SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993
SECTION 48

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	**CHI/29UD/OLR/2006/0039**
Property:	**337 Knights Manor Way** **Dartford** **Kent** **DA1 5SH**
Applicants:	**Mr. N.J. Woodhouse and** **Mrs. A.D. Woodhouse**
Respondent:	**Sinclair Gardens Investments** **(Kensington) Ltd.**
Date of Hearing:	**27th November 2006**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. R. Athow FRICS MIRPM** **Mrs. H.C. Bowers MRICS**
Date Decision Issued:	

RE: 337 KNIGHTS MANOR WAY, DARTFORD, KENT, DA1 5SH

1. This is an application under Section 48 of the Leasehold Reform, Housing & Urban Development Act 1993 ("the 1993 Act") by Mr. N.J. Woodhouse and Mrs. A.D. Woodhouse, ("the Applicants") leaseholders of 337 Knights Manor Way ("the subject property") for the determination of the premium to be paid by them to Sinclair Gardens Investments Ltd. ("the Respondent") the freeholder, on the grant of a new lease to the Applicants at a peppercorn rent for a term expiring 90 years after the term date of their existing lease. The subject property is at present held on a lease for 99 years from the 1st March 1986 at a ground rent of £30 per annum for the first 33 years, £60 per annum for the next 33 years and £90 for the final 33 years.

2. On the 27th November 2006 before the commencement of the hearing, the Tribunal inspected the exterior of the subject property and the block of which it forms part. We noted that the block was very close to a railway cutting and from the information provided to us we could not tell whether the subject property was on the side of the block nearer to the railway or on the side of the block away from the railway. We were informed at the hearing that the subject property was on the side away from the railway.

3. The subject property is a first floor studio flat in a purpose built block which is part of a modern residential development and which is described in the valuation report of Mr. L. Nesbitt Bsc (Hons), FRICS, MCIArb prepared on the instructions of the Respondent.

The Hearing

4. The hearing was attended by Miss Muir of Counsel representing the Applicants, Mr. M. E. Richens FRICS who appeared as an expert witness called by the Applicants and Mr. Nesbitt who appeared representing the Respondent and as an expert witness called by the Respondent.

5. Miss Muir provided the Tribunal with a skeleton argument and we had before us reports of Mr. Richens and Mr. Nesbitt. Our attention was drawn to the cases of Cadogan and another v Morris [1999] 1 EGLR 59, 9 Cornwall Crescent London Limited v The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea [2005] EWCA Civ 324 and Cadogan v Sportelli - Lands Tribunal, 15th September 2006.

6. In advance of the hearing we had received reports from Mr. Nesbitt valuing the premium at £2,500 and from Mr. Richens valuing the premium at £1,100. By the time of the hearing Mr. Nesbitt had produced a supplementary report valuing the premium at £3,140 and Mr. Richens had produced a report valuing the premium at £2,143. Mr. Nesbitt's revised figure resulted purely from the decision in the case of Sportelli.

7. Miss Muir and Mr. Nesbitt confirmed that it was only the premium which we had to determine. The proposed (long lease) value was agreed at £80,000. The deferment rate and the capitalisation rate were disputed as was the percentage of the current value of the subject property which the marriage value represented. The current lease was valued at £76,000 by the Applicants and at £78,400 by the Respondent.

8. We heard argument from Miss Muir as to whether or not the Respondent having proposed a figure of £2,500 in the counter notice could revise the figure as there was no provision for amending the counter notice. She submitted that in effect the Respondent was now seeking to move the goal posts and amend the counter notice. It was accepted that the only reason for Mr. Nesbitt's revised valuation was the decision in Sportelli. The 1993 Act required a counter notice and the landlord puts forward his best case in the counter notice. Miss Muir stated that there was some case law on the subject and referred us to Cadogan v Morris. She submitted that the notices set the goal posts for negotiation, that there was no provision for amending a counter notice and that it would defeat the object of the counter notice if two days before the hearing a new figure could be proposed. The new figure represented a significant percentage increase and there were public policy and legal reasons for not allowing such a late revision because it rendered the notices and everything else ineffective. This was a way of amending a counter notice by the back door; moving the goal posts at the last minute. It was unusual for there to be a change in the law between notice and hearing and there was no authority on the specific point. There could be negotiations without the notices and to allow a last minute amendment to the counter notice would render the notice and counter notice irrelevant and anomalies could arise. There would be the wasted expense of employing surveyors and it would render the framework set down by 1993 Act meaningless. If the Respondent could not amend the counter notice two days before the

hearing then the Respondent had to rely on the initial basis for the valuation and the premium would be capped at £2,500.

9. Mr. Richens gave evidence referring to his report.
(a) He suggested that ignoring the decision in Sportelli the deferment rate should be 8%. There was an odd mixture of benefits and disadvantages for an investor and 8% he considered to be appropriate. The flat had particular properties and 8% was a reaction to the potential benefits of receiving vacant possession priced in many years time, etc. as required by the Act. If the subject property were in Central London then 6% or lower could be appropriate but in this particular case location was a factor. Obsolescence was also a factor but he paid very little account to it. The situation was changing because there was an increasing supply of such flats in area. A studio flat was not everybody's choice. Most people preferred a separate lounge and dining room and there was a small risk of obsolescence. Mr. Richens suggested that there was no justification for a deferment rate of 5% because lower interest rates were used for significantly better investments than a small bed sit in Dartford but that if 5% did apply then the capitalisation rate should be increased to 9%. If some of the significant attractive benefits of an investment are removed then that would work to reduce the investment yield. The investment would then be much more directed to collection of annual ground rent which is onerous, time consuming and expensive and the capitalisation yield must be adjusted because attractive benefits had gone out of the investment. The low value of the subject property did not have much effect and any effect was vanishingly small if it existed at all.
(b) As to relativity value, he considered that 98% was correct. The sort of purchasers who would buy a studio flat for owner occupation were generally at the full extent of their purchasing powers. They would not pay significant sums of money to have a lease extended beyond 79 years which in the eyes of most people was a bewildering length of time. Most owner occupiers bought a studio flat intending to move on in a short time. Most would not pay £4,000 to extend the lease. Mr. Richens' view was that the percentage increase should be nominal but not above 2%. He accepted that tribunal decisions were against him because most tribunal decisions were in respect of more expensive properties. The extended lease would attract some purchasers. His perception of the market in Dartford was that the subject property was at the bottom of the market. Many mortgagees would lend at that level but because the ability to extend is as of right all solicitors and valuers would advise that a lease extension be sought. However it was not needed until the unexpired term was significantly under 70 years. If statutory rights to extend did not exist then there would not be much differential between a 79 year or 169 year lease. Mr. Richens believed in his valuation.
(c) He had no directly relevant market evidence of sales of leases but he stated that he deals with valuations of these properties all the time. Although not doing that here, when carrying out mortgage valuations or surveys taking account of condition there was a 10% error margin. To try and tease out even a 3% - 5% difference in respect of properties with different locations, kitchens, carpets, or whether facing a railway etc. was very difficult. He had been a valuer in the area all his life. His valuation was correct in his opinion but he did not have the evidence to support it. Mr. Nesbitt's comparables as to marriage value uplift were not in the immediate area and were largely of more expensive properties and in Mr. Richens' opinion the figures did not apply in Dartford. As to Mr. Nesbitt's comparables in respect of current market values these were sales of flats in the same development. Mr. Richens believed these properties were of similar size. They would fall within a margin of uncertainty. There would be minor differences. They may be top floor or ground floor. Mr. Richens had originally valued at £78,000 but had chosen £80,000 in an effort to resolve the

matter. There was nothing in the comparables to support one figure or another. It was not known whether the flats sold had, for example, good fittings etc. He considered that whether the flats were top floor or ground floor or whether they were on the side next to or away from the railway would make little difference. Some people would pay more for a different aspect but this occurred mainly on new developments.

10. Mr. Nesbitt submitted that in the case of Sportelli the Lands Tribunal said that they had tried to go further than the case of Arbib v Cadogan and made that clear. As a public tribunal they had a duty to the public at large not just to the parties and were saying now that they were wanting consistency. There may be anomalies but in broad terms the scheme is the appropriate course and should be followed unless compelling evidence to the contrary is produced.

11. Mr. Nesbitt gave evidence referring to his report, supplementary report and other documents produced.
(a) He stated that as there was now agreement as to the value of the extended lease nothing turned on those comparables.
(b) As to the list of comparables which he produced in support of a 5% uplift for the relativity value, he had used cases where the lease term was about the same as in this case. He also referred to previous Leasehold Valuation Tribunal decisions where the term was about 79 years.
(c) He stated that most of his experience was of London and its suburbs; Greater London not prime Central London. He had experience of the Dartford area having dealt with half a dozen cases in that area last year. Some had been agreed but none were on the list of comparables because some concerned shorter leases and therefore were not used as comparables. His use of 7% in his original report was based on his experience and was his opinion in March 2006. He had changed his valuation purely as a result of the decision in Sportelli. His analysis had been based on the final price agreed. Usually the price of the leasehold and of the freehold was agreed and the dispute was the percentage relativity. The settlements provided further information. Mr. Nesbitt referred to No. 210 Friern Road SE22 on the list which he had produced and stated that this was a lease extension and that where, for example, six people are involved they are more likely to hold out for the best deal because they share the costs. Theoretically enfranchisement is better than a lease extension because the lessees get control but in practice there is no difference. The same relativity rate applies in enfranchisement and new lease claims. Since the Commonhold and Leasehold Reform Act 2002 there is the right to manage and therefore less difference. Maybe lessees see a psychological difference but there may be arguments the other way where lessee managed blocks run into difficulties between the lessees themselves. He agreed that his examples were of much higher valued property and stated that he had found no market evidence of property such as the subject property. He considered that 2% to 5% was still within the rates of tolerance and that evidence from market sales would not assist because differences between individual flats would mask any differences in respect of lease terms. He considered that a studio flat at £78,000 was not at the bottom of the market because there would be owner occupiers looking to get onto the market and other purchasers buying to let and the latter would not be struggling to get the money together to purchase. The subject property was not owner occupied. The Applicants were investors. That did not make the property worth more or less. He thought that a purchaser in the market place would be prepared to pay £4,000 more to buy the longer lease. A buy to let purchaser would be concerned about capital appreciation. Some investors look at their portfolio and see those

leases just about to go under 80 years to run and where they would have to pay marriage value and are concerned. There are issues of mortgage and marketability. There is not much return of rent. They consider it worth the cost to extend the lease or buy the freehold because it secures their investment. Otherwise each year their investment diminishes. The subject property could be bought as an investment. There was difficulty in valuing this sort of interest because there are no hard and fast criteria. There are some attractions for some purchasers and other attractions for others. There is the ground rent income but also other sources of income such as management profit, insurance commission and capital payments for alterations. Typically an investor for this type of property is looking at not just rent and reversion. The 7% capitalisation rate was not necessarily chosen because it was the same as the deferment rate. He had been valuing and agreeing at 7% for both but in other cases might have used different percentages. It was common before the decision in Sportelli to use the same for both but he picked 7% because that was the prevailing percentage at the time. He had then been guided by that decision as to the deferment rate but as far as the capitalisation rate was concerned there was no similar guidance. That question was not before the Lands Tribunal. Agreement as to capitalisation rate was a separate issue entirely. He had not heard that valuers had looked at the capitalisation rate following the decision. The two rates were not related in any way. For example if 6% is agreed for the capitalisation rate that is still correct. It was difficult to say why he had not used 5% for both but he used 7% and had not heard of many valuers changing the capitalisation rate since the decision. However, the decision said that valuers were wrong to use 7% for the deferment rate and that the freeholder's interest was being undervalued.

12. Miss Muir submitted that the ruling in Sportelli was not cast in stone but should be followed unless there were good reasons not to follow it and that there could be a departure from 5% if that percentage were not appropriate in a particular case. Traditionally location, the likely increase in value, whether the property was a house or a flat and obsolescence would all have a bearing. In the case of Sportelli the property was in Central London where 5% prevailed. This was far removed from a studio flat in suburban Dartford. The inflation rate was not the same as in Central London. There was no valuer's evidence in support of departing from 5% except that the facts spoke for themselves. Both valuers had quoted a deferment rate higher than 5% before the decision in Sportelli: Mr. Nesbitt 7%, Mr. Richens 8% but the general view at that time was that 5% was not appropriate. Neither valuer thought that 5% was right. The subject property was far from the property in Sportelli. There was a specialised market for studios, it could not be right to apply the 5% rule and once departed from it was open to the Tribunal to pick a figure. Mr. Nesbitt had no justification for 5% on comparables or any basis other than the decision in Sportelli. He had previously used 7% and presumably that was based on his experience.

13. As to marriage value, Miss Muir submitted that in the market place in the real world, between a 79 year and a 169 year lease the difference was negligible and the Tribunal should bear this in mind. The subject property was a low value property even with an extended lease and the difference was not as high as 5%. As to negotiated settlement of marriage values, it was necessary to determine the difference between a property with a longer lease and with a shorter lease. Market forces needed to be considered. Negotiated settlements, tables and Leasehold Valuation Tribunal decisions would become self fulfilling prophesies if followed. Miss Muir posed the question: would a buyer pay 5% more for a longer lease where the mortgagee is not very concerned about the length of the lease? Most buyers, she submitted would hold a property such as the subject property for only a short time and

investors do not always need mortgages. The examples we have are enfranchisement cases. Most leaseholders prefer to have the freehold if possible. Control may be a real factor where there is only a small number of flats. If the freehold is purchased then the lessees can self manage and save service charges. There is room for manoeuvre between 2% and 5% and if the subject property is at the bottom end of the market then the percentage should be at the bottom of that scale.

14. Mr. Nesbitt submitted that the decision in Sportelli referred to the location not affecting the deferment yield. In that case there had been evidence before the Lands Tribunal of market transactions covering a wide range of areas and it had been found that there was no difference as a result of location. Not just Central London but also Outer London had been considered. As to prospect for growth there was no statistical evidence that growth rates were higher in Inner London than Outer London.

Decision

15. The Tribunal considered the evidence which had been provided.

16. The 1993 Act as amended provides under Section S.39 (1) that a tenant has the right to acquire a new lease on payment of a premium. Section 48 provides for an application to a Leasehold Valuation Tribunal to determine items in dispute. Schedule 13 of the 1993 Act as amended provides for the calculation of the premium.

17. The only item said to be in dispute was the premium and we considered the reports of Mr. Richens and of Mr. Nesbitt.

18. We considered the point raised by Miss Muir about the supplementary report of Mr. Nesbitt and the increase in the figure claimed by the Respondent. We came to the conclusion that there was a requirement for the parties to include in the notice and counter notice figures which were realistic but if agreement was not reached and the matter came before a Tribunal then the Tribunal had to apply the law as at the date of hearing even if that produced a figure either lower than the lessee's figure or higher than the freeholder's figure.

19. We had to bear in mind the decision in Sportelli and we found no compelling evidence to depart from 5% as the deferment rate.

20. We considered that 8% should be the capitalisation rate. Again no specific evidence had been provided to the Tribunal and we were obliged to rely upon our collective knowledge and experience. We saw no merit in the opinion of Mr. Richens that if the deferment rate dropped to 5% then an investor would be seeking an increase in the capitalisation rate.

21. We decided to make our calculations on the basis of 79 years as the unexpired term rather than 79.15 years as in this case the sums involved were small and to calculate 0.15 of a year with the figures involved would make a difference of about 1%.

22. Mr. Nesbitt did provide some evidence of relativity and although such evidence must be treated with caution, this was the only evidence available to the Tribunal. In particular we found most persuasive the evidence as to 108 Disreali Road and 67 Grafton Road where the

unexpired terms were almost identical with that in respect of the subject property and we determined that 96% relativity was appropriate in the present case.

23. We calculated the appropriate sum to be paid for the Respondent's interest in the subject property as follows:

Purchase of ground rent.		£	£
Ground Rent	£30 p.a.		
13 years purchase @ 8%	7.9038		
		237	
Ground Rent	£60 p.a.		
33 years purchase @ 8%	11.5139		
PV of £1 @ 8% in 13 years	0.3676979		
		254	
Ground Rent	£90 p.a.		
33 years purchase @ 8%	11.5139		
PV of £1 @ 8% in 46 years	0.0299973		
		30	
			521
Freehold Reversionary value.	£80,000		
PV of £1 @ 5% in 79 years	0.0211858		
			1,695
			2,216
Marriage value			
Leaseholders' extended lease value	£80,000		
Landlord's extended lease value	0		
		80,000	
Less			
Landlord's existing interest	£ 2,216		
Leaseholders' existing interest	£76,800		
		79,016	
		984	
50% of marriage value			492
Premium payable			2,708
			Say £2,710

R. Norman
Chairman.