UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT – deferment rate – hope value – collective enfranchisement – 1930s flats in outer London – deferment rate 5% affirmed – hope value of flats of non-participating tenants taken at 10% of marriage value – Leasehold Reform, Housing and Urban Development Act 1993, Sch 11

IN THE MATTER of AN APPEAL FROM THE LEASEHOLD VALUATION TRIBUNAL of the RESIDENTIAL PROPERTY TRIBUNAL SERVICE

BETWEEN **AMANDA JANE CULLEY** **Claimant**

and

DAEJAN PROPERTIES LIMITED **Respondent**

Re: 5 – 8 Royston Court, North View, Eastcote, Middx HA5 1PG

Before: The President and P R Francis FRICS

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on
23 March 2009

Stan Gallagher instructed by Gisby Harrison, of Cheshunt, Herts, for the appellant
Anthony Radevsky instructed by Wallace LLP for the respondent

The following cases are referred to in this decision:

Cadogan v Sportelli [2006] RVR 382 (LT); [2008] 2 All ER 220 (CA); [2009] 2 WLR 12 (HL)
Hildron Finance Ltd v Greenhill Hampstead Ltd [2008] EGLR 179
Daejan Investments Ltd v The Holt (Freehold) Ltd LRA/113/2006, 2 May 2008
Haresign v St John's College, Oxford (1980) 255 EG 711
Farr v Millersons Investments Ltd (1971) 22 P & CR 1055
Windsor Life Assurance Co Ltd v Austin [1996] 2 EGLR 169
Marlodge (Monnow) Ltd's Appeal (LRA/28/2002)
Nicholson's Appeal LRA/29/2006, 8 January 2007
Eyre Estate (Trustees') Appeal LRA/145/2006, 16 February 2006
Ulterra Ltd v Glenbarr (RTE) Company Ltd LRA/149/2006, 17 November 2007
Daejan Investments Ltd v The Holt (Freehold) Ltd LRA/133/2006, 2 May 2008
Lippe Cik v Chavda LRA/111/2007, 7 August 2008
Becker Properties v Garden Court NW8 Property Company Limited [1998] 1 EGLR 121
Maryland Estates v Campana Court Limited LRA/21/2000, 10 April 2001
Shulem B Association Limited's Appeal [2001 1 EGLR 105
Blendcrown Limited v The Church Commissioners for England [2004] 1 EGLR 143
Tyndale & Others v Kingsgarn Limited LRA/1/2002, 17 July 2002
Arbib v Earl Cadogan [2005] 3 EGLR 139
Gesso Properties (BVI) Ltd v SCMLLA Ltd LRA/13/2003, 1 March 2004

DECISION

Introduction

1. This is an appeal from a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel, determining the price to be paid under Schedule 6 to the Leasehold Reform, Housing and Urban Development Act 1993 on an application made by Amanda Jane Culley as nominee purchaser, in respect of 5–8 Royston Court, North View, Eastcote, Middlesex, on 8 February 2006. The LVT determined the price to be paid for the freehold of the four flats in the sum of £40,283 and in doing so applied a deferment rate at 5.0%.

2. The LVT decision was given after the Lands Tribunal had given it decision in *Cadogan v Sportelli* [2006] RVR 382 but before the Court of Appeal's decision on appeal [2008] 2 All ER 220. On 5 February 2008, the President granted permission to appeal, limited to the deferment rate issue only. In it he said:

> "The LVT reluctantly concluded that it was obliged to follow the guidelines in *Sportelli* and to apply a deferment rate of 5%, in the absence of any compelling evidence or particular features which suggested that the disadvantages of the location and of the property were not taken into account in the capital values. In the light of the Court of Appeal judgment in *Sportelli*, the proper test is somewhat less strict, namely whether there is sufficient evidence, for example on issues relevant to the risk premium for residential property in different areas, to justify a departure from the 5% starting point. Although some (but not all) of the arguments put forward by the applicant's expert at the LVT were rejected by this Tribunal in *Hildron Finance Ltd v Greenhill Hampstead Ltd* (LRA/120/2006), and are unlikely to be accepted if raised again before the Lands Tribunal, it is considered that the proposed appeal is of potentially wide importance and should be considered by the Lands Tribunal."

3. After this limited permission had been granted the House of Lords gave its decision in *Sportelli* (*Earl Cadogan v Sportelli* [2009] 2 WLR 12). The decision was confined to the issue of hope value. The LVT in the present case, following *Sportelli* in the Lands Tribunal, made no allowance for hope value. The House of Lords (Lord Hoffman dissenting) determined that hope value could constitute part of the price payable to the freeholder in relation to non-participating flats on a collective enfranchisement. In the light of this, permission to appeal on the question of hope value was given, and the experts subsequently produced supplemental reports covering this matter.

4. Mr Stan Gallagher of counsel appeared for the appellant and called Mr Bruce Roderick Maunder-Taylor FRICS MAE. Mr Anthony Radevsky appeared for the respondent freeholder, and called Mr Eric Frank Shapiro BSc (Est Man) FRICS IRRV FCIArb. Following the hearing we requested and later received further evidence and submissions that we refer to below, and we received a final revised valuation shortly before finalising this decision.

5. The property is situated in the 1930s suburb of Eastcote in the London Borough of Hillingdon. It is a detached purpose built two-storey block of four bay-fronted flats constructed in the 1930s of part rendered brick under conventional pitched and tiled roofs, each flat having its own entrance from a recessed porch off the front garden. Flats 5 and 8 are ground floor units each having two rooms, and kitchen with bathroom/wc off. They each have a gross internal floor area of 471 sq ft. Flats 6 and 7 are on the first floor, contain three rooms, kitchen and bathroom/wc and have a gross internal area of 555 sq ft. The first floor flats have small rear balconies and steel staircases leading down to the rear garden. Each unit has its own allocated strip of the rear garden. The rearmost boundaries back onto a station car park beyond which lies an above ground section of the London Underground, and Eastcote station is very close by. Ms Culley is the lessee of flat 7 and the lessees of flats 5 & 6 are not participating.

6. The lease of each of the flats is for a term of 99 years from 24 June 1972, and had 65.37 years unexpired at the agreed valuation date of 8 February 2006. The ground rents are as follows:

Flat 5	£25/£50/£75 per annum rising every 33 years
Flat 6	£25 per annum without review
Flats 7 & 8	£20/£35/£50 per annum rising every 33 years

The parties agreed the LVT's determination of the capitalised rental values of flats 7 and 8 at £1,030 each, and flats 5 and 6 at £1,095 each. They also agreed the capitalised values thus:

Freehold/long leasehold values of flats 6 & 8	£145,000
Freehold/long leasehold values of flats 5 & 7	£160,000
Existing lease value of participating flat 8	£126,150
Existing lease value of participating flat 7	£139,200

Deferment rate

7. Before the LVT Mr Maunder Taylor contended for a deferment rate of 8%. He expressed his disagreement with the Tribunal's decision in *Sportelli*, which, he said, had not had sufficient regard to obsolescence in the true sense of the word and to locational differences. He considered that the subject property, because of its layout and other factors, had a greater degree of obsolescence than the properties considered in *Sportelli* and that the decision was distinguishable because no allowance had been made for the risks at the termination of the leases in the absence of hope value.

8. On the question of deferment rate, the LVT said:

> "9. We consider that we are obliged to follow the guidelines in *Sportelli* and to apply a deferment rate of 5%, there being no compelling evidence or particular features which suggest that the disadvantages of the location and of the property are not taken into account in capital values. We do have misgivings as, we think, do most property valuers, about a 'one size fits all' deferment rate, and, had it not been for

> *Sportelli*, we have little doubt that we would have determined a deferment rate of 7% or thereabouts: certainly no lower than 7%, and possibly higher if hope value is to be disregarded altogether as *Sportelli* says it must be. Our misgivings arise from our doubts whether the risks to an investor associated with an investment of this type, in a suburban location and with potential management problems associated with unsatisfactory leases, really do justify the same risk rate as high value properties on one of the great estates in Central London. A relatively small difference in the deferment rate can have a very large effect on the price, and, to illustrate this, we have prepared a hypothetical valuation on the basis of a deferment rate of 7% and attached it to this decision at appendix 2 [£26,925]. Nonetheless, we accept the Lands Tribunal is entitled to issue guidelines, that it is not for us to say that *Sportelli* was wrongly decided, and that the guidelines must be followed."

9. One of Mr Maunder Taylor's contentions before the LVT was that, if hope value was to be excluded as a matter of law, the willing buyer, obliged to wait to the end of the term to realise his investment, would expect to receive a building that was unmodernised and, with property such as that in the present case, he would be likely to assume that the value of the property lay in it as a site rather than in the building. The LVT rejected this argument "on balance". It said:

> "We accept that an investor will assume that the building will be standing and will be in good repair at the end of the leases, and he will not reduce his bid to take account of perceived risks at termination, which, he will assume, he can take in his stride."

10. Before us Mr Maunder Taylor said that in his opinion the S*portelli* rate of 5%, if applied to non-prime properties and in non-prime locations, often produced a valuation result substantially different from a competent valuation which disregarded the *Sportelli* rate. That was his view, and to give evidence that applied any rate other than the one he considered to be appropriate would be contrary to his duty as an expert. He had given evidence before the Lands Tribunal in *Hildron Finance Ltd v Greenhill Hampstead Ltd* [2008] EGLR 179 and had supported a deferment rate of 8% on a collective enfranchisement on a block of flats in Hampstead. He there expressed his disagreement with the Tribunal's decision in *Sportelli*. The Tribunal (Judge Reid QC and N J Rose FRICS) applied a rate of 5%. Mr Maunder Taylor said that he considered that that decision was wrong and that a deferment rate applicable to prime properties in the best parts of central London was inappropriate both to Greenhill and to Royston Court. He said that he had also advised the nominee purchaser on the collective enfranchisement of The Holt, Morden, that led to the decision of the Tribunal in *The Holt* (*Daejan Investments Ltd v The Holt (Freehold) Ltd* LRA/113/2006, 2 May 2008) (Judge Huskinson and A J Trott FRICS) applying the 5% deferment rate. He said that he had no particular evidence or opinions that would distinguish that case from the present one. He accepted that the evidence that he was now giving was the same as that which he had given in *The Holt* and had been rejected by the Tribunal in its decision in that case.

11. Support for his view that the *Sportelli* 5% should not be applied as a universal rate, Mr Maunder Taylor said, came from a number of sources. Firstly he had carried out a survey of valuers, writing to as many valuers as he could locate who were experienced in Leasehold Reform Act valuations. Only a few of the replies expressed agreement with the universal

application of the *Sportelli* rate. In cross-examination he said that he had sent out between 100 and 200 letters, but he did not know how many, and had received about 30 replies. Further, while the great majority of LVT decisions adopted the *Sportelli* rate, Mr Maunder Taylor said, a number did not, and he relied on this. He also derived support from an article by Professor Farrand, an LVT chairman, in Bulletin 44 of Emmet and Farrand on Title.

12. On four occasions, Mr Maunder Taylor said, he had given evidence for landlords before LVTs applying a *Sportelli* deferment rate. In 8 Wetherby Place, London SW7, where the deferment rate was in issue, he had been instructed that the landlord would argue for a *Sportelli* 4.75%, but he drew the LVT's attention to evidence that he had previously given in a similar quality location at a higher deferment rate. In 86 Gladesmore Road, London N15, he acted as advocate for the landlord. The deferment rate was in issue. He gave no expert evidence on this issue, and submitted to the LVT that the *Sportelli* rate should be adopted in its decision. In 7 Brechin Place, London SW7, he gave expert evidence for the landlord. The deferment rate was in issue. He was instructed to apply the *Sportelli* rate, so that this did not form part of his expert evidence. In 6 Parkside, Knightsbridge, London SW7, a prime PCL property, he acted for the landlord in the dual role of advocate and expert witness. The deferment rate was not in issue.

13. Mr Maunder Taylor said that he had considered the question of the deferment rate in relation to comparative long-term growth rates. He was aware of an analysis that Mr Shapiro had prepared and presented to LVTs showing comparative growth rates in London on a borough by borough basis covering the period April 2000 to September 2007. The four boroughs that were considered to include the prime areas were not top of the percentage increases. That did not surprise him. Those were the areas in which it was expected that there would be steady growth. He would expect the list to be topped by those sub-prime areas that for one reason or another were seeing unusual price growth. It was unlikely that the level of growth would be sustained over the long term, so that, when the reasons for that price growth changed, such locations were likely to fall significantly further down the list. At the bottom of the list he would expect to see modest value locations for which there was no unusual reason for them to be experiencing any particular upside on a volatility cycle.

14. Investors reacted to this market behaviour, Mr Maunder Taylor said, in different ways. Firstly there were those investors who wanted least risk but best steady returns. They wanted to invest in prime areas and for that they were willing to buy their investment at a price reflecting a low yield or deferment rate. Secondly there were those investors who were looking for higher returns and were prepared to make speculative investments. They endeavoured to identify those locations which were likely to show strong growth over future years for reasons not yet recognised by the market at large. They would pay a price that reflected both the speculative chance that they were right as well as the speculative risk that they might be wrong. The yield or deferment rate was likely to be higher than for prime areas but not as high as those areas in which they perceived that there was no chance of unusual future improvement. Thirdly there were those investors who were always looking for the highest yield or deferment rate and who accepted that, in order to achieve it, they must invest in non-prime properties with no particular reason why their slower growth rate should change.

15. Mr Maunder Taylor expressed his views, with reference to the subject property, on the four risk factors identified in *Sportelli*: volatility, illiquidity, deterioration and obsolescence. He said that property investors recognised that prime properties were subject to less volatility than non-prime properties. Similarly there was greater illiquidity in non-prime properties because they were less attractive to mortgage finance. While in so-called boom periods there was a ready supply of loan finance and a favourable balance of buyers for all properties, in periods of bust there was a less favourable balance of potential buyers, who were more conscious of the quality of the property in which they were prepared to invest. The freehold vacant possession value at any given valuation date merely reflected that part of the short-term property cycle as it was then and did not reflect the long-term risk profile. The greater volatility and illiquidity of non-prime properties thus justified a higher risk factor.

16. On deterioration and obsolescence, Mr Maunder Taylor's view was that in prime areas there was a greater interest on the part of property owners in preserving and conserving character properties and maintaining them in terms of accommodation layout, general appearance, updating services and similar matters that constituted the main factors in obsolescence and deterioration. He considered that the subject flats at Royston Court were originally built to a non-prime standard, probably for letting-out, and did not meet modern environmental standards. They were modest value flats which did not compare well with new flats being built in the area. In his view the obsolescence and deterioration risks for the property were higher than for prime properties.

17. Mr Maunder Taylor said that in his opinion the market value of the flats at any point in time reflected a relatively short-term expectation on the part of purchasers and mortgagees. Their assumption was that there would be no significant change in aspects of obsolescence or deterioration during their period of ownership or loan, which they probably expected to be between about 10 and 20 years. Such value did not reflect the long-term view of the hypothetical investor considering the reversion about 65 years after the valuation date, and in his opinion the flats were likely to be obsolete by the term date.

18. Treating obsolescence only as a risk factor was, Mr Maunder Taylor said, at odds with the approach in valuations under the Leasehold Reform Act 1967. In such valuations, unless a building was considered to be of good enough quality for a *Haresign* addition (see *Haresign v St John's College, Oxford* (1980) 255 EG 711) to be made, the section 15 ground rent was valued to perpetuity and there was no calculation of the value of the ultimate reversion. Most properties, with a 99-year lease from construction and the 50-year statutory extension under the 1967 Act, were thus effectively regarded as being obsolete after 149 years. The Royston Court properties, having been built during the 1930s, would be about 135 years old at the term date, and in his view investors would regard the property as being obsolete by that date. No *Haresign* addition would fall to be made.

19. At some point in the future, Mr Maunder Taylor said, a private developer would redevelop the site. That point would come when the site value was perceived to be equivalent to or greater than the aggregate value of the four flats plus acquisition, planning and development costs. The rate at which prime properties in prime locations moved towards this point of obsoleteness was, he said, much slower than with modest suburban property such as Royston Court and typical 1967 Act cases where no *Haresign* addition was made. For this

reason the risk factor for deterioration and obsolescence must be greater for non-prime properties than for prime properties, and this should be reflected in the deferment rate.

20. The argument that the approach to obsolescence in *Sportelli* was at odds with Lands Tribunal decisions under the 1967 Act was not a matter that had been considered either in *Sportelli* itself or in subsequent Lands Tribunal decisions, and it seemed sufficiently important for us to request further evidence and submissions from both parties upon it. In his further evidence Mr Maunder Taylor gave his understanding of four Lands Tribunal decisions under the 1967 Act – *Farr v Millersons Investments Ltd* (1971) 22 P & CR 1055, *Haresign v St John's College, Oxford* (1980) 255 EG 711, *Windsor Life Assurance Co Ltd v Austin* [1996] 2 EGLR 169 and *Marlodge (Monnow) Ltd's Appeal* (LRA/28/2002).

21. *Farr v Millersons* concerned a substantial semi-detached house on Wandsworth Common, which had been built in the 1880s and was subject to a lease for 99 years granted in 1882. It had been divided into two flats. Mr Maunder Taylor drew attention to the valuation practices that the Tribunal (R C Walmsley FRICS) identified in the decision at 1060-1061:

> "From the now considerable volume of evidence that the tribunal has received on this matter a number of valuation practices have emerged, each appropriate to different circumstances, thus:
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> (a) *Where the subject house is likely to remain standing for the foreseeable future.* A practice of deriving its section 15 site value mainly by reference to the whole premises as they stand; the site value being taken as a proportion of this entirety value. The proportion normally adopted (outside central London) varies, on the evidence, between one quarter and one third, the actual proportion depending on such factors as the cheapness or dearness of local land values, and the attributes of the site looked at in the context of the entirety. In central London or in other areas of highly priced residential land, the proportion adopted is commonly higher, of the order of (plus or minus) 40%. This has been termed 'the standing-house approach.'
>
> (b) *Where the subject house is nearing the end of its economic life in the foreseeable future.* A practice of deriving its section 15 site value mainly by reference to the prices of sites sold for development, or redevelopment, for comparable uses. This has been termed 'the cleared-site approach.'
>
> (c) *Where the subject house has an indeterminate economic life.* A practice of deriving its section 15 site value either by the cleared-site approach of the standing-house approach, or by reference to what the property would be worth if a new building were to be substituted for the existing building, and then taking a proportion of that value or alternatively subtracting the present day cost of putting up such a building. This latter has been termed 'the new-for-old approach.' In the majority of cases a valuer will decide to rely mainly on a particular one of these three approaches, but will use one or both of the other two approaches as a check."

22. The decision, Mr Maunder Taylor said, concerned itself with the economic life of the building. It did not actually use the expression "deterioration and obsolescence", but, he said, he had approached his evidence on the basis that that both expressions essentially had similar or the same effect and meaning. After considering the cleared site value and the entirety value, the Tribunal had said that the site value of £5,250, which it had reached at on the basis of the cleared site approach by reference to comparable transactions, seemed to be supported by finding that that figure showed a proportion of 40% of an entirety value which it had found to be just over £13,000. Mr Maunder Taylor said that the Tribunal's preferred approach of the cleared site basis indicated that it considered the property to be nearing the end of its economic life, but checked that approach against the standing house approach for dependability. The landlord had not provided evidence or made submissions about the ultimate reversion in 63 years' time, possibly because it was too small, possibly because obsolescence by that date had been accepted, or possibly because nobody had thought about attempting to make such an addition. The Tribunal had found that the entirety value as a house (rather than as flats) was £10,000, so that it was obsolete for this purpose. What the Tribunal had found, therefore, said Mr Maunder Taylor, was that at the end of the original 99-year term the site value was 40% of the entirety value and that at the end of the 50-year extension the site value was the entirety value.

23. In relation to *Haresign*, which concerned a late Victorian 3-storey house in Oxford, held under a 99-year lease from 1982, Mr Maunder Taylor noted that there was no discussion about deterioration or obsolescence. In its decision the Tribunal (V G Wellings QC) included in the price, in addition to the capitalised ground rent for the residue of the term and the section 15 value, an amount for the reversion to the standing house value at the end of the 50 years' extension. The landlord's valuer had said that in most cases such an addition would be microscopically small but that in the case of the subject house the amount would be material. The Member said that he was driven to apply the valuer's method of valuation because there was no other evidence that would enable him to make a determination. Mr Maunder Taylor said that that the case provided little or no background to assist him.

24. *Windsor Life Assurance Co Ltd v Austin* concerned a semi-detached house in Redditch built in 1971 and with 77 years of a 99-year lease outstanding at the valuation date. Mr Maunder Taylor noted that there was no evidence on deterioration and obsolescence, and in view of the fact that the valuation date was in 1992 it might well be, he thought, that these were not particular thoughts in the minds of the valuers. He drew attention to certain passages in the decision of the Tribunal (M St J Hopper FRICS) that, he said, suggested that variable risk rates should be taken in such cases as distinct from the single universal risk rate adopted in *Sportelli*.

25. The *Marlodge* decision also, Mr Maunder Taylor said, did not consider the economic life of the building, and the Tribunal (P H Clarke FRICS) put the essential question as "...not whether the subject property will still be standing 62 years after the valuation date, but whether the purchaser in the hypothetical sale envisaged in Section 9(1) of the 1967 Act would value the reversion to standing house value?" Mr Maunder Taylor said that in his opinion and experience the three approaches considered in *Farr v Millersons* for 1967 Act cases had been reduced to one approach based on the standing house approach. The approaches had been developed for modest value houses below certain rateable value limits, and it was not difficult to accept that such houses were likely to have a limited expectation of economic life. The

1993 Act extended enfranchisement to the whole range of houses and flats. For prime properties in prime locations there was an expectation that the owners or occupiers would maintain, upgrade and improve those properties over the long term. Such characteristics were, however, rarely found in non-prime properties in non-prime areas, so that deterioration and obsolescence was a much smaller issue in relation to the former than the latter.

26. Obsolescence, Mr Maunder Taylor said, had a number of components. The appearance of a building could come to be seen as old-fashioned or drab or even unpleasant. The same would apply to its function, in terms of the usefulness and economy of its services and its insulation. The occupiers of prime property could be expected to be more demanding about the quality and upgrading of services and installations than occupiers of non-prime property, so that investors would pay higher prices (reflecting lower yield rates) for them. Layout and location were other factors. Changes affecting the location, such as transport links, the character of the area, conversion of houses to multiple occupation, gentrification and employment opportunities, could, if marginal, be reflected by adjusting the vacant possession value but if substantial the result would tend to be redevelopment with a different density, type and character of building.

27. Mr Shapiro rejected the contention that the *Sportelli* basic deferment rate should be adjusted upwards to reflect a greater risk of obsolescence in the subject property. There was no greater risk than in the case of *The Holt*, a similar type of property in a similar suburban situation, or indeed property within the PCL area. In contrast to *The Holt*, where the Lands Tribunal found that the property was "tired and shabby and not built to modern standards", the LVT in the present case had made no such adverse comment. Having regard to the full repairing nature of the leases there was no reason to consider that the property would decay faster than the millions of properties that were built throughout the country in the 1930s. The leaseholders, with significant capital and/or mortgages tied up in the properties, would try to maintain the value of their investment. Mr Shapiro said that he had had experience of houses being built in Borehamwood immediately after the second world war with walls constructed of 4 inch concrete slabs which were experimental and had been found to be sub-standard as regards insulation and risk of rusting from reinforcing rods. In such cases there might well be a higher risk of exposure to depreciation and obsolescence. Royston Court, however, was of standard construction. Indeed, there was a good argument to say that it was better constructed than blocks of flats built during the 1950s and 1960s.

28. While the internal layout was not ideal, with the bathroom being accessed through the kitchen, Mr Shapiro said, it could be improved if necessary. This was an indication of the flexibility of the property and its capability of adaptation. It was in an area where demand would continue to exist for the foreseeable future. There was no reason from a physical point of view why the property should not still be standing in 200 to 300 years' time. It might well be that the site value in future would exceed the total value of the existing flats, but that would not be because the flats were obsolete in themselves but would be most likely to arise from the planning system providing for different densities. It would not be the obsolescence of the property that would lead to its redevelopment but rising land values.

29. Mr Shapiro said that Mr Maunder Taylor's view that the building would be obsolete when the site value for redevelopment was equal to or greater than the value of the property

standing on the site was based on a misunderstanding of the concept of obsolescence. What Mr Maunder Taylor was referring to was not functional obsolescence, since the building could still be in use and would remain useful. What he was really saying was that the building might be "value obsolete", which applied to every property; hence large parts of London and other cities, towns and villages were being rebuilt from time to time. This did not mean that the reversion to vacant possession value should be ignored, because the reversion would in fact be to a higher figure if the site value exceeded the values of the flats standing on the site.

30. Mr Shapiro said that deterioration did not feature pre-*Sportelli* as a factor in the deferment rate. The distinguishing feature then had only been location. He had himself said before the LVT in the present case that if it had not been for the decision in *Sportelli* he would have agreed a deferment rate of 7% or higher and that he had in similar cases agreed rates of 8 or 8.5% if hope value was considered separately. He and other valuers had been looking at valuation in a traditional way because that was what LVTs were doing. What *Sportelli* had done was to show that the perceived wisdom of valuers, when forensically examined, was wrong. In relation to the factors other than location identified in *Sportelli* as bearing on the risk rate, Mr Shapiro did not accept that non-prime markets suffered more in a downturn than prime markets and thus showed a greater volatility, or that higher value properties were less difficult to sell: if anything, the reverse was the case. Sometimes it was easier to sell low value property than higher value property, and at other times it was the other way about. There was no evidence of a lower growth rate in the location under consideration. Mr Shapiro said that he could not see any reason, therefore, having regard to all the factors that *Sportelli* had identified as being relevant to the risk premium, for departing from the *Sportelli* generic deferment rate of 5%. The arguments that Mr Maunder Taylor was now advancing were advanced by him in his evidence in *The Holt* and were rejected by the Tribunal, and Mr Shapiro found support for his conclusion in the decision in that case.

31. Mr Shapiro considered the four cases decided under the 1967 Act to which reference had been made. He referred to the Tribunal's summary in *Farr v Millersons* ((1971) 22 P & CR 1055 at 1059-1060) of the "generally recognised method of approach" to valuations under the 1967 Act:

> "The generally recognised method of approach is to adopt three stages as follows:
>
> *Stage 1*. To capitalise the rent payable for the house and premises under the existing tenancy, for the period of the unexpired term of that tenancy.
>
> *Stage 2*. To estimate the rent that would be payable for the house and premises at the expiration of the original term, in accordance with section 15(2) – 'the section 15 rent.'
>
> *Stage 3*. To capitalise this section 15 rent as if in perpetuity, deferred for the period of the unexpired term of the existing tenancy; not seeking to quantify any different rent that might become substituted at the expiration of twenty-five tears from the original term date, and not quantifying separately the value in reversion at the expiration of fifty years from the original term date."

32. Mr Shapiro said that there was no evidence before the Tribunal that this approach was potentially incorrect, and both valuers proceeded on this basis, so that the three-stage approach was not tested to show the effect on the value of the reversion. The reason for this, he said, was that there was a general valuers' perception that after 60 years the YP in perpetuity multiplied by the rent payable was equal to or greater than the YP for the term plus reversion to full rental value. This theory was derived from commercial valuations where the rent payable had to increase very significantly on reversion to show any increase in value. It did not have regard to the fact that two separate matters were being considered, namely that the rent receivable was based on only 40% of the capital value and that there was a reversion to 100% of that figure. Together with the term to reversion the discount rate used was critical, so that using the 8% rate used by the Tribunal the loss to the landlord was small, but using a 5% rate the loss would have been significant.

33. In *Haresign*, Mr Shapiro said, the Tribunal accepted that the age of the house was no bar to using the three-stage approach adopted by the landlords' valuer and that what was relevant was whether the reversion had substantial value (and not whether the house was substantial, a matter that was not referred to). What mattered was the term to reversion. In *Haresign* it was 53 years. Here, in the case of Royston Court, it was 65 years, not significantly different, so that had the Tribunal been considering the 65 years Royston Court reversion it would have made a *Haresign* addition.

34. Mr Maunder Taylor's fundamental criticism of *Sportelli* was in essence that it imposed a straitjacket on the valuation process, effectively replacing the judgment of the valuer by a prescription based on the evidence of financial experts. That is, we think, to misunderstand the position, certainly as it has been arrived at following the Court of Appeal's decision in that case. The decision in *Sportelli* related to properties in prime central London. In the Court of Appeal Carnwath LJ said this (at paragraph 102) about properties outside the PCL area:

> "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."

35. Thus evidence of valuers as to whether a higher risk premium should be taken because of the features of the property under consideration, including its location, is of undoubted relevance, and if a tribunal is satisfied on the evidence before it that such features justify the application of a higher deferment rate then, of course, it ought to apply such higher rate. In determining whether a higher rate is appropriate it will need to bear in mind the considerations

that led the Tribunal in *Sportelli* to adopt the approach that it did, and the primary question will always be whether there are particular features that are not fully reflected in the vacant possession value and thus should be reflected in a higher risk premium. Moreover – and this is a matter that may not, or may not sufficiently, emerge from the Tribunal's post-*Sportelli* decisions – what matters is the view that the market, properly informed on relevant factual matters, would take on such features (the prospective movement of house prices in the area, for instance, or the potential obsolescence of the property) in considering an investment in the reversion. On this the expert opinion of the valuer is likely to be important.

36. One particular matter to which Mr Maunder Taylor has drawn attention is the attitude of investors to possible future variations in growth rates in different locations. It may be that an expectation that over the term of the lease as a whole the growth rate will not diverge significantly from the overall growth in residential property prices, or the fact that evidence of historical growth rates fail to establish any such divergence in the past, will be insufficient for an investor to make no allowance for location. Indeed, since the investor is likely to be concerned about the tradeability of his investment (see Sportelli in the Lands Tribunal [2006] RVR 386 at paragraph 76), what may be expected to happen in the very long term is not the only matter that he is likely to take into account. (We would add that for this reason illiquidity, to the extent that it is related to the need for mortgage finance, as Mr Maunder Taylor suggested, could well affect the current vacant possession value more than the value of the reversion). What is suggested is that investors would approach differently purchases of reversions in prime and non-prime areas and areas that could (but might not) experience a rapid rise in prices in the shorter-term and those for which there is no such apparent prospect. While we do not regard this particular categorisation of those investors as any more than illustrative, we accept that such differences could cause a variation in the discount rate that each would see as appropriate to a particular investment. Of course the possibility of variations in growth rates over the shorter term is likely to be reflected at least to some extent (and possibly fully) in the vacant possession value. But the purchaser of the reversion, unlike the purchaser of the freehold with vacant possession who will live in or let the property, is simply interested in capital appreciation and will approach his purchase from that standpoint. We see no reason on the evidence to think that non-prime property prices are in general more volatile than prime properties in the course of a property cycle, but the sort of particular differential movements that might occur could, we accept, give rise to different perceptions of risk on the part of investors. For reasons that we give later, however, we are not persuaded on the evidence before us that a higher deferment rate is justified in the present case, and we think it likely that any adjustment made on this basis would in any event be relatively small.

37. The matter that we have just addressed – the investor's perception of risk in relation to growth rates in different locations – is not one that appears to have arisen for consideration in the Lands Tribunal decisions on the deferment rate in areas outside PCL since its decision in Sportelli. There have been a number of other decisions of the Tribunal since *Sportelli*. Two of those decisions (*Nicholson's Appeal* (LRA/29/2006, 8 January 2007, unreported) and *Eyre Estate (Trustees') Appeal* (LRA/145/2006, 16 February 2007, unreported) were unopposed appeals by the landlord and were decided before the Court of Appeal's decision in *Sportelli.* The decisions contain no discussion of the matters with which we are now concerned. In *Ulterra Ltd v Glenbarr (RTE) Company Ltd* (LRA/149/2006, 17 November 2007, unreported) the Tribunal refused to upset the LVT's decision on the deferment rate (7% on flats in Reading) because the appeal was by way of review and no evidence was advanced in the

appeal. In three other decisions, on appeals conducted by rehearing, *Hildron Finance Ltd v Greenhill Hampstead Ltd* (LRA/120/2006, 10 January 2008, unreported), *Daejan Investments Ltd v The Holt (Freehold) Ltd* (LRA/133/2006, 2 May 2008, unreported) and *Lippe Cik v Chavda* (LRA/111/2007, 7 August 2008, unreported) location and obsolescence were matters considered.

38. *Hildron Finance* concerned a block of flats in Hampstead, at the northern end of the Fitzjohn/Netherhall Conservation Area, described by the Tribunal as a prime residential area (although it concluded at paragraph 33 that, for the purposes of applying the *Sportelli* guidance, the appeal property was to be taken as falling outside the PCL). The property had been built in the early 1930s. It was of multi-storey construction but, because of the sloping site, parts were on three storeys and parts on five. The property was generally of solid construction, although the top floor accommodation was contained within a timber framed mansard roof, with brick-built cross walls. There were a number of entrance halls/staircase areas serving different parts of the block. The Tribunal concluded (paragraph 35) that, to the extent that the flats were (as Mr Maunder Taylor, giving evidence for the nominee purchaser, had suggested) deficient in design, layout, services, facilities, fittings and finishes, those factors would presumably be reflected in the vacant possession value. It considered that the only factor that might have had a greater effect on value at the end of the lease was the mainly timber construction of the top floors, but it thought that a purchaser would not feel it to be sufficiently significant to justify an increase in the deferment rate.

39. *The Holt* concerned a three-storey block of flats constructed in about 1930 of brick and concrete, standing in communal grounds in Morden. The common parts were described as basic and shabby. The Tribunal concluded (paragraphs 85-87) that the age, physical condition, design and construction of The Holt were factors that were already accounted for in the price of the flats. The price paid by owner occupiers was fairly representative of the reversionary vacant possession value since the investor would not necessarily have a materially different time horizon for holding his investment; and if, as Mr Maunder Taylor had suggested, the hypothetical investor held the investment for the long term, any increase in the risk premium to allow for the investor's exposure to deterioration and obsolescence would be offset by a reduced exposure to the volatility and illiquidity of the property market.

40. In *Lippe Cik*, which concerned two blocks of 1930s flats in Hounslow, the LVT adopted a deferment rate of 6.5% on the basis of a number of particular factors that it considered to have application. It did not appear that these factors were supported before it in any expert evidence, and beyond identifying the factors the LVT gave no indication as to why it considered that they justified a higher deferment rate (see paragraph 30 of the Lands Tribunal decision). Before the Lands Tribunal there was expert evidence only on the part of the appellant landlord, and this was to the effect that a higher deferment rate was not justified. Of the first of the factors that the LVT had identified the first was the location of the property. The Lands Tribunal said (paragraph 31) that the mere fact of location did not self-evidently affect the deferment rate. Since the evidence before it did not show that growth rates were lower or that volatility was greater for flats in the particular outer London location than in the PCL area there was no justification for taking a higher deferment rate. Other factors (continuing litigation between landlord and tenants about services and charges, "very poor tenants", the poor external condition of the premises, traffic on the A3006 Bath Road and a

flanking access road and aircraft noise) appeared to the Lands Tribunal to be pre-eminently matters that would be fully reflected in the vacant possession value.

41. We accept Mr Shapiro's criticisms of Mr Maunder Taylor's suggestion that, for deferment rate purposes, a building is obsolete when it is worth more as a redevelopment site than as a standing house. Assuming the existing building represents the most valuable use of the property at the valuation date, the deferment rate is applied to the value of the existing building. If there is a possibility that the reversion will be to a higher (site) value, it seems to us that this would make the investment more, not less attractive and thus reduce the appropriate deferment rate. Mr Maunder Taylor made broadly the same point in *Hildron* as he has in this appeal. The Tribunal in that case rejected it on the basis that "obsolescence is concerned with the risk that a building will decline, not that the value for another purpose will increase." We see no reason on the evidence before us to disagree with that conclusion.

42. Having considered the further evidence and submissions that we asked for, we do not think that the cases decided under section 9(1) of the 1967 Act suggest that a particular approach to obsolescence or deterioration is appropriate in 1993 Act valuations. Of the four cases to which such evidence and submissions were addressed, it was only to *Farr v Millersons* that the appellant sought to attach any real weight. But the three-stage approach there referred to and the different treatment recognised for houses with varying prospective economic lives were not the subject of express decision. The Tribunal simply noted established valuation practices that had grown up in these respects, and the appropriateness of them was not a matter of disagreement between the parties. The difference between valuing the ultimate reversion separately and not so valuing it would in most instances have been extremely small in view of the values involved, the deferment period and the higher deferment rates then taken; and the perception of valuers, to which Mr Shapiro referred, that after 60 years the YP in perpetuity multiplied by the rent payable was equal to or greater than the YP for the term plus reversion to full rental value, would have conditioned the approach. While the review of the section 9(1) decisions was helpful, in the result we do not see that any assistance is to be derived from them, nor, we would add, do we see any inconsistency between *Sportelli* and the way in which section 9(1) valuations are at present carried out.

43. As far as the present case is concerned we see no reason to conclude that the risks arising from obsolescence are such as to justify an increase in the deferment rate. The property has no particular features that would in our view differentiate it in this respect from the generality of properties.

44. We derive no assistance from the inadequately quantified and inconclusive survey of valuers that Mr Maunder Taylor carried out, nor from the fact, if it is indeed the case, that in a very few instances LVTs may not have followed the *Sportelli* guidance, nor from the other matters adduced by Mr Maunder Taylor in support of his contention that such guidance was wrong. We can see no reason at all why he should feel compelled, as he says he does, by reasons of professional conduct, to continue to advance valuations that are in conflict with the *Sportelli* guidance. Indeed it would seem to us contrary to a proper professional approach to do so, given the role of such guidance as recognised by the Court of Appeal. We have derived very limited assistance from his evidence because it was directed more as a challenge to that guidance than to its application.

45. We note moreover the occasions when Mr Maunder Taylor, acting for landlords, has supported the application of a *Sportelli* rate before LVTs. He produced some extracts from copies of the reports and submissions that he had submitted on those occasions. In the case of 8 Wetherby Place he was quite clearly expressing an expert opinion in favour of the application of a *Sportelli* rate and seeking to distinguish those cases in which he had argued for a higher rate. In two other cases he had applied *Sportelli* rates in the evidence that he had given. When acting as advocate he had advanced arguments in favour of the application of *Sportelli* rates. The format of his reports and submissions was basically the same. Each was entitled either "Expert witness report of" or "Statement of submission" of "B R Maunder Taylor, FRICS, MAE. Specialist field: Chartered Surveyor and property valuer". While Mr Maunder Taylor is correct in pointing out the different roles of advocate and expert witness, the fact is that, when acting for landlords, he presents both evidence and submissions when holding himself out as a specialist valuer and is willing to accept instructions to apply *Sportelli* rates, supporting them as necessary (as in 8 Wetherby Place) with an expression of expert opinion.

46. In the present case there is not before us any factual evidence (for instance the historic growth rates in London boroughs) which in our view supports a higher deferment rate for a property such as this. To the extent that we are asked to determine a higher rate in the light of the considerations set out in paragraph 36 above simply on the basis of Mr Maunder Taylor's expression of opinion we decline to do so. In view of what we have just said, we do not think that it would be right to attach such weight to his opinion as to make it decisive. We are not satisfied, as we have said, that there is any justification for an adjustment to the deferment rate in respect of obsolescence. We therefore uphold the LVT's determination of a rate of 5%.

Hope Value

47. In *Sportelli* the House of Lords (Lord Hoffman dissenting) concluded that hope value can be taken into account under paragraph 3 of Schedule 6, in so far as it is attributable to the possibility of non-participating tenants wishing to obtain new leases of their flats in the open-market (and not as of right under Chapter II of Part I of the 1993 Act). In *Sportelli* in the Lands Tribunal at paragraph 112 the conclusion was reached ("convincingly" per Lord Neuberger of Abbotsbury in the House of Lords at paragraph 69) that it was appropriate to allow for hope value by applying a lump sum to the value of the reversion prior to the statutory marriage value apportionment.

48. In his supplemental report, Mr Maunder Taylor said that on the basis of the calculation of a deferment rate of 8% (not reflecting hope value) for which he had argued, there should be an addition for the two non-participating flats of separately calculated hope value at 5% of marriage value. His valuation is at Appendix 1. He said that he had been instructed, following the House of Lords judgment, to review Lands Tribunal decisions where hope value had been either considered or determined, and to comment on whether it was apparent that any valuation principles had been established. He had also been asked to give evidence as to how a typical investor in the real-world marketplace factored hope value into the price he would be prepared to pay for ground rent investments, and to give examples of sales of the reversions of non-participating flats to arms-length investors by nominee purchasers in enfranchisement cases.

49. The Lands Tribunal decisions in which the question of hope value had been considered were: *Becker Properties v Garden Court NW8 Property Company Limited* [1998] 1 EGLR 121, which accepted the possibility of hope value in principle, but concluded on the facts that the particularly long (over 80 years) unexpired term of the non-participating flats meant that the purchaser of a reversion would pay nothing extra for the expectation of being able to grant extended leases. *Maryland Estates v Campana Court Limited* (LRA/21/2000, 10 April 2001) (Unreported) which held that a 69 year term was too remote for hope value to be added to a premium otherwise determined. *Shulem B Association Limited's Appeal* [2001] 1 EGLR 105 found hope value at 15% of marriage value (applied to non-participating flats only) with 60.75 years unexpired. In that appeal, where the lessee was not represented, Mr Maunder Taylor said that the opinions expressed by Mr Shapiro (who was acting for the freeholder) were based upon a purchase by one of his clients in 1994 of a block of 34 maisonettes in Loughton, Essex. He said that he thought that this was the same block as the one upon which he had been instructed by the current freeholders to prepare a valuation in July 2008. Land Registry records and information from managing agents indicated the rate at which investors' hope of selling lease extensions have turned into reality in the intervening period. The data indicated an average of around one property per year commencing with the 61 years unexpired in 1994, up to 46 years unexpired in 2008. If this rate were that which an investor could expect in the marketplace generally, then in the case of Royston Court he would anticipate one lease extension over the next 15 years (there being just 2 non-participating flats). However, Mr Maunder Taylor said that in his experience the rate of lease extensions in Loughton was uncharacteristically slow, and he would normally expect an investor to anticipate a faster rate.

50. He said that, as was evident from paragraph 22 of the *Shulem B* decision, Mr Shapiro's valuation of the term and reversion and the hope value element demonstrated hope value at 13.81% of marriage value. However, those calculations were directly and proportionately dependent upon the deferment rate that was employed. The calculations, he said, would be unrecognisably different if a 5% deferment rate were substituted. Indeed, the Member, N J Rose FRICS, recorded at paragraph 23, that "Mr Shapiro accepted that an alternative method of reflecting hope value would be to reduce the yield…in order to arrive at a similar result to that which he had calculated, it would be necessary to reduce the yield in the whole calculation from 9% to 6%."

51. In *Blendcrown Limited v The Church Commissioners for England* [2004] 1 EGLR 143, which related to a block of 80 flats where 15 were non-participating (and represented 17.2% of the aggregate value), hope value was determined at 5% of marriage value on non-participating flats only with 46.5 years unexpired. In that case, Mr Maunder Taylor had argued that investors would pay hope value only if they were satisfied that there would be long lease applications in the reasonably near future, and he reflected hope value in his yield, saying that a specific addition was not justified on the evidence. He pointed to the conclusions of the Member (P H Clarke FRICS), where he said (at paragraph 77):

> "77 ….hope value is by its nature speculative, uncertain and incapable of precise assessment. It is the value now with the chance of a future payment..."

and continued at paragraph 79:

> "79 As to the amount of this value, precision is impossible. I cannot accept Mr Maunder Taylor's view that it is included in the yield of 7%. If I had accepted a 6% yield then I might have been persuaded that this yield is low enough to reflect an element of hope value. A yield of 7% is, however, too high for it to reflect more than investment value. There should be a separate addition for hope value. Mr Ford [the respondent freeholder's expert] said that an investor would pay 25% of the potential marriage value, representing the hope of the prospect of extracting marriage value by lease extensions in the short to medium term. I agree with Mr Ford's approach but think that 25% is too optimistic in the circumstances of this case. In my view, a purchaser, although including hope value in his price, would have been more cautious and attributed only 5% of the possible marriage value of the non-participating flats as hope value."

52. The decision in *Tyndale & Others v Kingsgarn Limited* (LRA/1/2002, 17 July 2002) (Unreported) also found, Mr Maunder Taylor said, 5% of marriage value and in that instance there were 63 years unexpired on the non-participating flats. He referred also to other cases, and concluded that, in the round, an analysis of all of them failed to establish any certain valuation principles. However, he said that they did suggest that there was a cut off point at which the unexpired term of the lease was too remote for investors to attribute any additional value; any addition for hope value where it was justified was less than 50% of the marriage value to which a landlord was entitled, and it must be accepted that the quantum of hope value for non-participating flats was not a certain calculation based upon a known income at a definite point in time.

53. Mr Maunder Taylor said that the typical ground-rent investor in the marketplace understood that, where the unexpired term was very long, his return would be almost exclusively income with no prospect of capital growth or profit within the foreseeable future. Conversely, where the unexpired term was short, he would regard income in nominal terms and would anticipate that virtually all of his return would be in the form of either capital growth or capital profit. On this basis, he said, it was clear that hope value was not something that would be applicable irrespective of the unexpired length of the term, and that view was also supported by the House of Lords judgment in *Sportelli* (paragraph 63), and an observation in *Arbib* (*Arbib v Earl Cadogan* [2005] 3 EGLR 139) at paragraph 169. It was his professional opinion, based upon these analyses, that hope value was of rapidly diminishing interest below an unexpired term of 35 years, and would also be of no interest to the investor where that term is over 80 years.

54. He also said that in his view, as with the arguments relating to deferment rate, an investor would view the PCL market differently to other locations in terms of hope value. In PCL there was a ready market for relatively short leases (less than the 35-40 years, as noted in paragraph 63 of the House of Lords judgment in *Sportelli*), whereas, in the suburbs and elsewhere, it was comparatively rare to find unexpired leases as short as this. Thus the expectation of investors in the suburbs was that lessees probably would seek lease extensions, and in most cases before the lease fell below 50 years unexpired. Hence, in his opinion, there would be more interest from an investor in an investment such as Royston Court (and hence more hope value) than in a PCL flat with the same unexpired term.

55. Mr Maunder Taylor said that the term and reversion method of valuation is a tool used by valuers to arrive at a value for a given property after analysing and adjusting comparable transactions. That was not, in his experience, how an investor worked. In the no-Act world, whilst he could put a value on ground rent income because the amount and term were known, assessment of capital growth or gain could only be by way of intuitive judgement. For instance, there was no certainty as to whether (if at all) he would be able to sell a lease extension to non-participants, buy out the lessee or successfully pursue forfeiture action. It was, of course, the very action of the participating tenants that made them the most likely to seek early lease extensions, and the non-participating tenants who were the least likely to. Thus, he said, insofar as the investor's offer reflected hope value, that value would be directed far more to the participating tenants and less towards the non-participants.

56. Mr Maunder Taylor said that in his opinion, in valuation terms, hope value and deferment rate were inextricably linked, with one being dependent upon the other. They were merely different labels for two parts of the same figure: the prospect of capital growth or gain. He said that this view was supported by the Tribunal's findings in *Shulem B* and *Blendcrown*, as well as in his analysis of market results. In general terms, outside the PCL area, investors would not make a purchase at a 5% deferment rate plus something extra for hope value. In this case, not only would an investor not contemplate purchasing the freehold reversion at a 5% deferment rate, but also there was no margin out of what he would pay for the prospects of capital growth unless the deferment rate were lifted to a much higher level – as was considered in *Shulem B.* Quantifying hope value as a separate figure was a product of the way in which valuations under the Act had developed, and the exercise was particularly difficult in the hypothetical no-Act world marketplace. He said that it seemed to him that the consequence of the House of Lords judgment in *Sportelli* was that it was accepted that the investor paid hope value:

a. in respect of participating flats as part of the marriage value (with it therefore being excluded from the term and reversion calculation), and

b. for the non-participating flats, it being now recognised that hope value is payable and, there no longer being an assumption that the purchaser is only investing for the reversion, with the valuation principles having changed.

57. In summary, Mr Maunder Taylor said that it was his opinion that the Royston Court valuation should be calculated at an 8% deferment rate (not reflecting hope value), with an addition for the non-participating flats of separately calculated hope value at 5% of marriage value.

58. Mr Shapiro produced a revised valuation showing an adjusted premium of £45,482 (Appendix 2). He said that he had not amended any of the constituent parts of the LVT's valuation, other than to include hope value at 20%. In his view, there was no reason to depart from the opinions that he had expressed before the Tribunal when he given evidence for the tenant in *Shulem B.* There, he had argued for 25% of marriage value, but he acknowledged that the Tribunal decided that that was too much and determined hope value on the non-participating flat at 15%. In his report to the Tribunal in that case he had said:

"7.5.1 With regard to the non-participating flat, the price to be paid to the freeholder is the price at which the property would sell in the open market. I believe that this price is made up of the term and reversion together with the expectation of a sale of a lease extension, i.e. hope value. The need for a lease extension is clearly demonstrated by the market and hence the transactions relating to numbers 11 and 26 Westmere Drive. Even if there is a market for a lease of 60.75 years, the market conditions for this lease will become increasingly difficult as the lease reduces in length…. In 1994 my client paid approximately 13.81% of the marriage value as hope value. This was shortly after the 1993 Act was passed and the level of premium which would be determined or agreed was therefore uncertain as was the potential level of activity. The position is now much more certain and hence I believe that a purchaser in the market for the investment today would pay a higher share of marriage value to reflect this future gain. In my opinion, in a lease which is wasting as rapidly as this one, the amount which an investor would pay in the market for the investment would be the investment value plus half of the marriage value.

7.5.2 It will be appreciated from the above that if the non-participating lessee was to require a lease extension immediately then the freeholder will have almost doubled his money. If the lease extension is not required for some time then the underlying increase in value will be even greater, because the term of the lease will be shorter and the values will be greater."

He went on to produce his valuation, and concluded:

"7.5.2.1 An alternative way of reflecting hope value would be to reduce the yield. The Leasehold Valuation Tribunal believe that this could be done by reducing the yield from 13% to 11%. On their calculation the collective enfranchisement price was therefore £14,057. If the yield had been 13% the price would have been £13,792 and therefore the additional price for the hope value was calculated at £265. In view of the fact that half the marriage value in one flat on the Tribunal's figures was £2,194, this is an unrealistic assessment, therefore the yield differential is insufficient. In order to arrive at a similar result to that which I have calculated it would be necessary to reduce the yield in the whole calculation from 9% to 6%."

59. Mr Shapiro said that he was aware that the Tribunal has adopted different percentages in other decisions, and he accepted that there could be no hard and fast rule as to the appropriate amount. However, he said he could not accept the LVT's decision in *Gesso Properties (BVI) Ltd v SCMLLA Ltd* (LRA/13/2003, 1 March 2004) (Unreported), as such a figure (5%) was only a nominal addition which was within normal valuation tolerances and would thus be incapable of being assessed as a separate number from any analysis of sales. Clearly, he said, the percentage must be less than 50% because a purchaser in the market would require a profit to allow for the possibility that the lessees might seek to obtain extensions immediately after purchase. However, the hypothetical purchaser did have to cover his costs of acquisition and allow for risks together with interest on capital until such time as extensions were sought. Thus, the percentage did have to be significant and, for the reasons that he gave, he considered that 5% was not significant. In his view, although it could not be supported by any further evidence, 20% of marriage value was an appropriate figure to adopt.

60. In cross-examination Mr Shapiro accepted that where tenants were not participating in the collective enfranchisement that was an indication that they were not, at that time, interested in claiming lease extensions. However, he said that what was relevant was the expectation that at some time in the future, often at the point the lessee decided that he wished to sell, he would decide to apply for extension. He said that, in his experience, it was not normal for investment purchasers to make inquiries of non-participating tenants. They would apply their experience in assessing how many and how often such applications could be anticipated.

61. Mr Radevsky submitted, in the light of the preference as to the treatment of hope value on non-participating flats expressed by Lord Neuberger at paragraph 69 of the House of Lords judgment in *Sportelli*, that the Tribunal should prefer Mr Shapiro's 20% of marriage value as the bare minimum of lessees were participating, thereby keeping marriage value low. Mr Maunder Taylor's argument for 5% based largely on *Blendcrown* was, he said, self defeating. In that case there were two important factors to be considered: the relatively short unexpired terms and the proportion of non-participating flats (representing 17.2% of the aggregate value). In the present case there was a much longer period during which the anticipated marriage value would rise and the proportion of participating flats was 50% both in terms of number and value. Accordingly, it stood to reason that the that the hope value to be applied here must be more than the 5% determined in that case and sought here by Mr Maunder Taylor. Furthermore Mr Maunder Taylor's 5% was even smaller than the figures that he used to advise his clients in two of the properties that he had referred to in his evidence: Avon Terrace and Broomfield Avenue.

62. Both experts relied upon previous decisions of the Lands Tribunal that had taken hope value at between 5% and 20% of marriage value, with Mr Shapiro considering the upper level to be appropriate, and Mr Maunder Taylor opting for the lowest figure. Considerable care needs to be exercised before any weight is attached to specific percentages adopted in other cases both for the reasons expressed by the Member in *Blendcrown*, (see the passages reproduced at paragraph 51 above) and because, in the light of *Sportelli*, the correct approach now is to approach hope value and the deferment quite separately. Hope value is not a matter to be taken into account in the deferment rate, and the deferment rate has no influence on what the appropriate allowance for hope value should be.

63. There are in our judgment two particular valuation matters to be borne in mind in the determination of hope value. Firstly, it is likely to be greater if the proportion of non-participating flats is relatively large. Secondly, it will be lower if the unexpired terms are particularly long. In the present case the unexpired terms of the leases are 65.37 years and 50% of the lessees are non-participators. Taking all matters into account, and bearing in mind the essentially speculative nature of hope value, we conclude that hope value in this case may be expressed as 10% of marriage value. The Tribunal's valuation is at Appendix 3.

Summary

64. The two issues are determined as follows: deferment rate 5%; hope value relating to the non-participating flats 10% of marriage value. The price to be paid for the enfranchisement is £42,883.

Dated 7 September 2009

George Bartlett QC, President

Paul Francis FRICS

Appendix 1
LRA/82/2007

Appellant's valuation

Report of:	B R Maunder Taylor, FRICS, MAE
Specialist Field:	Chartered Surveyor and Property Valuer
On behalf of:	Amanda Jane Culley (Applicant)
Prepared for:	The Lands Tribunal

Four flats each leased for 99 years from 24 June 1972
Flat 6 at a fixed ground rent of £25 p.a.
Flat 5 pays £25/£50/£75 p.a. rising every 33 years
Flats 7 & 8 each pay £20/£35/£50 p.a. rising every 33 years
Flats 7/8 participating
Flats 5 & 8 with one bedroom, Flats 6 and 7 with two bedrooms
Valuation Date: 8 February 2006
Capitalisation rate determined: 7% p .a.
Values determined
2-beds: long lease £160,000 each; existing lease £139,200 each
1-bed: long lease £145,000 each; existing lease £126,150 each

Paragraph 2(1)(a): the value of the landlord(s) interest in the premises as determined in accordance with Paragraph 3		
PARTICIPATING FLATS 7 AND 8		
Rent value determined		£1,030
Reversion to £160,000 + £145,000	£305,000	
Deferred 65.37 years at 8% p.a.	0.006533	
	£1,993	£1,993
Paragraph 2(1)(b): the landlord(s) share @ 50% of the marriage value as determined in accordance with Paragraph 4.		
Long lease values	£305,000	
Less		
Value of landlord's current interest as above	(£3,023)	
Value of existing leases: £139,200 + £126,150	(£265,350)	
Marriage value	£36,627	
50% of marriage value		£18,314
Paragraph 2(1)(a): the value of the landlord(s) interest in the premises as determined in accordance with Paragraph 3		
NON-PARTICIPATING FLATS 5 AND 6 Rent value determined Reversion to £160,000 + £145,000 Deferred 65.37 years at 8% p.a.	 £ 305,000 0.006533 £ 1,993	 £1,095 £1,993
Hope Value calculated at 5% of marriage value.		
Reversionary value: £160,000 + £145,000 Less value of existing leases :£139,200 + £126,150 Less Value of Landlord's current interest as above: Capitalised ground rent Value of reversion Marriage value Hope value at 5% of marriage value	£ 305,000 (£265,350) (£ 1,095) (1,993)	 £1,831

Paragraph 2(l)(b): the landlord(s) share @50% of the marriage value as determined in accordance with Paragraph 4.		
No marriage value		£0
Paragraph 2(1)(c): compensation payable to the landlord under Paragraph 5.		£0
TOTAL		**£26,256**

Respondent's Valuation

5-8 Royston Court, North View, Eastcote, Middlesex, HA5 1PG

INPUT INFORMATION			Rent to:	25/03/2038	23/06/2071	Extended lease values	
				32.12	33.25		65.37 yrs
Participants							
Flat 7	3R K B/WC	99 yrs from 24/6/1972		£35.00	£50.00	£160,000	
Flat 8	2R K B/WC	99 yrs from 24/6/1972		£35.00	£50.00	£145,000	
				£70.00	£100.00	£305,000	
Non Participants							
Flat 5	2R K B/WC	99 yrs from 24/6/1972		£50.00	£75.00	£145,000	
Flat 6	3R K B/WC	99 yrs from 24/6/1972		£25.00	£25.00	£160,000	
				£75.00	£100.00	£305,000	

Valuation Date		08/02/2006
Leases Expire		23/06/2071
Number of years unexpired		65.37
Capitalisation rate	Term	7.00%
	Reversion	5.00%

(1) Participating Lessees - Flats 7 & 8

Value of share of Freehold							**£305,000**
Value of existing lease					87.00%	**£265,350**	
Value of Freehold current interest							
	Rent reserved			£ 70.00			
	YP to 1st review			12.6602	£886		
	Reversion to			£100.00			
	YP to reversion		12.779				
x	PV of £1 to 2nd review		0.1138	1.4541	£145		
	Reversion to VP value			£305,000			
x	PV of £1 to Reversion			0.0412	£12,565	**£13,597**	**£278,947**
	Marriage Value						**£26,053**
							50%
							£13,026
							£13,597 **£26,624**
	Freehold Price for flats						

(2) Non Participating Lessees - Flats 5 & 6

Value of share of Freehold							**£305,000**
Value of existing lease					87.00%	**£265,350**	

Value of Freehold current interest

	Rent reserved		£ 75.00				
	YP to 1st review		12.6602	£950			
	Reversion to		£100.00				
	YP to reversion	12.779					
x	PV of £1 to 2nd review	0.1138	1.4541	£145			
	Reversion to VP value		£305,000				
x	PV of £1 to Reversion		0.0412	£12,565	**£13,660**	**£279,010**	
						£25,990	
	Hope Value					20%	
						£ 5,198	
						£13,660	**£18,858**
							£45,482

Lands Tribunal's Valuation

5-8 Royston Court, North View, Eastcote, Middlesex, HA5 1PG

INPUT INFORMATION			Rent to:	25/03/2038	23/06/2071	Extended lease values	
				32.12	33.25		65.37 yrs
Participants							
Flat 7	3R K B/WC	99 yrs from 24/6/1972		£35.00	£50.00	£160,000	
Flat 8	2R K B/WC	99 yrs from 24/6/1972		£35.00	£50.00	£145,000	
				£70.00	£100.00	£305,000	
Non Participants							
Flat 5	2R K B/WC	99 yrs from 24/6/1972		£50.00	£75.00	£145,000	
Flat 6	3R K B/WC	99 yrs from 24/6/1972		£25.00	£25.00	£160,000	
				£75.00	£100.00	£305,000	

Valuation Date		08/02/2006
Leases Expire		23/06/2071
Number of years unexpired		65.37
Capitalisation rate	Term	7.00%
	Reversion	5.00%

(1) Participating Lessees - Flats 7 & 8

Value of share of Freehold							**£305,000**
Value of existing lease					87.00%	**£265,350**	
Value of Freehold current interest							
	Rent reserved						
	YP to 1st review			£ 70.00			
				12.6602	£886		
	Reversion to			£100.00			
	YP to reversion		12.779				
x	PV of £1 to 2nd review		0.1138	1.4541	£145		
	Reversion to VP value			£305,000			
x	PV of £1 to Reversion			0.0412	£12,565	**£13,597**	**£278,947**
	Marriage Value						**£26,053**
							50%
							£13,026
							£13,597 **£26,624**
	Freehold Price for flats						

(2) Non Participating Lessees - Flats 5 & 6

Value of share of Freehold							**£305,000**
Value of existing lease					87.00%	**£265,350**	

Value of Freehold current interest

	Rent reserved		£ 75.00				
	YP to 1st review		12.6602	£950			
	Reversion to		£100.00				
	YP to reversion	12.779					
x	PV of £1 to 2nd review	0.1138	1.4541	£145			
	Reversion to VP value		£305,000				
x	PV of £1 to Reversion		0.0412	£12,565	**£13,660**	**£279,010**	
						£25,990	
	Hope Value					10%	
						£ 2,599	
						£13,660	**£16,259**
							£42,883