of which, therefore, there is no appeal);
>
> (b) Nil for flats 25 and 26
>
> (c) Nil for flat 27 (as determined by the LVT and in respect of which, therefore there is no appeal); and
>
> (d) 7% for the remaining flats in the subject property."

38. I asked Mr Maunder Taylor whether he accepted that the deferment rate for those flats with 66.6 and 47.8 years unexpired should be 5%. He replied that he did not. In the light of legal advice received, his client had decided to accept the 5% rate, but he still considered that it should be 7%. The following exchange then took place:

> "Q. If you are right that the deferment rate should be 7% instead of 5% for the shorter leases, does it follow that you would be asking for 9% for the longer leases?
>
> A. No sir.
>
> Q. I thought you said that there was a difference between the markets for shorter and longer reversions.
>
> A. There is a different type of market. There is a point at which the thoughts and bids of those two different types of purchasers would come together."

39. That final answer is irreconcilable with Mr Maunder Taylor's previous evidence. In para 6.1 of his first expert report Mr Maunder Taylor said that:

> "As far as concerns non-prime property, it is my opinion that the deferment rate should start to increase at 75 years unexpired, increase further at 80 years unexpired, and from 90 years unexpired upwards, reversionary value should be treated as nil."

In cross examination he said that he had carried out further research, and now considered that the nil value applied to leases of 100 years and more. Nowhere in his written or oral evidence was there any suggestion that the deferment rates for long and short leases would converge beyond 75 years.

40. Mr Maunder Taylor's evidence on the significance of the price paid for the appeal property at auction was also troubling. In para 11.6 of his report he said this:

> "It is my opinion that the auction price reflects the existence of the Leasehold Reform, Housing and Urban Development Act 1993 however, it is my opinion that the existence of the Act cannot possibly justify the difference between £95,000 in the with Act world and £248,500 in the no Act world."

41. As Mr Maunder Taylor accepted in the course of cross-examination, that view was directly contrary to one which he had previously expressed in reply to a written question from the respondent's solicitors. It was given in the context of proceedings in the Central London County Court arising from the respondent's decision to challenge the validity of the lessees' initial notices served under the 1993 Act on the grounds that the prices proposed were wholly unrealistic. Those prices were based on a valuation report by Mr Maunder Taylor dated 31 December 2004, two weeks after the appeal property had been sold at auction. Mr Maunder's individual valuations of the four blocks totalled £47,100, half the auction price.

42. The respondent's solicitors asked Mr Maunder Taylor

> "10. Was the auction relevant and contemporaneous evidence of a comparable transaction affecting the above property?"

On 28 July 2006 Mr Maunder Taylor replied:

> "All evidence has some value in my opinion; the quality of the evidence must first be looked at and the circumstances behind it, and then the weight that should be given to such evidence can be properly assessed. In my opinion little weight, if any, should be placed on the auction result for the purposes of the statutory valuation."

43. The statement in para 11.6 of Mr Maunder Taylor's report was also not supported by the enfranchisement price paid to the owner of 33 Addison Gardens, London, W14 ODP. The freehold interest in that property was purchased at auction for £30,000 in September 2007. The nominee purchaser served an initial notice to purchase the freehold on 11 January 2008. The freeholder served a counter notice at £100,000, based on a valuation prepared by Mr Maunder Taylor. Following negotiations between Mr Maunder Taylor and the nominee purchaser's surveyor the price was agreed at £79,600.

44. The price determined by the LVT in respect of the appeal property and the price paid by the nominee purchaser of 33 Addison Gardens bore the same relationship to the auction price – a multiple of approximately 2.5. When I pointed this out to Mr Maunder Taylor, he expressed the view that the value he had agreed for 33 Addison Gardens was exorbitant. That was a surprising suggestion, bearing in mind his acceptance that the nominee purchaser had been represented by a very experienced surveyor.

45. I am satisfied that Mr Maunder Taylor's original opinion on the relevance of the auction price, quoted in para 42 above, was right. The respondent completed the purchase of the freehold interest in the appeal property in January 2005. The decision of the Lands Tribunal in *Sportelli* was not published until 15 September 2006. It is clear that, prior to *Sportelli*, enfranchisement claims in this part of London were being settled based on a deferment rate, for reversions both long and short, of at least 7%. The then current valuation practice would have been of considerable significance to anyone bidding for the appeal property at auction, since the auction particulars disclosed that the lessees were interested in acquiring the freehold interest. The effect of *Sportelli* was that, for such properties, the starting point for assessing the deferment rate was reduced from at least 7% to 5%. This change has resulted in a substantial increase in the prices payable on enfranchisement. The increases are particularly marked where the unexpired terms of the existing leases are very long, because of the effects of compound interest on the calculation.

46. Mr Maunder Taylor also pointed to the auction catalogue which would have been seen by the respondent before it agreed to purchase the appeal property on 14 December 2004. This referred to "valuable reversion in 2072" in the case of flats 9 and 36, having approximately 67 years unexpired, and "valuable reversion in 2053" for flat 29 with approximately 48 years unexpired. No such note appeared in respect of the remaining flats with 88 years or more outstanding on the lease. I do not attach any significance to this distinction. The auctioneers would have known that, in the real world, purchasers were interested in the possibility of

realising marriage value which, it is agreed, did not exist where leases were significantly longer than 80 years. In the no Act world, on the other hand, it is clear from *Sportelli* that marriage value is to be ignored when assessing the deferment rate, irrespective of the length of the unexpired term.

47. Mr Maunder Taylor sought to rely on the Tribunal's observation in *Arbib* that there may be reason to increase the deferment rate with leases of more than 80 years unexpired. He did not refer to para 123 of *Arbib*, which drew attention to the limitations of the evidence before the Tribunal (HH Judge Michael Rich QC and P H Clarke FRICS) as follows:

> "We must emphasise, however, that, as appears from such analysis, we are disappointed as to the quality and analysis of the evidence that has been put before us in the course of these appeals."

Because *Arbib* left room for further evidence and argument as to what deferment rate was right, the Tribunal decided to collect up further cases raising the same issue for hearing together. The result was the hearing of *Sportelli* and other appeals. In the course of his judgment in the Court of Appeal in *Sportelli* Carnwath LJ said, at para 98

> "The Tribunal could hardly have done more to ensure that the issues were fully ventilated and exhaustively examined. They had already been discussed in detail in Arbib. I have already referred to the steps taken by the Tribunal to bring together the present group of cases. Furthermore it is difficult to envisage a better qualified panel of experts for the purpose than those called in this case, or of specialist counsel on both sides of the argument."

Having heard such evidence, the Tribunal decided that

> "Beyond 75 years we see no reason on the evidence before us to conclude that the rate would be either higher or lower" (para.85).

Mr Maunder Taylor's selective quotation from *Arbib*, and his failure to state in terms that the Tribunal had subsequently arrived at a different conclusion having heard more detailed evidence, was misleading. I regret that in my judgment the inconsistencies and selective choice of material in Mr Maunder Taylor's evidence mean that I can place no reliance on his assertion that a higher deferment rate should be applied to 88 year reversions than to those with shorter unexpired terms. The appeal on this issue must therefore fail.

Development value

48. Prior to the auction, Mr Mehmet investigated the planning history of the appeal property. On 27 November 2004 he discovered that the only previous applications had related to trees. Immediately after the auction Mr Mehmet instructed his architects, Foster Lomas, to prepare a scheme for the erection of new flats on the land at the rear of the site. Foster Lomas wrote to the local planning authority, London Borough of Barnet, on 12 January 2005 requesting a pre-planning application meeting. On 12 September 2005 the architects submitted a planning application for the erection of 2 two bedroom flats totalling 157m^2. That application was

refused in November 2005, contrary to the recommendation of the planning officer. A revised application for two smaller flats was then submitted and approved. At the same time as it submitted the second application, the respondent appealed against the refusal of the first application, and the appeal was allowed on 27 March 2006.

49. Mr Maunder Taylor considered that, at the valuation date, the market value of the undeveloped area was nil for the following reasons. Enquiries of the local planning authority were likely to have resulted in an indication being given that planning permission would be refused. The leases of two of the existing flats would each have required a deed of variation permitting development of the land, and there was no guarantee that such deeds would be entered into. Access to the completed development would be down an access way leading from East End Road to the garages and the development area. The management and maintenance of the access way, together with the right to collect service charges was part of the function of the management company, which was controlled by the lessees. If the lessees wished to frustrate the development they could refuse to enter into an agreement regarding improvements to drainage, service charge contributions and membership of the management company. Finally, Mr Maunder Taylor's professional judgment was that the sale value of the two flats proposed was £400,000, which was insufficient to produce a profit after all costs had been taken into account.

50. Mr Shapiro produced a residual valuation of the site, assuming a gross development value for the two flats of £550,000 which, after deducting the agreed figure for costs and profit, produced a land value ripe for immediate development of £95,000. He said that, if the site had been purchased for £50,000, it would have produced a profit of £116,361 before allowing for the cost of buying out legal impediments. With the benefit of hindsight it was known that planning permission was capable of being obtained on appeal. Although two leaseholders had an absolute indefeasible right to use the area proposed for the development, in view of the comparatively low value of the flats Mr Shapiro believed that the freeholder would have been able to secure the release of their rights over the land for a realistic payment. In accordance with the principle in *Stokes v Cambridge Corporation* (1961) 13 P & CR 77, the most the lessees could have extracted from the freeholder would be 30% to 40% of the development value. Mr Shapiro did not think there would have been any difficulty with the management company, since the two flats could if necessary be sold as separate freeholds with only rights of access over the estate roads. On planning, he considered that a purchaser would have had regard to the fact that the land was an overgrown brownfield site, not in a conservation area and unencumbered by tree preservation orders. The only reason planning permission might have been refused was because of objections from the adjoining leaseholder. Such objections were indeed made to the inspector on appeal and rejected. The LVT had reflected all the risks by deducting 50% from its estimated unencumbered development value of £100,000. Mr Shapiro considered this was a fair allowance and he, too, valued the land at £50,000.

51. As is widely known, the Lands Tribunal is reluctant to accept residual valuations if there is any comparable evidence of land sales. No such comparable evidence has been produced in this case, and so the residual method must form the basis of my decision. The LVT arrived at its valuation of £100,000 as follows. It valued the two flats at £550,000 and deducted £450,000, being the agreed costs, and thus arrived at a residual development value of £100,000

with the benefit of planning permission and assuming no hindrance to development. From that figure the LVT deducted 50% to reflect the various risk factors and thus arrived at a value of £50,000. Mr Shapiro agreed with the LVT's gross development value of £550,000. The value of each of the existing unimproved flats in Sherwood Court had been agreed at £230,000. The proposed flats would be 30% larger and brand new. Mr Maunder Taylor pointed to certain deficiencies in the proposed flats, but he had no comparable evidence to justify his suggested value of £200,000 per flat. I find that the proposed flats would have been worth £275,000 each, giving a gross development value of £550,000 and a potential development value of £100,000 after deducting the agreed figure for costs and profit.

52. Mr Shapiro pointed out that, in *Arrowdell*, the Tribunal had made a deduction of 50% to reflect the absence of planning permission. In that case, however, planning permission had recently been granted on appeal for a virtually identical development on the immediately adjoining site and the planning officer had advised that refusal of permission for the development proposed "could not be upheld on appeal". In the case of the site at Sherwood Hall, by contrast, there was no comparable planning history. Mr Mehmet did not say whether he had discussed the possibility of development with the local authority before the auction and, if he had, what view they had expressed. He produced a letter from his architects to the Local Planning Authority dated 12 January 2005, enclosing information for a Pre-application meeting, but he provided no information as to the objections to the proposed development which, it appears from a letter dated 12 September 2005, were made by the Council at that meeting.

53. I do not agree with Mr Shapiro's suggestion that *Stokes v Cambridge* provides an appropriate yardstick for estimating the price likely to be required by the two lessees enjoying a right to prevent the development. In that case the Tribunal assessed the ransom value of a strip of land in a single ownership at one-third of the increase in value of the claimant's land which would result from its release. One of the considerations which led to this conclusion was the Tribunal's finding that there was "an inducement to the owner of the brown [ransom] strip to sell it as access", because development of the claimant's land would expedite the rezoning of other land, held together with the access strip, from allotment to industrial use. In the present case there was no evidence to suggest that the two leaseholders would benefit in any way from the proposed development, nor that both could have been bought out at a price which would have made the development financially viable. It is significant, in my judgment, that the auctioneers did not even refer to the development potential of the site in their sale particulars prepared in December 2004. The LVT's decision recorded at para 41 that garage 13 was located on the development land. Garage 13 is not tied to the lease of a particular flat and it is agreed that such garages are worth £10,000 each. Taking all the evidence into account, I find that the speculative value of the development site did not exceed the existing use value of garage 13. I therefore assess the value of the development site at £10,000.

Conclusion

54. The LVT valued the existing buildings at £198,827 and the development site at £50,000. This produced a total of £248,827, say £248,825. Before me, Mr Shapiro arrived at a slightly

lower value, £196,907, for the existing buildings, based on a deferment rate of 5% throughout and utilising an exact unexpired term in each case and no rounding. I accept that figure. I determine that the price payable by the appellant to the respondent for the freehold interest in the appeal property is £205,000, calculated as follows:

Existing buildings	£196,907
Development site	£ 10,000
Total	£206,907
Say	£205,000

55. I am not aware of any circumstances which would justify the unusual step of awarding costs in an appeal of this nature. I make no order as to costs.

Dated 10 September 2009

N J Rose FRICS