RESIDENTIAL PROPERTY TRIBUNAL SERVICE

EASTERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CAM/00MF/OCE/2005/0017

Leasehold Reform, Housing & Urban Development Act 1993

Property: **Coniston Court, Holland Road, Hove, BN3 1JU**

Applicant: **Coniston Court(North) Hove Limited**
Represented by: **Andrew Pridell FRICS**

Respondent: **Arrowdell Limited**
Represented by: **Edward Peters (Counsel) and Jennifer Branscombe FRICS**
Also Present: **Mrs. Hitchcock (Assistant to Mrs. Branscombe)**
Damion Greenish (Solicitor for the Respondent – present for the morning session)

Tribunal: **David Brown FRICS MCIArb (Chair)**
John Morris (Barrister)
John Dinwiddy FRICS

DECISION AND STATEMENT OF REASONS

The Law

1. Section 24 of the Leasehold Reform, Housing & Urban Development Act 1993, provides that where a reversioner, in respect of the specified premises has given a counter notice under section 21 but any of the terms of the acquisition remain in dispute at the end of two months after the date of the counter notice, a leasehold valuation tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute.

The Application

2. The Applicant applied to the Tribunal on 21st January 2005, indicating that the terms which were in dispute were the "price and costs".

The Inspection

3. The Tribunal inspected the premises on the morning of the hearing. Mr. Pridell requested that Flat 64 be inspected internally. This is a larger two-bedroomed flat, containing entrance hall, living room, kitchen, 2 bedrooms and bathroom.

4. The block is of brick and flat-roofed construction. There is a steeply sloping garden area to the front and a tarmacadum parking area to the rear with 16 parking spaces marked out. There are 12 garages. Access to the rear is via a driveway shared with Coniston Court South. There is an electrical sub-station adjacent to the rear boundary, opposite this driveway.

5. The Tribunal noted the layout of the top floor landing and staircase, in relation to the proposed construction of flats on the roof.

6. The block was noted to be in reasonable condition, with common parts generally well maintained. In the bundle, documents relating to the planning application include a statement by an objector that there is a subsidence problem. The Tribunal did not see any evidence of subsidence and neither Mr. Pridell nor Mrs. Branscombe was aware of such a problem.

The Issues

7. Mr. Pridell and Mrs. Branscombe had been able to agree a number of issues, namely:-

   The block comprises 30 flats (no.s 36-65), 12 garages and 16 parking spaces;
   All flats participating except 36, 55 and 56;
   Tenures and ground rents and unexpired terms agreed;
   Valuation date agreed as 22nd November 2004;
   Yield agreed at 7% for conversion of ground rent and value of reversion;
   Freeholder's share of potential marriage value on non-participating flats agreed at 15%.

8. The issues not agreed were:-
   the value of flats and garages unimproved with share of the freehold/long lease;
   the relative value on existing leases disregarding tenants' rights;
   the value of parking spaces;
   the loss of development value in respect of the roof.

9. At the hearing, the parties' representatives indicated that the document TR1 ("Transfer of whole of registered title(s)") was agreed and that this dealt with the Applicant's request for easements and quasi easements referred to in the Notice.

Preliminary issues

10. Mrs. Branscombe produced a revised proof of evidence. She said that Mr. Pridell had mentioned to her a week before that an additional flat had acquired a long lease. She had amended her calculations to take this into account. Mr. Pridell objected to the late presentation of this document on the basis that he did not have time to read through it. The Tribunal decided not to permit its inclusion. The hearing would be considering the calculations in detail and any amendments could be dealt with then.

11. Mr. Peters sought to present to the Tribunal a written summary of the legal argument he would be putting forward in respect of the parking area. Mr. Pridell again objected on the basis that this was a completely new document, he had not had time to read it and he would want to take legal advice upon it. Mr. Peters pointed out that the question of the demise and use of the parking area had been raised in the written representations and that there is clearly a legal argument. The Tribunal decided not to allow the document. Mr. Peters would be able to cross examine Mr. Pridell on the case that he put and would be able to address the Tribunal in connection with the representations on behalf of the Landlord.

12. The representatives agreed the basic information about the property, namely that

    of the12 garages, 7 are demised, one is in hand and 4 are let separately on long leases;
    there are 7 of the smaller two-bedroomed flats, not 8 as shown by Mr. Pridell in his calculations; Mr. Pridell apologised for the error;
    Flat 38 has an extended lease with effect from 29th September 2000 on the same terms as the other extended leases in the block.

13. The Tribunal indicated that it would deal with the evidence in three stages –

    The basic valuation
    The parking area
    The loss of development value.

Amended Calculations

14. Mr. Pridell and Mrs. Branscombe recalculated their premium figures in the light of the factual amendments discussed. The amended figures were –

    Mr. Pridell - £204,000
    Mrs. Branscombe - £453,142.

The Evidence

15. In view of the amendments to be made, the Tribunal gave the representatives time to go through their calculations again and revise them. The parties were able to agree much of the new calculation. Referring to Mr. Pridell's calculation (beginning at page 36), the agreed figures were for the capitalisation of the ground rent income and the value of the reversion and the total for those items was agreed at £73,197.

16. On the question of relativity, Mr. Pridell pointed out there is no evidence from short lease sales in the block, and said that it is therefore appropriate to look at previous LVT decisions. He had appended a list of seven decisions (Page 35), ranging in time from October 2002 to December 2004, in unexpired terms from 59 to 76 years and in uplifts from 5% to 11%. He said that relativity depends on the type of block, the location and the market in the area. The type of purchaser in Hove is the older retirement customer. They do not care if there is 70 or 80 or 65 years on the lease. He considered that the appropriate figure was 8% uplift or 92.5% relativity.

17. Mr. Peters put it to Mr. Pridell that previous LVT decision are not admissible and should not be given weight by the Tribunal. He referred to *Blendcrown Ltd v Church Commissioners for England 2004, Wellcome Trust Ltd v Romines and another 1999,* (both Lands Tribunal cases), *and Land Securities plc v Westminster City Council [1992] 44 EG 153.* Copies of reports of those cases were handed to the Tribunal. He referred to paragraph 53 in the first case, where the Member said that other LVT decisions are not evidence in themselves and are no substitute for evidence. In the Wellcome case, the Member had referred to the Land Securities case and stated the view that the same principles applied to decisions on matters of fact or opinion by leasehold valuation tribunals and he gave greater weight to settlement evidence than leasehold valuation tribunal decisions. In the summary of the Land Securities case, Hoffman J stated, "In principle the judgement, verdict or award of another tribunal is not admissible evidence to prove a fact in issue or a fact relevant to the issue in other proceedings between different parties".

18. Mr. Pridell responded that the difficulty in this case is that there is no market evidence. In its absence, he said, one cannot ignore decided cases. That had been the practice since the Act came in.

19. Mr. Peters suggested that the approach taken by Mrs. Branscombe was more satisfactory, that the decisions quoted by Mr. Pridell were only as good as the evidence before the tribunals in those cases and that Mr. Pridell's calculation of the average uplift in his list was of no assistance. Mr. Pridell defended his approach by saying that he was attempting to find a tone.

20. Mr. Peters put it to him that he had not explained how he arrived at an uplift of 8%. Mr. Pridell said that it was by assessing the type of block and type of buyer. The block is comparatively well maintained. There are no arguments on service charges. He did not think it was advantageous for the lessees to acquire the freehold in this case. They were aiming to retain the existing managing agents.

21. Mrs. Branscombe had included in her proof of evidence details of flats 46 and 51. Flat 46, a small two bedroomed flat sold for £169,950 in August 2004 on a long lease but there were no short lease sales of similar flats with which to compare it. Flat 51 was under offer on the existing lease at £156,500 towards the end of 2004. This was a similar flat but with a garage. If its value is £144,500 without a garage, this is 85% of the price on Flat 46. The price

would be lower if one allows a discount to reflect the tenant's rights under the Act. She also made some comparisons by reference to prices per sq.ft. on Flat 60, sold in November 2003 and Flat 46. After adjustments for inflation, by indexing the long lease sale back to November 2003, she said that this shows a short lease value equating to 88% of the long lease value. Mr. Pridell said that if the price of Flat 60 was increased by 10% for inflation, that would come out at the agreed long lease values. Mrs. Branscombe said that it was back to the argument about an "Act" and "no Act" world. Her proposed relativity of 89% builds in an element of "no Act" discount.

22. She had also made comparison between the sale of Flat 60 on a short lease for £112,000 in November 2003. They had agreed a long lease value of £135,000 and applying the Nationwide index would bring the price up to £125,440, or 92% of the agreed long lease value. But the lease was a year longer, if one adjusted 1% for that and 5% for "no Act" the price would be £118,000 or 87.4% of the long lease value. She had also compared Flat 60 to Flat 46, making adjustments for the different sizes, inflation, shorter lease and "no Act" which produced a relativity of 87.4%.

23. Mrs. Branscombe referred to her own price calculation (commencing at page 97), as amended. She had adopted a different methodology from Mr. Pridell and her revised figures had not been specifically agreed. She had added a 1% uplift to the long lease values to reflect the value of owning a share of the freehold. Mr. Pridell asked what that uplift was based on. Mrs. Branscombe said that it was because of the element of control and the desire of tenants to enfranchise rather than to extend their leases. She said it was an emotional thing, a benefit perceived by tenants but added that she believes that in the market it is a fact.

24. Mr. Pridell pressed her for authority for her 1% uplift. Mrs. Branscombe said that cases she has dealt with an uplift of 1-3% has been agreed. She was aware of other LVT decisions but was not relying on them, it was her own opinion. She was not aware of any Lands Tribunal decision which supported such an uplift.

25. Mr. Pridell suggested that agency experience in the locality is valuable in assessing relativity. Mrs. Branscombe said that she has had a lot of experience on the south coast. She knows that a lot of people retire to Hove and that there is a difference between Hove and London. If this block were not in Hove and there were a lot of first time buyers in the market she would expect to see a much bigger differential. She said that she had reflected the nature of buyers in this case because the sales in the block to which she has referred are sales to typical purchasers.

26. Mrs. Branscombe concluded that she would normally expect to see relativity of around 87% on an unexpired term of 63.58 years. She has dealt with cases which ranged from 84-90%. She has adopted 89% in this case as the highest figure that can be deduced from the evidence.

27. The Tribunal put to her that one cannot make direct comparison between "Act" sales and "no Act" values. She responded that one can do a mathematical calculation. If one knows the cost of lease extension one can work out the marriage value the purchaser had considered.

28. On the hope value calculations, she said that she had just looked at the marriage value as the difference between 89% and 100%. She did not think that a LRHUD Act calculation is correct. Mr. Pridell contended that the proper course was to calculate marriage value and take a percentage of that.

Parking Area

29. Mr. Pridell had not included any additional value for the parking area. Mrs. Branscombe had valued the parking area at £118,857.

30. The Tribunal asked the representatives if their agreed values for the long leases included the benefit of the parking area. Mr. Pridell said "Yes", Mrs. Branscombe initially said "Yes" but then said "No". She then said that they had agreed the values on the wrong basis and apologised for the error. The values of the long leases are not therefore agreed.

31. Mr. Pridell referred the Tribunal to the lease:-

32. Schedule 4 sets out the rights included in the demise. Paragraph 5 states:-
The right to use in common with the owners and occupiers of all other flats and their visitors to pass and repass over the gardens drives paths and forecourts forming part of the Reserved Property Subject to the observance of such reasonable riles (sic) *and regulations for the common enjoyment thereof as the Lessor may from time to time prescribe.*

33. Schedule 2 defines the Reserved Property as
First ALL THAT the gardens drives paths forecourts and the parking area forming part of the Property and the staircases lift and other parts of the buildings forming part of the Property which are used in common by the owners or occupiers of any two or more of the flats SECONDLY ALL THOSE the main structural parts of the buildings forming part of the Property including the roof foundations and external parts thereof including the drains and boundary walls (but not the glass of the windows or window frames of the flats nor the interior faces of such external walls as bound the flats) and including all cisterns tanks sewers drains pipes wires ducts conduits taps and supplies not used solely for the purpose of one flat and the joists or beams which are attached to the ceilings and floor screeds (but not including the ceiling and floor screeds) and including also the boundary walls and fences.

34. Mr. Pridell said that his clients' interpretation was that the parking area is not demised or allocated, it is a free for all but the tenants have used it since the block was built and they had a collective right to use it. He said that the valuation of the flats must flow from that. The values cannot be the same if parking rights were not included. Parking in the area is quite difficult, especially at night. Businesses are allowed two parking spaces each and it can

be difficult to find spaces on the street. If parking rights are excluded, he considered that the values of the flats must be reduced by £5-7,000 each.

35. He was "dumbfounded" that Mrs. Branscombe had never raised this point during discussions about values over the past months. He said he had looked at sale values in the block. If tenants do have parking rights, there are non-participating tenants and so the parking area could not be sold off.

36. Mr. Peters replied that Clause 1 of the lease demised the rights set out in the Fourth Schedule. Parking spaces are not demised. The definition of the "Reserved Property" in Schedule 2 has three parts to it, firstly the gardens drives paths forecourt and parking area, then the staircase lifts etc. and then the structural parts. Schedule 4 has six paragraphs. The fifth is the one referred to by Mr.Pridell. It only confers rights over those parts of the Reserved Property that are listed, and it omits the parking area and also the lifts staircase etc and structural parts. There was conscious omission of reference to the parking area. He was asked if there was evidence of intention that they should use it. He said not; the fact they have done so does not show a right to do so. The landlord has control of the parking spaces and can let them off. He can choose to let the tenants use them. Asked why the landlord had not made use of this valuable asset up to now, he responded that landlords and tenants do not read their leases carefully.

37. The Tribunal asked if those tenants who have extended leases have acquired parking rights under s.62 of the Law of Property Act 1925, the rights may now be incorporated into the new lease. Mr. Peters accepted that this was a possibility but pointed out that most flats had not extended their leases. He added that there was no evidence that the lessees of those five flats had, in fact, been using the parking spaces. He concluded that it cannot be ruled out as a possibility that s.62 may apply to the tenants who have extended.

38. Mrs.Branscombe said that she had argued £10 per week for a space but had since discovered that a resident's parking permit costs £80 per year in Holland Road. These permits are available to tenants as of right and there is no waiting list. She said that the agreed value of garages at £12,000, on 7% equated to a rental value of £840 pa. She considered that the spaces behind the block could be let for £240 pa, giving a total income on 16 spaces of £3840, with a capital value at 7% of £54857 or £3428.57 per space.

39. Mr. Pridell asked her by how much the value of the flats would be reduced by the loss of parking spaces. Mrs. Branscombe replied that this was not an issue. Most of the garages have been sold off. There is does not appear to be a demand for a massive amount of parking within the block. The basic price of a flat with or without parking would not be affected.

Development Value

40. Mrs. Branscombe included in her calculation a figure of £115,650 for development value in respect of the roof. Planning permission had been

granted for three additional flats on the south block roof on appeal. A similar application on the subject block in had been refused planning permission by the Planning Committee. An appeal had been lodged and, at the valuation date, the hearing was expected to be in December 2004.

41. Mr. Pridell repeated his contention that there is no development value. He said that the situation with this block is not novel and he referred the Tribunal to the Southern LVT decision in respect of Lynton Court, 40 St Aubyns, Hove, of 30 July 2004, (included in the bundle). In that case, there had been planning permission for two flats on the roof but it had expired. A further planning application had been submitted following the notice of intention to purchase and had not been determined at the time of the hearing. The Tribunal, having inspected the property, concluded that development of the roof would be extremely difficult and expensive. No evidence had been adduced to demonstrate that the proposed development was feasible or financially viable. The application appeared to the LVT to be speculative and it found that the roof area had a nil value.

42. Mr. Pridell said that in the subject case planning permission has been refused. The drawings are scant, all we have is the schematic plan. The architect has shown the lift motor room on the fifth floor when it is in the basement. There is no Building Regulations approval. There is no evidence that the building will take the extra weight; "it's a well known local fact that it contains high alumina cement". There is no evidence of the cost of construction. There are no details of the balconies or decking. Has the whole roof got to come off? How will services be dealt with? The kitchens and bathrooms do not tally with the position of kitchens and bathrooms below.

43. He asked why the landlord had not done it before. There could not have been a more buoyant market than in the 80's and 90's. If it is viable, if one could get planning permission, why has the landlord not undertaken this development?

44. He added that there is a restrictive covenant in favour of Goldschmidt Estates. Mrs. Branscombe seeks to rely on the fact that a deal was done on the south block for £6450. She accepted that they cannot develop without lifting the covenant but there has been no attempt to approach Goldschmidt Estates on this block.

45. He referred to the fact that Mrs. Branscombe had produced evidence of the sale of the roof of the adjoining block but how do we know the construction is not the same and we have no details of the south block proposals. He concluded that it is "merely speculative, a ruse to screw more out of the lessees".

46. Mr. Peters referred Mr. Pridell to the southern block and the fact that a Planning Inspector decided that the Planning Committee were wrong to refuse planning permission in that case. The Planning Officer's report to the Committee on the subject application contains a recommendation that planning permission should be granted subject to full planning and, amongst other conditions, "Details of a revised car park layout, to include additional

parking". In that report, the Traffic Manager is quoted as stating that there was no objection on traffic grounds and that scope may exist on site for 2 or 3 extra parking spaces. The Tribunal notes that in the appeal decision, the Inspector determined that the planning permission on the south block would be subject to a condition to provide covered cycle parking and three additional car parking spaces.

47. Mr. Peters said that the same factors outlined in the Planning Officer's report applied on the south block and Mr. Pridell agreed. Mr. Peters suggested that a purchaser in November 2004 would be bullish about the chance of getting planning permission. Mr. Pridell replied that there was a chance but a purchaser would want to look at carefully physical aspects, costings and other details. He said, "You have not shown that it can be done. You have to get structural reports, details of services. You show me all that and I'll agree this figure tomorrow. What if you need to underpin it?"

48. Mrs. Branscombe said that the 10% deduction in her calculation provided for the delay in getting planning permission, given that, in November 2004, the appeal decision was expected in January. When she looked at the value of the roof space she took into account costings that the freeholder has from the development next door, these and profit allowance were in her calculation (page 100) and she had allowed a 10% contingency. The Tribunal asked if a purchaser would not make a further deduction for the uncertainty of gaining planning permission. Mrs. Branscombe repeated that when the south block roof was sold the covenant had not been lifted and so there was uncertainty then.

Costs

49. Pemberton Greenish (solicitors for the Respondent) had provided a breakdown of their costs to Farrington Webb (solicitors for the Applicant) on 2nd December 2004. They indicated that their conveyancing costs of £1,575 (plus VAT) were estimated. The Applicant's solicitors have indicated that the Applicant would be "quite happy to proceed directly to Transfer without an exchange of contracts". In view of this situation, the Tribunal indicated that it was minded to make no decision in respect of the conveyancing costs but to grant the parties leave to apply if those costs could not be agreed. Both sides agreed to this course.

50. In their breakdown, Pemberton Greenish indicated that the relevant work had been carried out by Damian Greenish (Partner) at an hourly rate of £315 and Anna Booth (Trainee Solicitor) at an hourly rate of £76. The input was 9hours and 36 minutes for Mr. Greenish and 1 hour for Ms. Booth, giving a total charge, excluding conveyancing, of £3,100 plus VAT. They did not provide Farrington Webb with their time recording printout, on the grounds that it contains privileged information, and the detail in the day-by-day breakdown is scant.

51. Andrew Stevens, a Law Costs Draftsman employed by Pemberton Greenish, prepared a submission in relation to the recovery of costs on 12th April 2005

and this is included in the bundle (pages 147-151). He confirmed the hourly charging rate was agreed with their client and is based on the location of the firm's offices in central London, the seniority of the fee earner having conduct of the matter, the specialist nature of the work and the proximity of the client to the firm. Mr. Stevens then set out some additional details about the work undertaken on each of the dates in the breakdown.

52. Michael Barry, a Senior Partner in the firm of Farrington Webb, submitted a reply to the Respondent's solicitor's submission. He appended copies of a London Rent Assessment Panel LVT decision in the case of *Peter Odell, Jean Odell and Anne Roberts v Baring Trust Company Ltd* [2004] LON/ENF/1020/04 and referred to lengths of time which that tribunal considered to be reasonable for various tasks in that case.

53. Mr. Barry said that the Pemberton Greenish charges for initial work in connection with the Notice of Claim included the service of a notice requiring evidence of title. He said that this notice, although dated 12th October 2004, was not received until 14th October and was out of time. He contended that an hourly rate of £165 should be adopted, being the local County Court rate, there being no reason why a local solicitor could not have been employed. He questioned the need to spend 1 hour 54 minutes considering the initial notice as it was a straightforward document. He said that the Applicant should not be liable to pay for the respondent's company searches and drafting what he assumes was an internal memorandum. He also questioned whether it was necessary for a senior partner to charge for such straightforward tasks as requisitioning official copies of the Land Registry entries. He considered that other periods of time charged were excessive.

54. At the hearing, Mr. Peters addressed the Tribunal on the question of fees. He said that it was reasonable for the respondent to go the Pemberton Greenish because this was specialist work. Mr. Pridell accepted that £315 per hour was a reasonable rate for a senior partner to charge in central London, the Applicant's dispute was with the time spent.

55. Mr. Peters said that the s.20(1) notice was in compliance. The Applicant's solicitors accepted it and responded to it. The fact that it was outside the time limit is not relevant. Mr. Pridell accepted that it was not rejected. However, the Tribunal notes that in a letter to Pemberton Greenish dated 14th October 2004, Farrington Webb stated that the notice was out of time, but undertook to forward copy leases.

56. With regard to the Odell & Roberts case, produced by Mr. Barry, Mr. Peters said that there was no indication how many flats were involved or how complicated that case was.

57. Mr. Pridell asked why the senior partner was carrying out searches. The Tribunal commented that it would seem reasonable for the trainee to draw up the schedule of the leases. Mr. Peters replied that overall it was a morning's work.

58. The valuer's fee is also in dispute. Mrs. Branscombe's fee for "Inspection of property, research, valuations and reporting.....for service of counter-notice" is £3,400 plus VAT, based on 17 hours at £200. Mr. Barry submitted that this was unreasonable.

59. Mrs. Branscombe said that she spent 150 minutes on site and she charged for 2 hours travelling although the actual traveling time was greater. Asked why the Respondent had engaged her firm, she replied that their conveyancing work was done by a solicitor near her firm. They referred to her because they felt the matter was too complicated and she recommended Pemberton Greenish.

60. Mr. Pridell said that his charge for the valuation work was £1,250. Mrs. Branscombe said that she had valued the roof space and car park. Mr. Pridell said that £200 per hour is a central London rate not a local rate. There are local firms on the LEASE website who could do the work. He charges £150 per hour and is the most expensive in Brighton. He considered that anything over £1500 was unreasonable. Mrs. Branscombe responded that the client is based in Putney. He felt that a south-west London valuer was reasonable rather than a central London valuer. Even if there was a local valuer who had the comparables, they would still need to be analysed. Her charge is only £100 per flat.

DECISION

61. The Tribunal has considered all of the evidence presented to it, in the written submissions and other documents and in the oral evidence given at the hearing. It notes the agreement between the valuers on the first part of the calculation as set out in Mr. Pridell's proof of evidence and, in view of this, for ease of reference it has adopted Mr. Pridell's valuation layout.

62. The main issues which remain in dispute are the parking area, the development value of the roof, the relativity and also the values of the flats with long leases, which it now transpires have not been agreed. Taking these issues in turn:-

Parking Area

63. It is agreed that the parking spaces are not demised. It is clear that at least some of the tenants of some of the flats have been using the parking area, almost certainly since the block was built and certainly for many years, with the full knowledge and consent of the landlord. The Tribunal has considered whether, by virtue of s.62 of the Law of Property Act 1925, those tenants who have extended their leases have acquired an easement for use of the parking area. That question cannot be definitively answered without knowing whether each of those tenants had been using the parking area prior to their extension. None of the leases of those flats includes a garage. It is a reasonable assumption that at least one of them had been using the parking area and that he/she would be able to claim a formal right under s.62. That right would not be for use of one parking space but would be for use of the parking area as a whole. This would effectively prevent the landlord from letting off any part of the parking area.

64. In the opinion of the Tribunal, the other tenants could argue that Clause 4 of the Fourth Schedule could be construed as including reference to parking as "*other easements.....now enjoyed or intended to be enjoyed by the Premises*". Such an argument would be supported by the fact that the lease provides for the tenants to pay for the maintenance of the parking area through the service charge. Clause 31 of the Sixth Schedule requires the tenants to pay a proportionate part of the charges and expenses which the lessor incurs in carrying out its obligations under the Seventh Schedule and under Clause 4 of the Seventh Schedule, those obligations include "*shall keep the Reserved Property and all fixtures and fittings thereto in a good and tenantable state of repair decoration and condition including the renewal and replacement of all worn or damaged parts*"; it then goes on to refer in particular to the exterior parts, the garden and the roads paths and boundary fences and decoration of the staircase and other common parts of the Building but it does not exclude the parking area, which is included in the Reserved Property by the definition set out in the Second Schedule. It would be a nonsensical situation if the tenants have to contribute to the upkeep of the parking area but have no right to use it. The lease appears to be badly drafted in this respect and in order to make sense of these provisions together, it would be reasonable to assume that

it was the intention of the parties to each lease that the tenant has a right to use the parking area.

65. The Tribunal concludes that a purchaser of the landlord's interest in the open market would take the view that the tenants, or at least some of them, have a right to use the parking area, acquired either through s.62 of the Law of Property Act 1925, (in respect of the extended leases), or by purposive construction of the lease, and would not consider that there was a reasonable possibility of letting off spaces or otherwise realising any additional value from the parking area.

66. The Tribunal therefore finds that the parking area has no additional value.

Development Value

67. The Tribunal accepts Mrs. Branscombe's evidence that in November 2004 it was assumed that a planning appeal decision would be available in January 2005. As at the valuation date there was no planning permission and, indeed, planning permission had been refused. However, the Tribunal acknowledges that the grounds for refusal are very similar to those which were overturned in the appeal decision on the South Block and agrees with Mr. Peters that any purchaser of the block on the valuation date would take an optimistic view about the likelihood of planning permission being granted on the appeal.

68. The Tribunal does not agree with Mrs. Branscombe's contention (page 78) that "the only question is whether the market value of the roof space is reduced by the need to await planning consent". She herself referred the Tribunal to a case where a tribunal found no development value even though planning permission had been granted as there was no evidence that the project was physically feasible or financially viable. In this case, as Mr. Pridell has pointed out, there is no evidence of any structural survey, there are no detailed costings for this project, no evidence has been adduced that shows that the project is structurally possible or financially viable.

69. Mrs. Branscombe refers to the deal done on the south block, where the roof space was sold to a developer for £128,500. One cannot simply infer from that sale that the project is feasible or viable. No work on that development has begun yet. The Tribunal was told that the deal on the south block was done before the restrictive covenant was lifted, which calls into question the reliability of that purchaser's project appraisal. Furthermore, the north block is of a different design and construction to the south block and so direct comparisons cannot be made. Mr. Pridell has referred to the presence of high alumina cement, which could be an important factor.

70. As for the residual valuation produced by Mrs. Branscombe, she uses building costs which she says were obtained from the freeholder but these figures are

not supported by any structural report, detailed specifications or any evidence which gives a reliable indicator of the likely development costs.

71. There is no guarantee that the restrictive covenant on the north block could be lifted for the same price as that on the south block. Indeed, a second approach for lifting of a similar covenant in such a short time might well prompt the covenantee to seek a higher figure.

72. From the documentation produced, the Tribunal concludes that any grant of planning permission will be subject to a condition that three additional parking spaces shall be provided. It might be possible to provide three additional spaces in the existing parking area but the current tenants in the block may well resist such a move. It is another area of uncertainty.

73. In November 2004, the long period of inflation in the property market, which had continued into the first half of the year, was over and there were predictions of a recession during 2005. There was already evidence of reductions in prices and in levels of demand in many areas. The Tribunal considers that a purchaser would have made some allowance for the possibility of prices falling and of sales of the proposed flats taking longer to achieve.

74. The Tribunal finds that neither the residual calculation nor the sale of the south block roof is reliable or helpful evidence of the potential value of the north block roof. It concludes that a purchaser on the valuation date would have attributed some hope value for development of the roof space but that this would be tempered by all of the uncertainties referred to above, for which allowance would be made. It is difficult to quantify the sums which a purchaser would allow for each of these matters. **The Tribunal, having considered all of the factors, on the basis of its own knowledge and experience, finds that a reasonable figure for the hope value would be £35,000.**

Relativity

75. The Tribunal is not persuaded by Mrs. Branscombe's argument for a 1% uplift to reflect the benefit of freehold ownership. Mrs. Branscombe produced no market evidence to support her contention. Moreover, the Tribunal has considerable knowledge of settlements and of agreements between valuers as to relativity rates in and around Brighton and Hove and knows that such an uplift is not usually applied in this locality.

76. The Tribunal accepts that decisions of other tribunals are not evidence of relativity in any particular case, but they can be put forward as persuasive argument. However, in this case, the Tribunal finds the evidence of Mr. Pridell unhelpful. His averaging of a range of relativities from other cases is irrelevant and he did not clearly explain how he came to his figure of 92.5%.

77. Both parties referred to the sale of Flat 60 in November 2003 for £112,000. Mr. Pridell's evidence is this would produce an extrapolated value of £123,200 at the valuation date, 91.25% of the agreed value of long leases. However, he had not relied on that sale.

78. Mrs. Branscombe extrapolated a 2004 value of £125,440 from the Nationwide index, giving a short lease percentage of 92% and then deducted 1% for the lease being a year shorter and 5% for a "no Act" world. She produced no evidence to support either of those percentages and the Tribunal considers that they are too high in respect of a lease with over 60 years unexpired.

79. Mrs. Branscombe referred to a number of other transactions but they are not direct comparables and are subject to various adjustments and assumptions, which makes them less reliable to assess the value in a particular case.

80. This is an imperfect calculation because none of the sales figures reflects a "no Act" world and there is no direct comparable evidence. The assessments presented are subject to numerous assumptions and adjustments and attempting to extrapolate 2004 values from 2003 sales is fraught with uncertainty, the Nationwide and other indices not being accurate or reliable enough to apply to individual properties. The Tribunal is entitled to have regard to its own knowledge and experience, particularly in relation to relativities which have been agreed between parties or their valuers in other similar cases. **The Tribunal finds that relativity is 91.25%.**

The Valuation

81. The Tribunal agrees with Mr. Pridell's method of calculating the hope value in respect of the non-participating flats, in that the agreed 15% share should be of the potential marriage value on those flats. In the event of such marriage value being realised it would be under the provisions of the 1993 Act and so a calculation under the Act is appropriate.

82. When asked by the Tribunal if the values of the long leasehold interests had been agreed on the basis of the parking area being available to the tenants, Mr. Pridell answered in the affirmative, Mrs. Branscombe was less forthright initially but then said they had not. However, she later expressed the opinion that the basic price of a flat with or without parking would not be affected and so presumably she would not amend the valuation figures which had been put forward as agreed anyway. The Tribunal has determined that the parking rights should be taken as running with the flats and therefore adopts those previously "agreed" values for the long leases. (Had the Tribunal decided that the valuation of the long leasehold interests should exclude parking rights, it would have reduced those values by £2,000 per flat).

83. The Tribunal determines that the price payable by the nominee purchaser for the freehold of the premises shall be £265,000 (Two Hundred and Sixty-five Thousand Pounds), the calculation of which is set out in the appendix hereto.

Costs

84. The Applicant is challenging both the legal costs and the valuer's fee.

85. In respect of the legal costs, the Tribunal does not consider that it is unreasonable for the Respondent to employ a London based solicitor who has specialist knowledge and expertise in 1993 Act enfranchisement. However, it is to be expected that a solicitor who has that level of expertise will not need to spend as much time on research of legal matters and will be in a position to deal with issues expeditiously and efficiently.

86. Mr. Pridell has accepted that a charging rate of £315 per hour for a senior partner is reasonable and the Tribunal concurs. The rate of £76 per hour for a trainee is not challenged and the Tribunal finds it to be reasonable. The challenge is on the basis of the amount of time taken to deal with certain tasks.

87. The Applicant's solicitors referred the Tribunal to the Odell & Roberts case but this has not been of assistance. The Tribunal has no information about the details of that case – how many leases there were, whether they were identical in terms or what issues arose. Comparisons between that case and the subject case cannot be drawn.

88. With regard to the work carried out on 11 October 2004, the Tribunal notes that this included "making searches and requisitioning details of client's title". On 4th October Mr. Greenish wrote to Arrowdell Ltd requesting, a copy of the certificate of incorporation and copies of the passports of the two directors in order to establish their identity. The Tribunal does not see why, if that information had been produced, the solicitors needed to carry out a company search on Arrowdell. If it was necessary, such a search could have been carried out by a competent trainee and should only take about ten minutes. The Tribunal is not satisfied that this item is a cost properly chargeable to the Applicants under section 33. The notice requiring evidence of participating tenants' titles does appear to have been served out of time but the Applicant's solicitors responded to it and, in any event, the information should properly have been provided. The Tribunal does not accept that this work is not chargeable. The Tribunal concludes that a reasonable time charge for 11 October would be 30 minutes for Mr. Greenish and 30 minutes for Ms. Booth.

89. On 5th November, the charge includes time spent by Mr. Greenish in scrutinising the leases and preparing a detailed schedule. The Tribunal does not consider that it was necessary for a senior partner to carry out this work, it could have been carried out by a competent trainee under supervision. Work on both 5th November and 15th November includes preparation of a report to the client. There appears to be some duplication or the time charged on the two days is excessive. The Tribunal finds that a reasonable time charge on 5th November would be 120 minutes each for Mr. Greenish and Ms. Booth, and on 15th November 30 minutes for Mr. Greenish.

90. The breakdown of costs for 19th November does not explain why the counter notice required amending or what figures were revised. In any event, noting

the revised valuation figures and amending the counter notice should not have taken a substantial amount of time. The solicitors have failed to provide sufficient information to justify these items. The Tribunal finds that a reasonable charge for this date would be 40 minutes for Mr. Greenish.

91. The Tribunal does not find the charges in respect of the other dates to be unreasonable.

92. The Tribunal determines that the amount of legal costs payable by the Applicant is 150 minutes for Ms. Booth and 340 minutes for Mr. Greenish, amounting to £1,975 plus VAT.

93. As for the valuer's charge, the Tribunal does not consider that it was unreasonable for the Respondent to employ a valuer located in Middlesex but, where there are competent and experienced valuers in the locality of the property, the Tribunal considers that it is not reasonable to expect the Applicant to pay the travelling expenses incurred as a result.

94. Mrs. Branscombe's charging rate of £200 per hour is not unreasonable but the Tribunal would expect that charge to include incidentals such as e-mails, faxes and letters.

95. With reference to Mrs. Branscombe's schedule, the Tribunal considers that 150 minutes for the inspection is reasonable. It does not accept that checking comparables should require more than 90 minutes in a case like this where there is ample evidence of sales of flats readily available. It considers that the 240 minutes for drawing up schedules and making calculations should include the time for receiving deeds of variation and making notes. It accepts that 180 hours for writing the detailed valuation report is reasonable.

96. The Tribunal determines that a reasonable amount payable by the Applicant in respect of the work carried out by Mrs. Branscombe is 750 minutes at £3.33, amounting to £2500 plus VAT.

SUMMARY and ORDERS

The Tribunal makes the following determinations and orders:-

A. **The price payable by the Applicant for the freehold interest in Coniston Court, Hove is £265,000.**

B. **The Applicant shall pay to the Respondent the sum of £2320.62, (£1975 plus VAT), in respect of legal costs.**

C. **The Applicant shall pay to the Respondent the sum of £2936.50, (£2500 plus VAT) in respect of Valuer's fee.**

D. **Leave is granted to either party to apply in the event of the conveyancing costs not being agreed.**

Dated this 12th day of May 2005

Signed:  **(Chair)**

D S Brown FRICS MCIArb

APPENDIX

THE CALCULATION

A. Value of the Freeholder's interest

Capitalisation of Ground Rent Income, including Garages O, P, Q and X and Value of reversion				
		Agreed		£73,917
Hope Value in respect of non-participating flats(36, 55 and 56)				
Flat 55				
Unexpired term exceeds 80 years. Marriage Value				NIL
Flats 36 and 56				
(a) Value of freeholder's interest				
Ground rent 2004-2035		£60		
YP 31 years @ 7%		x12.5318		
			£752	
Ground rent 2035-2068		£80		
YP 33 years @ 7%	12.7538			
PV £1 in 31 years @ 7%	0.1227	x1.5649		
			£125	
			£877	
Reversion to capital value of £308,500				
PV £1 in 64 years @ 7%		x0.0131		
			£ 4,072	
Value of freeholder's interest			£ 4,949	
(b) Marriage Value				
Value of long unimproved leases			£308,500	
Less				
Value of existing unimproved leases £281506				
Value of freeholder's interest		£ 4949		
			£286,455	
Marriage Value			£ 22,045	
Freeholder's share, agreed 15%				£ 3,307
Carried forward				£77,224

Brought forward			£ 77,224
B. Marriage Value			
Flats 36 and 56 non-participating,			
Flats 38,40,46,50 and 55 Unexpired lease terms in excess of 80 years, Therefore marriage value			NIL
Remaining Flats			
Value of long unimproved leases		£4,060,000	
Less Value of existing unimproved leases Value of freeholder's interest	£3,704,750 £ 73,917		
		£3,778,667	
Total marriage value		£ 281,333	
Freeholder's share 50%			£140,667
C. Vacant garage			£ 12,000
E. Value of Parking Spaces			£NIL
F. Loss of Development Value			£ 35,000
TOTAL			**£264,891**

Say £265,000