

**Leasehold Valuation Tribunal for
Eastern Rent Assessment Panel**

File Ref No: CAM/38UC/0LR/2003/5

Leasehold Valuation Tribunal: Decision

Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")

Address of Premises:

Murray Court
80 Banbury Road
Oxford
OX2 6LQ

The Tribunal Members were:

Mr John Hewitt
Mrs Sarah Redmond BSc Econ MRICS
Mrs Helen Bowers BSc Econ MRICS

The Applicant:

Murray Court (Oxford)
Freehold Limited, as nominee
purchaser

The Respondent:

T H Kingerlee and Sons Limited,
as landlord/freehold owner

Appearances:

Counsel

Mr Anthony Radevsky
Instructed by:
Farrington Webb

Ms Amanda Eilledge

Darbys

Expert Witnesses - Valuers

Mr Andrew Pridell FRICS
Clifford Dann

Mr Thomas Lindley BSc (Hons) MRICS
FPDSavills

Hearing:

Friday 3 October 2003 at The Oxford Centre 333 Banbury Road Oxford OX2 7PL

Initial Notice: Dated: 20 January 2003

Counter-notice: Dated: 25 March 2003

Application: Dated: 28 May 2003

1. Documents

1.1 Prior to the hearing we had been provided with copies of:

Initial notice	Dated 20 January 2003
Counter-notice	Dated 25 March 2003
Application	Dated 28 May 2003
Lease of flat 1 Murray Court	Dated 13 December 1977
The report of Mr Pridell	Dated September 2003
The report of Mr Lindley	Dated Undated
A letter from Farrington Webb	Dated 25 September 2003 stating that all lessees were now participating and submitting a revised marriage value calculation.

1.2 At the beginning of the hearing we were handed copies of:

A schedule of differences prepared by Mr Radevsky
A revised calculation of price prepared by Mr Lindley

1.3 During the course of the hearing we were provided with a copy of:

A manuscript note said by Mr Lindley to have been made by him on 6/5/03

1.4 After the hearing we were provided with copies of letters:

Mr Radevsky to the Tribunal office	Dated 6 October 2003
Darbys to the Tribunal office	Dated 9 October 2003

2. Introduction

2.1 At the commencement of the hearing, Mr Hewitt informed the parties' representatives that in his capacity as a solicitor in private practice in London, he had, from time to time, instructed Mr Radevsky to advise his clients. Ms Eilledge thanked Mr Hewitt for bringing this to her attention and, having consulted with her instructing solicitor, said she had no objections to the hearing proceeding. Mr Radevsky did not have any observations to make.

2.1 Shortly prior to the hearing the Tribunal had the opportunity of an inspection of Murray Court and 4 of the flats within it.

2.2 Murray Court is a purpose built block of flats dated from the 1970's comprising 20 flats laid out in a "T" shape on plan, on 3 floors. There are 4 types of flats:-

Type 1	x9	Two beds + cloak room
Type 1+	x3	Two beds + cloak room + study
Type 1-	x3	Two beds + study no cloakroom
Type 2	x5	Three beds + study + cloakroom

The block is of brick construction with tiled mansard roof. The whole block has aluminium framed windows.

All of the flats provide spacious well-laid out accommodation
The flats are accessed from airy well-kept and lit common parts. A lift serves the upper floors.

Murray Court is set in attractive and mature grounds.
20 garages are provided. 1 garage is allocated to each flat, and the right to the use of a garage is included within the lease terms.

Murray Court is located in Banbury Road Oxford and is within walking distance of local shops and amenities and the City centre.

Further details of the accommodation comprising Murray Court is included within the reports of Mr Pridell and Mr Lindley.

We were told that the leases of all of the flats were in common form and granted terms of 99 years from 24 June 1976.

The common parts are held under a separate long lease which is vested in Murray Court (Oxford) Management Company Limited and which manages Murray Court on a daily basis and administers the service charge regime. We were told that the lessees of the flats control the management company, so that they have day to day control of Murray Court.

- 2.2 The participating qualifying tenants served an initial notice dated 20 January 2003 under section 13 of the Act. The notice was given by 18 of the 20 lessees. The price proposed for the freehold land edged red on the plan was £172,000 and for the land edged green, £500. At the hearing we were told that the remaining 2 lessees wished to join in the collective enfranchisement. The Applicant put forward a revised price of £190,850 for the red land.
- 2.3 The Respondent freeholder served a counter-notice dated 25 March 2003. The respondent admitted that on the date that the initial notice was given the participating tenants giving it were entitled to exercise the right to collective enfranchisement in relation to the specified premises. The Respondent accepted the price proposed for the purchase of the green land of £500. The Respondent did not accept the price proposed for the purchase of the red land of £172,000 and counter-proposed the price of £519,500. The Respondent also proposed that the rights and exceptions set out in the Property and Charges Registers of title number ON31978 should be included in the any Transfer. This latter point was not in contention.
- 2.4 Accordingly, the only substantive issue for the Tribunal is to determine is the price to be paid for the red land. The rival contentions put forward at the hearing by the expert valuer witnesses for the parties was £190,850 for the Applicant and £550,000 for the Respondent. However, before summarising and evaluating the valuation evidence, there are 2 subsidiary matters we have to deal with. These are, first the valuation date. Secondly, the status and effect

of 2 documents appended to the valuation reports. One was Appendix III to Mr Pridell's report, being notes of a without prejudice meeting between Mr Pridell and Mr Lindley on 6 May 2003, and signed by Mr Pridell on 24 May and by Mr Lindley on 21 May 2003. The second was Appendix VI to Mr Lindley's report, which is a calculation of price headed "Without Prejudice".

3. The Valuation Date

- 3.1 Schedule 6 to the Act sets out the process to be followed to ascertain the price payable by the nominee purchaser. Paragraph 1 sets out some definitions including that of "the valuation date". It provides as follows
 - "(a) the date when it is determined either by agreement or by a leasehold valuation tribunal under this Chapter, what freehold interest in the specified premises is to be acquired by the nominee purchaser, or
 - (b) if there are different determinations relating to different freehold interests in the specified premises, the date when determinations have been made in relation to all the freehold interests in the premises."
- 3.2 The scheme of the Act for the parties to understand what issues are in contention between them, is the service of the initial notice under section 13 and the service of a counter-notice under section 21. By section 13(3)(a) the initial notice must give particulars of the land and what freehold interest in it, is proposed to be acquired. By section 21(3) the reversioner is required to "state which (if any) of the proposals contained in the initial notice are **accepted** (our emphasis) by the reversioner and which (if any) are not so accepted... "
- 3.3 In the present case, in paragraph 2.1 of the initial notice the nominee purchaser claimed the freehold interest in Murray Court, 80 and 82 Banbury Road Oxford of the land edged red on the annexed plan, which it described as "the Specified Premises". It also made a proposal in respect of the freehold of the green land. In its counter-notice the reversioner expressly accepted the purchase price proposal for the green land. It did not accept the proposed purchase price for the red land and put forward a counter-proposal.
- 3.4 The question therefore arises as to whether the effect of the initial notice and the counter-notice is that the parties have **agreed**, for the purposes of paragraph 2 of Schedule 6 to the Act, what freehold interest in the specified premises is to be acquired. If the effect is that they so agreed, the valuation date will be 25 March 2003, the date of the counter-notice. If they have not agreed, the valuation date will be the date when we determine the extent of the freehold interest.
- 3.5 The notes of the without prejudice meeting comprising Appendix III to Mr Pridell's report, record that at that time Mr Lindley contended, subject to discussion with his principal, for the valuation date to be the date of the initial notice i.e. 20 January 2003. Mr Pridell contended it should be the date of the LVT hearing. In his valuation report to us Mr Pridell, in paragraph 5.2

contends that the valuation date should, in the absence of agreement, be the date of the LVT hearing. In his report to us, Mr Lindley in paragraph 7.1 of his report, produces his valuation calculations as Appendix VI. Those calculations show a valuation date of "Mar-03". Mr Lindley's calculations produced to us at the commencement of the hearing show a valuation date of "Oct-03".

3.6 For the Applicant, Mr Radevsky submitted that the valuation date should be 25 March 2003. He submitted that the extent of the freehold interest was accepted (and thereby agreed) by the counter-notice so that that issue was no longer in contention between the parties. The parties were agreed upon it for the purposes of paragraph 1 of Schedule 6, he said. What had to be agreed, he said, was what the freehold interest was. That is the nature and extent of it.

3.7 We decide that the valuation date is 25 March 2003, the date of the counter-notice. We are satisfied that the clear acceptance by the Respondent of the freehold interest in the specified premises put forward in the initial notice, means that by that date the parties were agreed upon the identity of the freehold interest to be transferred. That is all that paragraph 1 requires. We note that neither party put forward any evidence to us as to the size, scope or identity of the freehold interest. No submissions were made to us to the effect that we were required to make any determination as what freehold interest in the specified premises is to be acquired by the nominee purchaser. Both valuers clearly proceeded with their valuation work on the basis of the freehold interest being the land shown red on the plan annexed to the initial notice. This reinforces our view that both parties were agreed on the identity of the freehold land in the specified premises, in the sense that this was not an issue between them. There was no evidence put before us to the effect that either party reserved its position as to the nature and extent of the specified premises.

4. The Without Prejudice Documents

4.1 We shall deal first with Appendix III to Mr Pridell's report. We heard evidence from both Mr Pridell and Mr Lindley. We were told that both valuers met on 6 May 2003, on a without prejudice basis to try and see what issues could be agreed between them. After the meeting Mr. Pridell sent his notes of the meeting to Mr Lindley. We were not shown a copy of the covering letter. We were told the gist of it was that Mr Lindley was invited approve or amend the notes, and if satisfied with them, to sign against his typed name. Mr Lindley accepts that he signed and dated a copy of the notes and returned them to Mr Pridell. In so doing, Mr Lindley told us that he was not waiving privilege to the meeting or the notes, he was simply confirming the accuracy of Mr Pridell's file note. Mr Lindley told us that the notes were accurate save in one respect. At the top of page 4 it is recorded that Mr Lindley felt that the freehold reversion should be capitalised at 7.5% whereas Mr Pridell was of the opinion it should be 8%. Mr Lindley told us that it was his opinion, at that time, his figure was 7%. In support of this Mr Lindley produced his manuscript notes of the meeting. At the relevant point they record "Reversion to FH V.P. £8.06m -- AJP 8% --TL 7%" Mr Radevsky had opportunity to

examine the original file note, but did not have any point to take about the copies provided.

- 4.2 Mr Lindley told us that he was in error in signing the notes, and that he ought to have raised this discrepancy at the time. He apologised for having overlooked it and for failing to do so. Mr Lindley was prepared to waive privilege in respect of the notes, subject to the correction of this error.
- 4.3 Mr Lindley and Mr Pridell confirmed that in all other respects the notes were an accurate summary of their meeting. Mr Pridell told us that his recollection was that the meeting was aimed at trying to narrow issues and that whilst Mr Lindley's starting position was 7% during the course of the meeting, and by way of compromise, Mr Lindley moved to 7.5%. Mr Pridell told us that his position was greater than 8%, but that he came down to 8% in a spirit of compromise. (Subsequently and as is shown in paragraph 5.12 of his report, Mr Pridell is prepared to compromise and accept a yield of 7.5% in relation to the reversion.)
- 4.4 Having had the benefit of hearing evidence from Mr Lindley and Mr Pridell, we decide that in signing the notes Mr Lindley did not waive or intend to waive privilege. We accept Mr Lindley's evidence that so far as he was concerned he was simply confirming Mr Pridell's file note as being accurate. We accept Mr Lindley's evidence that at that meeting his position on capitalisation rate was 7% and that he did not concede 7.5%. We accept Mr Lindley's evidence that he signed the notes not realising the discrepancy. In the circumstances and given the parties' positions and that they both waived privilege, the notes were admitted into evidence as corrected on this point.
- 4.5 Next we deal with Appendix VI to Mr Lindley's report. It comprises his calculations, for the price. It is headed "Without Prejudice". By way of clarification, Ms Eilledge stated that the document had been so labelled in error and that it was not intended to claim privilege in respect of it.

5. Valuation

- 5.1 The parties were agreed
- 5.1.1 that the unimproved value of the existing leasehold interests was £6,865,000
 - 5.1.2 that all of the leases expire on 24 June 2075, and so have 72.25 years unexpired at 25 March 2003
 - 5.1.3 that all 20 leaseholders were now participating in the collective purchase so that marriage value is payable in respect of all the flats
- and we were invited to proceed on that basis.
- 5.2 Mr Pridell for the Applicant contended for a price of £109,850. Mr Lindley for the Respondent contended for £550,000. The differences arise as follows:

Applicant

Respondent

Capitalisation Rate	7.5%	7%
Deferment rate	7.5%	7%
Capital value for reversion	existing lease value	freehold value
Difference between 72yrs/freehold	4%	14%

5.3 We shall take each of the issues in turn.

5.4 **Capitalisation Rate**

5.4.1 We considered carefully the rival contentions of the valuers. The difference between them was not great. We preferred the evidence of Mr Pridell. We noted carefully the evidence of Mr Lindley on the returns to be achieved on lettings of flats on assured shorthold tenancies, but did not consider this to be a helpful, correct or appropriate approach to ascertaining the correct capitalisation rate for the freehold interest. We concluded that short term residential lettings is a very different market, with several factors influencing returns and short term growth rates.

5.4.2 We decide that the appropriate capitalisation rate for a property of the quality of the subject premises in north Oxford is 7.5%

5.5 **Deferment Rate**

5.5.1 We noted that Mr Pridell advanced an argument for 8%, but was prepared to compromise and concede 7.5%, and that Mr Lindley contended for 7% at the meeting on 6 May 2003 and remains of the opinion that 7% is the correct yield.

5.5.2 We considered carefully the evidence of Mr Pridell and the table on pages 18 & 19 of his report. In our view and experience, the more recent decisions cited by him relate to properties in the Brighton area. We considered that the age profile of lessees does affect the market in that area and has an impact. There are features, which distinguish this market. However, we did not think this was borne out in north Oxford.

5.5.3 Mr Lindley conceded that proving yields in respect of Oxford properties is difficult. Capital values are high. Mr Lindley considered that yields on central London properties provided helpful comparisons. We disagree with this and hold that prime central London is a unique market. We do however, accept that some parts of affluent outer London may well be comparable with north Oxford.

5.5.4 Having regard to all of the evidence put before us, we decide that the deferment rate appropriate to apply in respect of the subject premises is 7.5%.

5.6 Capital value of reversion

- 5.6.1 In paragraph 5.13(ii) of his report, Mr Pridell cites the existing lease value at 72 years, thereby removing, he says, the need to adjust for the right of lessees to remain in occupation at the end of the terms. Mr Pridell had not made an adjustment to reflect the value when the leases fall in. He said that the long lease length unexpired is a quid pro quo against lessees remaining at the end of the term. His normal practice he said was to discount the virtual freehold value by 4-5% to allow for the risk of lessees exercising any rights to remain in occupation at the end of the leases. In this case therefore he used the existing leasehold value of £6,865,000 to determine the value of the reversion. Mr Radevsky was not able to cite any authority to show that this type of approach had been supported by previous LVT decisions.
- 5.6.2 Mr Lindley had not realised until the hearing that Mr Pridell had made such a discount. He considered that this risk factor was allowed for in the all risks yield to be used for deferring the reversion and had used the freehold value he assessed by applying an uplift of 14% of £7,826,100. He considered that the years unexpired were so great that it was speculative to make specific allowance for recovery of possession at term date.
- 5.6.3 In general we agreed with Mr Lindley that it would only be relevant to consider a specific deduction in the case of a very short term remaining unexpired. Given the length of the unexpired lease terms in the present case, we determined that the reversion should be calculated with reference to the full value of the freehold.

Difference between leasehold/freehold values

- 5.6.4 Mr Pridell contends for a 4% uplift. He told us that he based his uplift on the agreed unimproved value of the leasehold interests. Mr Pridell asks us to bear in mind that the tenants already have control of the management of Murray Court and that it is well run. In his view management control is often a strong factor impelling tenants to a collective enfranchisement. He says it is unfair to penalise tenants when management control is not an issue.
- 5.6.5 In arriving at his figure of 4% Mr Pridell relies heavily on previous decisions of LVTs as detailed in paragraph 5.26 of his report; particularly those where the years remaining is 72 or close thereto. We consider that generally this approach is helpful. However we think that Mr Pridell relies over heavily on the decisions numbered 483,495 and 522. These all relate to properties in Eastbourne, Hove and Brighton and we consider that these can be distinguished from the subject premises, due to the general age profile of lessees in those areas, as compared with north Oxford. We do not agree that in north Oxford the value of flats will be strongly influenced by a particular age profile of

purchasers. We consider that caution is needed in relation to Mr Pridell's use of simple averaging to iron out anomalies.

- 5.6.6 Mr Lindley contends for an uplift of 14%. In support of his case he relies on the analysis set out in paragraphs 6.4.2 to 6.4.17 of his report. Mr Lindley's first approach was to compare sales in the locality of leasehold flats with about 72 years unexpired with sales of flats with 80+ years unexpired to show an average value psf. He sought to show, on average a July 2003 price of £361 psf, for flats of around 72 years unexpired, compared with £451psf, for flats with 80+years unexpired. This, he says shows an uplift of 25%. We considered this to be an interesting approach, and may well have been of some value if more detailed and robust evidence to support the figures and comparables had been provided to us. We noted that Mr Lindley had not given details of his comparables to Mr Pridell prior to exchange of expert's reports. We did not consider that we could rely with any confidence on the conclusions drawn from the rather raw and unsophisticated data on which the research was based and on which Mr Lindley relies.
- 5.6.7. Mr Lindley also relies on the relativity tables produced by his firm, FPD Savills, and reproduced at page 15 of his report. We are aware that this table is based on valuation opinion. Mr Lindley has subsequently confirmed via Darby's letter dated 9 October 2003 that his assertion in paragraph 6.4.11 of his report that the index was approved by a London LVT (5 Durham Place) as an appropriate guide to value is not correct. Further Mr Lindley relies heavily, it seemed to us, on comparison between north Oxford and central London. Whilst we accept that many residential properties in north Oxford are desirable and expensive, we consider that prime central London to be a unique market and comparison with it and north Oxford in this case is not helpful.
- 5.6.8 At the meeting in May 2003, Mr Lindley was of the opinion that the uplift should be at 11.5%. At the hearing he was of the opinion it should be 14%. He told us that his present view was based on analysis of local comparables and the benefit of more recent LVT decisions as per the LEASE website updated in August 2003. Unfortunately Mr Lindley did not cite details of the specific decisions he relies upon in his report, and he was not able give any such detail to us during the course of his evidence. Mr Lindley's evidence was that the local evidence was 25%, the central London table showed 12-13% and 2003 LVT decisions on a national basis is in the range 4-14%. Mr Lindley was not able to show us how the basis for his range of 4-14% for LVT decisions was arrived at, nor how he satisfied himself that that 14% was the appropriate uplift for the subject premises.
- 5.6.9 On this issue we preferred the general approach and evidence of Mr Pridell. His approach was more in line with convention and in accordance with general principles endorsed in previous LVT decisions. His general approach was correct and his comparison with

previous LVT decisions in respect of properties outside London was helpful. We accept his evidence to the effect that prime central London is a unique market and should be distinguished from north Oxford. We noted his argument that tenants should not be penalised where management control was not an issue. We did not consider this could be a significant factor because there can be management problems even where lessees have control. We did however, consider that Mr Pridell was at the lowest end of the bracket.

5.6.10 Taking all of the evidence into account, and bearing in mind our own expertise, we consider that the appropriate rate of uplift to apply in respect of the subject premises is 6%

6. Decision

6.1 In summary our decision is as follows:-

The capitalisation rate is 7.5%

The deferment rate is 7.5%

The capital value for the reversion is the freehold value

The uplift leasehold/freehold rate is 6%

6.2 Accordingly, the price to be paid by the Applicant for the freehold of the premises, the subject matter of this application is £260,000 as shown by the valuation attached as Appendix 1.

Chairman

John Hewitt

Dated 21 November 2003

APPENDIX 1

**MURRAY COURT
80 BANBURY ROAD
OXFORD
OX2 6LQ**

Valuation Date: March 2003

VALUATION OF FREEHOLD INTEREST

Term

The Flats

Term 1	Profit Rent	£4,180	
	YP 23.25 years @ 7.5%	<u>10.8508</u>	£45,356
Term 2	Profit Rent	£8,760	
	YP 25 years @ 7.5%	11.1469	
	PV of £1 in 23.25 yrs @ 7.5%	<u>0.1862</u>	
		<u>2.0755</u>	£18,181
Term 3	Profit Rent	£18,340	
	YP 24 years @ 7.5%	10.983	
	PV of £1 in 48.25 yrs @ 7.5%	<u>0.0305</u>	
		<u>0.3350</u>	£6,144

The Common Parts

Rent	£10	
YP 72.25 years @ 7.5%	<u>13.2616</u>	<u>£133</u>
		£69,814

Reversion

Existing Leasehold Interest (Unimproved)	£6,865,000	
Uplift 6%	£7,276,900	
PV of £1 in 72.25 years @ 7.5%	<u>0.005382</u>	<u>£39,164</u>

Value of the Freehold Interest **£108,978**

MARRIAGE VALUE

<u>Proposed Interest</u>	£7,276,900	£7,276,900
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Present Interest

Existing Leasehold Interest	£6,865,000	
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Existing Freehold Interest	<u>£108,978</u>	
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	£6,973,978	<u>£6,973,978</u>
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Marriage Value		£302,922
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Freeholder's Share 50%		£151,461
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Enfranchisement Price

Existing Freehold Interest	£108,978	
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Freeholder's Share of Marriage Value	<u>£151,461</u>	
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£260,439	Say £260,000
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