

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



S.24 Leasehold Reform, Housing & Urban Development Act 1993

DECISION of the Leasehold Valuation Tribunal & ORDER

Case Number:	CHI/45UC/OLR/2006/0134/5/6
Date of Applications:	1 st December 2006
Property:	2,8,11 Seaview Court Waterloo Square Bognor Regis West Sussex PO21 1TF
Applicants:	C D Enticott & J J Rixon R W Porter A J Feaver
Respondent:	Sinclair Garden Investments (Kensington) Limited
Appearances:	
For the Applicants	Mr E Loosley MRICS
For the Respondent	Mr J Holden FRICS
Date of Hearing	29th January 2007
Tribunal Members:	Mr R T A Wilson LLB (Lawyer Chairman) Mr R Wilkey FRICS (Valuer Member) Ms J Morris (Lay Member)
Date of Decision:	23rd February 2007

DECISION IN SUMMARY

1. The Tribunal determines the premiums payable for new, extended leases of the subject flats within the premises as follows:-

Flat 2	£13,737
Flat 8	£15,044
Flat 11	£14,552

2. The premiums are calculated as set out in the Tribunal's valuations attached at the end of this decision.

INTRODUCTION

3. Three separate applications, all dated the 1st December 2006 were sent to the Tribunal by Messrs George Ide Phillips on behalf of the leaseholders of the numbered flats. These applications all relate to claims made for new (extended) leases in respect of individual flats in accordance with the provisions of the Act.

4. The Applicant's initial notices proposed premiums for new leases of the different flats ranging from £8,500 to £9,500. Otherwise the terms proposed were a term expiring on the 5th November 2148 at a ground rent of a peppercorn. The Respondents counter notices admitted the claims and accepted all the proposed terms but not the premiums. Instead, the premiums were counter proposed in respect of the different flats as follows:-

Flat 2	£16,540
Flat 8	£18,073
Flat 11	£17,823

5. With the hearing bundle was a statement of agreed facts which confirmed that all matters had been agreed save for the following:-

i) Deferment rate

- i) Mr Holden contends that the Lands Tribunal decision in *Cadogan v Sportelli* is intended to be prescriptive and accordingly the deferment rate should be 5%
- ii) Mr Loosley contends that each case must be considered on its merits and that a deferment rate of 7% is appropriate for these flats.

ii) Relativity

- i) Mr Holden suggests relativity should be 83.33%
- ii) Mr Loosley suggests 90%

6. Accordingly this present determination only deals with the above valuation issues. Insofar as any other issues remain in dispute, they may be made the subject of appropriate supplementary applications to the Tribunal.

INSPECTION

7. Members of the Tribunal inspected the property prior to the hearing. Neither Mr Holden nor Mr Loosely attended.
8. The Tribunal made a general inspection of the exterior of the property and also inspected each of the flats internally.

HEARING

9. As to valuation issues, the parties' respective representatives, both expert valuers, had each submitted valuation reports to the Tribunal. These reports were referred to at the hearing by the respective representatives, who each gave oral evidence and also cross examined each other.
10. The bundle also contained a statement of agreed facts signed by both representatives. This statement contained a description of the location of the property and also a brief description of each flat and it is not proposed to repeat these descriptions in this decision. The Tribunal was prepared to proceed with valuation on the basis of the agreed facts. Helpfully the representatives had agreed the value of the flats with extended leases as follows:-

- Flat 2 £134,500
- Flat 8 £145,000
- Flat 11 £145,000

DEFERMENT RATE

11. Mr Loosley referred the Tribunal to the case of Flat 1 Turret House, Limmer Lane, Felphem, Bognor Regis. This was a one bedroom purpose built flat in the centre of a village. It was a leasehold for a term of 99 years from 1963 thus having approximately 57 years unexpired in August 2005 when the sale of the lease was

negotiated at £132,000. Apparently the purchasers offered to pay £142,500 if an extended lease were available. The lessee negotiated an extension for £5,500 and apparently completed on an extended lease in November 2005. Mr Loosley confirmed that this was just hearsay evidence and he had little idea of the background or context of the deal and had not received formal confirmation as to the accuracy of the above figures.

12. Mr Loosely considered that the value of the flats without double glazing, central heating and modern kitchen and bathroom fittings could be considered approximately £10,000 less. This should be discounted in the premium calculation.
13. Assuming identical flats and leases an investment Company would consider a block of several flats to be worth more than a block of two. Therefore a different deferment rate could therefore be applicable to a single flat as opposed to a whole block. Furthermore an investor would pay more attention to the actual effect of lease conditions on the market value than an occupier. In this case the lease somewhat unusually placed the obligation on the lessee to affect all external repairs. Accordingly an investor would find these leases less attractive than leases where the investor controlled repair. It could be argued that they would be less likely to obtain vacant possession in good order at the end of the leases and would therefore want an increased risk premium. Together with an historic difference in yield between London and elsewhere, the above factors could justify and did justify a deferment rate of 7%.
14. Mr Holden disagreed with Mr Loosley's view that the 7% deferment rate was appropriate. He referred the Tribunal to the case of *Cadogan v Sportelli*. He reminded the Tribunal that this case was unusual for it comprised three senior members and was led by the president himself. Mr Holden contended that the depth and quality of the evidence presented was exceptional. Mr Holden had no doubt from the wording of the decision that the deferment rates that they determined for houses and flats were to be regarded by valuers and Tribunals alike as prescriptive. The case held that deferment rates for flats should be 5% unless particular features could be shown and that a departure from this rate was appropriate.
15. Mr Holden suggested that there were no particular features in this case and in the absence of clear open market 'non act world evidence' of which he was not aware of, the premium to be paid for these flats should be calculated using a deferment rate of 5%.
16. In this case the Tribunal accepts the assertions made by Mr Holden. We agree that the *Sportelli Case* is intended to be prescriptive and it is appropriate to deviate from deferment rates of 4.75% and 5% only when,
 - i) Particular features are shown to justify the departure and
 - ii) The departure is appropriate.

17. The Tribunal accepts that a departure might be appropriate, for example when there is clear open market 'non act world evidence', but in this case none has been presented. Accordingly we have approached our calculation of the value using a deferment rate of 5%.

RELATIVITY OR MARRIAGE VALUE UPLIFT

18. Mr Loosley accepted that there was not a wealth of market evidence which could be drawn upon. Accordingly his valuation was produced bearing in mind the fact that the property attracted an elderly market, which was not so dependent upon mortgage finance. An elderly market did not make the same valuation considerations as an investor would.
19. Mr Loosley considered that an allowance of £10,000 should be made for the tenant's improvements. This was the figure that in his personal experience people would pay for a property having the benefit of a modern kitchen, double glazing and central heating over an otherwise identical property not having these features.
20. In the absence of market evidence Mr Loosley also based his valuation on the College of Estate Management Report (CEM) which was produced in 2000. This report suggested that the appropriate relativity percentage for these flats was in the region of 90%. This was the figure Mr Loosley suggested should be adopted by the Tribunal having regard to the above and in the absence of any other useful direct comparables.
21. Mr Holden disagreed with this approach. Firstly he suggested that investors were more interested in the amount of ground rent, the insurance return and the prospect of leasehold extensions. In his opinion they were not interested in repairing obligations.
22. Mr Holden also rejected Mr Loosley's contentions that these flats would only appeal to older people. Mr Holden quoted that two out of the three let flats were let out on a 'buy to let' scheme to young people. Mr Holden also rejected Mr Loosley's argument in relation to older people not requiring mortgages. In Mr Holden's opinion the mortgage market was now changing and the industry were granting longer mortgages sometimes up to 30 years. However, the leasehold term of 55 years had always been a pivotal time and anything under 55 years would materially affect the saleability of a lease.
23. Mr Holden accepted that he was unable to refer the Tribunal to any sale of flats with 52 years leases in the area. This was of course a common problem for valuers preparing valuations under the Act and the reason why such disputes often ended up before a Tribunal. In the absence of any open market evidence Mr Holden had therefore chosen to look at Tribunal decisions for assistance. He referred to a schedule of southern panel decisions in relation to lease extensions since 2003. The unexpired lease terms in the fourteen cases listed varied from 26 years to 67 years and the relativities from 54.9% to 95.2%. He suggested that one could plot the relationship of relativities to the unexpired lease terms on a graph and he produced

such a graph in his report. In his judgement the graph would support a relativity in relation to these flats of 83.33% and this is the figure he used in his calculations and he invited the Tribunal to do likewise.

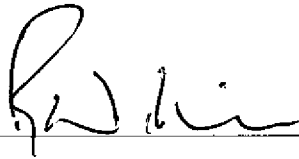
24. The Tribunal considered both parties' evidence most carefully. In relation to the issue of improvements, the Tribunal felt that a figure of £10,000 was too much and inconsistent with the level of improvements made to each flat. The Tribunal was more inclined to accept a figure of just under £4,000 which was consistent with Mr Holden's valuation of improvements which had been taken into account in Mr Holden's figures for the value of the leases with extended terms.
25. As for the appropriate percentage for relativity, the Tribunal agreed with Mr Holden that the evidence on Flat 1 Turret House could not be taken as reliable open market evidence. The figures had not been verified and the background and context of the deal was unknown.
26. The Tribunal also agreed with Mr Loosley that the graph of relativities produced by Mr Holden could be interpreted in a number of different ways. Accordingly the interpretation was subjective and not objective.
27. Looking at all the factors mentioned above and because no specific evidence has been provided to the Tribunal, we were obliged to rely on our collective knowledge and experience. We decided to make our calculations on the basis of a relativity percentage of 87.5%.
28. Accordingly we calculate that the appropriate sums to be paid for the Respondents interest in the various flats are as set out in the calculations appearing below.

COSTS

29. Mr Holden invited the Tribunal to make a cost order against the Applicants on the grounds that the Applicants had not instructed an expert to negotiate at an early enough stage. Although directions were issued by the Tribunal on the 6th December 2006, Mr Loosley did not get instructions to meet up with Mr Holden until the 10th January 2007. This meant that Mr Loosley had no instructions to negotiate and the Applicants had not given the Respondents sufficient time to comply with the directions. It was Mr Holden's view that had Mr Loosley received instructions to negotiate then all issues could have been agreed thus avoiding the cost of the hearing.
30. Furthermore it had not become clear to Mr Holden until the day of the hearing that the issue of improvement was not agreed. In response Mr Loosley said that the Christmas period had caused communication difficulties with his clients and he did not receive the directions order from his instructing solicitors until just before Christmas. Thereafter it had been difficult to obtain firm instructions from his clients. However, he denied that there had been no opportunity to negotiate and he considered that, "the door was always open", for Mr Holden to come forward to negotiate.

31. The Tribunal considered that it was regrettable that Mr Loosley had not received the directions order until just before Christmas, and it was also regrettable that he had not received instructions to negotiate with Mr Holden prior to the hearing. Having said that we could identify no compelling reasons to exercise our discretion to award costs and the Tribunal considered that it would be inequitable to make a cost order against the Applicants or Mr Loosley. Accordingly no such order is made.

Chairman



RTA Wilson LLB

Date 23rd February 2007

Flat 2(Garage 6) Seaview Court

(A) Value of Landlord's existing interest

ground rent	£14 p.a.		
YP 52 yrs 7 months @ 7%	13.878516	£194.30	
Reversion to capital value	£134,500		
PV £1 in 52 years 7 months @ 5%	0.0768771	<u>£10,339.97</u>	
		<u>£10,534.27</u>	say £10,534

(B) Landlord's share of marriage value

Value of tenant's interest under new lease	£134,500		
Value of landlord's reversion	£128	£134,628	
LESS: Value of tenant's existing interest	£117,688		
plus Value of Landlord's existing interest	£10,534	<u>£128,222</u>	
	Marriage Value	£6,406	
	Landlord's share @ 50%	£3,203.00	£3,203

(C) Compensation

	nil
Premium payable	<u>£13,737</u>

n.b A deferment rate of 5% has been used in calculating the value of the landlord's reversion in 142 years 7 months

$£134,500 \times 0.0009523 = £128.08$ say £128

Value of tenant's existing interest calculated at 87.5% of interest under new lease

Flat 8(Garage 5) Seaview Court

(A) Value of Landlord's existing interest

ground rent	£50 p.a.		
YP 52 yrs 7 months @ 7%	13.878516	£693.93	
Reversion to capital value	£145,000		
PV £1 in 52 years 7 months @ 5%	0.0768771	<u>£11,147.18</u>	
		£11,841.11	say £11,841

(B) Landlord's share of marriage value

Value of tenant's interest under new lease	£145,000		
Value of landlord's reversion	£138	£145,138	
LESS: Value of tenant's existing interest	£126,875		
plus Value of Landlord's existing interest	£11,841	<u>£138,716</u>	
	Marriage Value	£6,422	
	Landlord's share @ 50%	£3,211.00	£3,203

(C) Compensation

	nil
Premium payable	<u>£15,044</u>

n.b A deferment rate of 5% has been used in calculating the value of the landlord's reversion in 142 years 7 months

$£134,500 \times 0.0009523 = £138.08$ say £138

Value of tenant's existing interest calculated at 87.5% of interest under new lease

Flat 11(Garage 11) Seaview Court

(A) Value of Landlord's existing interest

ground rent	£14 p.a.		
YP 52 yrs 7 months @ 7%	13.878516	£194.30	
Reversion to capital value	£145,000		
PV £1 in 52 years 7 months @ 5%	0.0768771	<u>£11,147.18</u>	
		£11,341.48	say £11,341

(B) Landlord's share of marriage value

Value of tenant's interest under new lease	£145,000		
Value of landlord's reversion	£138	£145,138	
LESS: Value of tenant's existing interest	£126,875		
plus Value of Landlord's existing interest	£11,341	<u>£138,716</u>	
	Marriage Value	£6,422	
	Landlord's share @ 50%	£3,211.00	£3,211

(C) Compensation

	nil
Premium payable	<u>£14,552</u>

n.b A deferment rate of 5% has been used in calculating the value of the landlord's reversion in 142 years 7 months

$£134,500 \times 0.0009523 = £138.08$ say £138

Value of tenant's existing interest calculated at 87.5% of interest under new lease