## RESIDENTIAL PROPERTY TRIBUNAL SERVICE

# <u>LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANEL</u>

Case Number: CAM/38UC/OCE/2005/0044

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

In the matter of: Hartley Court, 84 Woodstock Road, Oxford, OX2 7PF.

Parties: Hartley Court (Oxford) Ltd Applicant

T H Kingerlee and Sons Ltd Respondent

Representatives:

Mr Pridell Andrew Pridell Associates Ltd for the Applicant

Mr Clargo Counsel for the Respondent
Mr Lindley Savills for the Respondent

Hearing Date: 7th December 2005.

Tribunal members:

Mrs H Bowers MRICS Mrs T J Gordon Mr R V N Auger FRICS

Decision Date: 10th March 2006

### 1. Introduction

- 1.1 This matter relates to Hartley Court, 84, Woodstock Road, Oxford (the subject property) and an application pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").
- 1.2 On 5<sup>th</sup> April 2005, Hartley Court (Oxford) Limited served a notice on the landlords, T H Kingerlee & Sons Ltd under section 13 of the Act. The premium proposed in the initial notice was £260,000. A counter-notice was served on 10<sup>th</sup> June 2005 by T H Kingerlee & Sons Ltd that recognised the Applicant's right to collectively enfranchise and proposing a premium of £511,000. An application was made on the 31<sup>st</sup> August 2005 to the Tribunal to determine the terms of acquisition that were in dispute between the parties.
- 1.3 It appears that all aspects dealing with the transfer have been settled and the only issues that remain in dispute relate to various elements of the valuation and the question of costs. Both aspects are now considered below.

## 2. The Law

- 2.1 Chapter I of the Act sets out the provisions for the collective enfranchisement of a property. Schedule 6 of the Act sets out the provisions for the calculation of the premium that is payable in respect of the freehold interest of the property.
- 2.2 In this matter, Section 33 of the Act needs to be considered in relation to costs incurred in connection with the enfranchisement that are payable by the tenant.

## 3. <u>Inspection</u>

3.1 Shortly prior to the hearing the Tribunal had the opportunity to carry out an inspection of the interior and exterior of the subject property. The property is a four storey, purpose built development of twenty four flats in three blocks. The development is located on the corner of Woodstock Road and St Margaret's Road and relatively close to Oxford City Centre. The development

is of brick and slate hung construction with a flat roof. There are gardens to the front and side of the development. At the rear is a parking area and access to garaging either on the ground floor of the development or in a block of garages.

- 3.2 There are eight studio flats and sixteen two bedroom flats, each with a garage. We made internal inspections of a number of the studios, as agreement had been reached on the issues relating to the two bedroom flats. We made an internal inspection of flats 9, 14 and 15. In general these flats provide the same accommodation, although they have been differently configured by the leaseholders. The accommodation comprises one large studio room, a separate, reasonable sized kitchen and a bathroom with a WC. The corridor in each flat provides some storage cupboards. Some of the flats have upgraded the bathroom and kitchen fittings, but we were able to see some indication of the quality of the original fittings. Originally all the flats had ducted warm air heating.
- 3.3 We also made a brief internal inspection of 28 Russell Court that has been used by both parties as a comparable property. This flat is situated in a purpose built development opposite to the subject property. The accommodation comprises a living room with views onto attractive communal gardens; a modern, good sized kitchen, a double bedroom and a modernised bathroom; there are storage cupboards in the hall area. The flat has ducted warm air heating and this was supplemented with night storage heaters. There is a covered car space beneath the development. We made a brief external inspection of Butler Close situated at the corner of Woodstock Road and Leckford Road, a purpose built development of flats which includes comparable studio flats. We also made a very brief external inspection of 8 Staverton Road, upon which little reliance was made during the hearing.

#### 4 The Leases

4.1 In the papers submitted to the Tribunal, there was a copy of a sample lease of the units within the development. The lease for 1 Hartley Court is dated 17<sup>th</sup>

April 1974 and is between Kingerlee Limited, as the Landlord, and Margaret Lilian Hayward and Elizabeth June Organ, as the Tenants. The lease is for a term of 99 years from 25<sup>th</sup> December 1972 at an annual rent of £45 for the first twenty five years, rising to £94 for second twenty five years, £197 for the third twenty five years and £413 for the final period of the term. The studios have a different ground rent regime, but we have assumed that the lease terms are in a similar format to the sample lease that was provided. We understand that there is a lease for the common parts, but we were not provided with a copy of the lease. The Lease of the common parts is for a term of 99 years from 25<sup>th</sup> December 1972 at a fixed rent of £10 per annum.

## 5 Agreed Matters

- 5.1 The Valuers provided an agreed statement of facts in which amongst other issues, the following matters have been agreed:
  - i) The ground rents and review patterns.
  - ii) A yield of 7.5% for the term and the reversion.
  - iii) The value of the existing unimproved leasehold interest of the two bedroom flats.
  - iv) The valuation date is 5<sup>th</sup> April 2005.

### 6. Matters in Dispute

- 6.1 The following issues are still unresolved and were brought to the Tribunal for our consideration:
  - i) The value of the existing unimproved leasehold interest of the studio flats, namely 9, 10, 11, 12, 13, 14, 15 and 16.
  - ii) The marriage value lift.
  - iii) Accordingly the premium to be paid on the enfranchisement.
  - iv) Costs under Section 33 of the Act.

## 7 Hearing

7.1 A hearing was held on 7<sup>th</sup> December 2005 at the Oxford Conference Centre, Oxford. It was necessary for the Tribunal to meet on 6<sup>th</sup> January 2006 in order to make a full consideration of the various issues. The Tribunal had access to a piece of information relating to the sale of 15 Hartley Court that was sold for £155,000 in March 2005. The details of this sale were made available to the parties with a request that written representations in respect of this transaction should be sent to the Tribunal.

### Applicant's Case

#### Valuation Elements

- 7.2 There are no lifts in the development and as the flats are located on the ground and three upper floors there should be a distinction in value between the flats. In general flats on the ground and first floors would attract a higher premium than those on upper floors, where access is more difficult. A distinction should also be made between flats located with a westerly aspect as compared with those with an easterly aspect and a view onto the rear car park.
- 7.3 There are three relevant comparables in the locality. Contracts had been exchanged for 28 Russell Court on 3<sup>rd</sup> December 2005 at a price of £194,000; this price reflected a share in the freehold interest. Details of this flat are provided in paragraph 3.2 above. 1 Butler Close completed in July 2005 for £140,000 for a 999 year lease. The property is a studio and the development is in quite pleasant grounds, but Mr Pridell did not think the development was as architecturally attractive as Hartley Court. 8 Staverton Road is a one bedroom flat in a converted house that sold for £148,500 in October 2005 for a share of the freehold. By using the above sales evidence and making adjustments to reflect the situation of each flat, the accommodation provided and the level of refurbishment and the dates of the sales evidence, Mr Pridell considered that the unimproved value of a long leasehold interest in each of the studios were as follows:

East Facing Flats

Flat 9 £182,500

Flat 11	£182,000
Flat 13	£181,500
Flat 15	£181,000

### West Facing Flats

Flat 10	£187,500
Flat 12	£187,000
Flat 14	£186,500
Flat 16	£186,000

£1,474,000

- 7.4 With regards to the question of marriage value, Mr Pridell acknowledged the problems of relying on previous LVT decisions. The relativity graphs produced by Mr Lindley should be treated with caution as they generally relate to the centre of London and are an indication of opinions rather than evidence of market transactions. However, the LVT decision of Murray Court, Oxford needed to be considered in this case. The decision for Murray Court is dated 2003 and Respondent in that case was the same as the current case. Murray Court is a very similar development as the subject property and is in very close proximity to the subject property. In that case marriage value uplift of 6% was determined when the leases had a period of 72 years unexpired. It was noted that the subject property is attractive to people of an older age profile than the average in the market. As such older people would have less concern about the shorter length of the leases and therefore there should not be such a marked difference in the uplift between short and long lease interests. As a rule of thumb an increase of 0.5% per annum should be used for unexpired terms of between 80 and 60 years. From the LVT decision on Murray Court and given the age profile of the occupants of the subject property, Mr Pridell was of the opinion that the marriage value uplift in the present case was 9%.
- 7.5 It was noted that Flat 12 was a non participating leaseholder and accordingly there was no marriage value element for this flat. It was also suggested that there would be no hope value for this unit. Applying this marriage value uplift, Mr Pridell was of the opinion that the total value of the existing unimproved

leasehold interest of the studios was £1,352,000. By placing these elements into the valuation template, a figure of £325,000 has been submitted as the premium on enfranchisement. Mr Pridell's valuation is shown in Appendix 1.

of Flat 15. It was confirmed that the sale was completed on 7<sup>th</sup> September 2005 at £155,000. The purchaser had been occupying the flat on an Assured Shorthold Tenancy prior to the sale. At the time of the sale the purchaser was of the opinion that a sum of approximately £10,000 would be due as a contribution to the purchase of the freehold. Independent valuation advice at the time indicated that the flat was worth between £160,000 to £165,000. Given this new information Mr Pridell was of the opinion that the long unimproved value of the studios should be revised to £170,000.

#### Costs

7.7 Mr Pridell was of the opinion that the surveyors' fees for dealing with this matter were excessive. Reference was made to a LVT decision in which a fee of £2,500 was determined for a case which was far more complex than the case under current consideration. Accordingly Mr Pridell was of the opinion that a fee of £1,500 plus VAT would be appropriate in this case.

### Respondent's Case

7.8 In respect of the capital values of the studios, Mr Lindley has relied upon the evidence of 1 Butler Close and 28 Russell Court. With respect to 1 Butler Close, this is a studio flat and with an area of 22.66 sq m is significantly smaller than the subject studios, which have an area of 34.62 sq m. Mr Lindley has taken the sale price of this property of £140,000 and adjusted this to reflect the size and superior quality of the Hartley Court studios. This produces a capital value of £198,159 for an unimproved, 66 year leasehold interest for a Hartley Court studio. By using the asking price of £197,000 for Russell Court and making adjustments to reflect the quality of the block, the lack of a garage, the difference in size, condition and the longer length of the interest for the Russell Court flat, Mr Lindley suggested that this comparable would produce a capital value of £180,000 for an unimproved, 66 year leasehold interest for a

Hartley Court studio. Averaging these two comparables a value of £190,000 was adopted as the unimproved, 66 year interest for the studios of the subject property.

- Turning to the question of marriage value uplift, it was acknowledged by Mr 7.9 Lindley that there was virtually no market evidence to help determine this issue. Therefore there must be reliance upon LVT and Lands Tribunal decisions. Mr Lindley has analysed these using strict criteria including 2004 and 2005 decisions, decisions in the London, Southern and Eastern regions, cases with unexpired terms of five years either side of 66 years, excluding all lease extension cases and missing landlord cases. From these core decisions and after making an adjustment to reflect three decisions that appear to be out of line with the general trend, there was shown to be an uplift of 13.2% and this has an equivalent relativity of 88.4%. Mr Lindley also produced a series of graphs from various sources showing the level of relativity that is appropriate for the unexpired terms. These graphs suggested a relativity of 84% and an uplift of 19% for a lease with an unexpired term of 66 years. Finally Mr Lindley produced details of some research carried out by Savills showing the actual relativities of long and short lease transactions and then deducting 5% to give effect to the assumption of a "No Act World". This research suggested a relativity of 87.2% and an uplift of 14.7%. From these various sources of data, Mr Lindley adopted a relativity/uplift of 88.1% /13.8%.
- 7.10 Regarding the question of the non participating tenant Mr Lindley adopted a hope value of 25% to reflect that the lease was relatively short and that given this was a high value block of flats and this was the only non participating tenant then there would be a very good chance there would be an eventual request for a lease extension. Some evidence regarding hope value was produced from other LVT decisions. By applying these factors into his valuation he calculated that the premium would be £489,000. Mr Lindley's valuation is reproduced in Appendix 2 of this decision.
- 7.11 The response from Messrs Darbys regarding the new information on 15 Hartley Court, confirmed the transactional details and stated that it was

believed that this unit was on the top floor with views overlooking the car park. It was suggested that the transaction was not a true market transaction as the purchaser had previously held a tenancy and there may have been other matters which could have had an effect on the price achieved.

#### Costs

7.12 The proposed valuation fees under Section 33 of the Act were £5,000. This figure was based on a figure of £200 per flat and then rounded up to £5,000. We were also shown an analysis of the fees on the basis of the time spent. The figures showed that 38.5 hours were spent and that Mr Lindley's charging rate is £125 per hour. Mr Lindley gave a brief description of the various aspects including research that had to be carried in producing a valuation. We were directed to an LVT decision in which a valuation fee of £3,000 had been determined and this equated to £250 per flat.

## 8. <u>Determination</u>

First the Tribunal turned its' attention to the capital value of a long leasehold 8.1 interest of the studios in Hartley Court. We started by examining the long lease value, as that was the evidence that was presented to the Tribunal. With regards to the Russell Court comparable, we considered that this at least would provide a ceiling for the valuation of Hartley Court. The price of £194,000 reflects a property that is fitted out to a higher standard than the subject block. The accommodation is significantly larger and a one bedroom flat must be more attractive than a studio. It was noted that Hartley Court was regarded as a more prestigious development, but we found that the gardens and aspect of the flat in Russell Court was quite attractive. We noted that Mr Lindley was unaware that the sale on this flat had been completed and his acknowledgement that his figures should have had a slight adjustment accordingly. Using this transactional information and adjusting this to reflect the better level of presentation, in comparison to the assumed condition of the subject premises, but also to reflect the availability of a covered car space in comparison to a garage, then we are of the opinion that a long lease, unimproved value of a studio in Hartley Court would be £180,000. Likewise taking the sales evidence from Butlers Close and adjusting for size and the fact that this development is perceived to be poorer than the subject development then we are of the opinion that this would support a figure of £180,000 for the unimproved long lease interest in Hartley Court. We considered that Mr Lindley had been too generous in his adjustments of the Butler Close transaction, particularly with regards to the adjustment to reflect the difference in floor area. We have not made a differential between the floors to reflect the lack of a lift as we consider that the benefit of the views achieved on the upper floors would outweigh this disadvantage. However we do accept that there is a difference between the different aspects of the building. We have therefore reduced the flats with an easterly aspect by £2,000.

- With regards to the short lease unimproved value, we were interested in the sale of 15 Hartley Court and felt we could use this as some check, but we did note that as this transaction was not fully at arms length with placed little weight upon it. Turning to the use of Murray Court as some guidance to this Tribunal on the question of uplift, Mr Lindley argued that Murray Court was not relevant due to the passage of time. We consider that this was not as relevant as the perception of the issue of relativity would not be so affected by time as market values. However, we consider that there is not a direct straight line relationship between a term with 72 years unexpired and 66 years unexpired. As time goes on and the term decreases the market would perceive an acceleration in the depreciation of the asset.
- 8.3 Evidence form open market arms length transactions of short leases or detailed agreed settlements of cases are far more preferable to assist in the determination on the question of relativity/uplift to the production of graphs, where the full details of the contributing factors are too far away for full scrutiny. In addition Mr Lindley when determining his relativity percentage from previous LVT decisions omitted three low figures as he felt these were out of line. Statistically he should have perhaps taken a similar view of the three highest percentages. By carrying out this exercise then the uplift would have been reduced to 10.5%. We are of the opinion that considering the information in front of us the uplift in this case would be 11%. We have based this figure upon Mr Lindley's evidence from a range of LVT decisions and

having some account of the determination in the Murray Court decision but allowing for increased depreciation of an asset over time.

8.4 It is acknowledged that at some stage in the future the leaseholder of Flat 12 may seek a lease extension. However, as there is only one non-participating tenant and there is still 66 years unexpired then the chances of a future extension are reduced. We consider that in this case that it would be appropriate to determine hope value at 10%.

#### Costs

8.5 We considered that the valuation fee was high. Whilst there are a number of flats in the development, there would be some economies of scale in the preparation of the valuation. We are of the opinion that on the time sheet basis the necessary preparatory work and valuations would not have taken 38.5 hours. Mr Lindley as a surveyor dealing with this aspect of valuation work should have detailed knowledge of yields and relativities. Accordingly the Tribunal determine that a reasonable amount of time that should have been spent on this case would be £28 hours. At a charging rate of £125 per hour this would produce a fee of £3,250 plus VAT.

#### 9. Decision

- 9.1 The long lease interest in the studios with a westerly aspect have been valued at £180,000 and those studios with an easterly aspect have been valued at £178,000.
- 9.2 The uplift has been determined at 11%.
- 9.3 Hope value on the non-participating flat has been determined at 10%.
- 9.4 Accordingly the premium for the enfranchisement is £384,840 and the Tribunal's valuation is shown in Appendix 3.
- 9.4 The valuation fees under Section 33 are determined at £3,250 plus VAT.

Chairman

Helen C Bowers

Date: 10/03/2006

## Appendix 1

## Applicant's Valuation

Valuation of Hartley Court

## i) Capitalisation of Ground Rental Income

Ground rents 2005 – 2022 £1,504 16 Flats @ £94 £ 336 8 Flats @ £42 £ 10 Common Parts @ £10 £1,850 9.434 YP 17 yrs @ 7.5% £17,452 Ground rents 2022 – 2047 £3,152 16 Flats @ £197 £ 704 8 Flats @ £88 Common Parts @ £10 £ <u>10</u> £3,866 11.1469 YP 25 yrs @ 7.5% PV of £1 in 17 yrs @ 7.5% 0.2924 3.25<u>93</u> £12,600 Ground rents 2047 - 2071

YP 25 yrs @ 7.5% 11.1469 PV of £1 in 42 yrs @ 7.5% 0.0479 0.526

0.526 £ 4,251 £34,303

## ii) Value of Reversion

Reversion to Capital Value £6,342,000

Adjust to freehold 9% £6,912,780

PV of £1 in 66 yrs @7.5% 0.0084

Total value of Freeholder's interest £92,370 c/f

b/f £92,370

£58,067

## Marriage Value

Existing unimproved leasehold interests £6,342,000

Virtual freehold (+9%) £6,912,780

Less

1. Existing unimproved leasehold interests £6,342,000

2. Freeholder's Interest £ 92,370

<u>£6,434,370</u>
Marriage Value <u>£478,410</u>

Freeholders's 50%share £239,205 £331,205

Less

### Marriage Value of Flat 12

i) Capitalisation of Ground Rental Income

Ground rents 2005 – 2022 £42 YP 17 yrs @ 7.5% 9.434

£396

Ground rents 2022 – 2047 £88

YP 25 yrs @ 7.5% 11.1469 PV of £1 in 17 yrs @ 7.5% 0.2924

3.2593

£287

Ground rents 2047 – 2071 £183 YP 25 yrs @ 7.5% 11.1469

PV of £1 in 42 yrs @ 7.5% 0.0479

0.526 £ 96

£776

ii) Value of Reversion

Reversion to Capital Value £171,500

Adjust to freehold 9% £186,935 PV of £1 in 66 yrs @7.5% 0.0084

Total value of Freeholder's interest  $\frac{£1,570}{£2,346}$ 

Marriage Value

Existing unimproved leasehold interests £171,500
Virtual freehold (+9%)

Less
1. Existing unimproved leasehold interests £171,500
2. Freeholder's Interest

Marriage Value
Freeholders's 50%share

£173,846
£13,089

£6,544
£325,031

## Appendix 2

## Respondent's Valuation

## Diminution in the Value of the Freehold Interest

As	Existing	<ul> <li>Participating</li> </ul>

Term 1 Profit Rent YP 17 Yrs @ 7.5%	£1,808 9.430	£17,057	
Term 2Profit Rent YP 25 yrs @ 7.5% PV 17 yrs @7.5%	£3,778 11.1469 0.2924530	£12,316	
Term 3 Profit Rent YP 24 yrs @ 7.5% PV 42 yrs @ 7.5%	£7,899 10.9830 0.0479562	£4,160 £33,533	
Reversion to Capital Value Less tenants improvements PV 66 yrs @7.5%	£7,152,330 £0 £7,152,330 0.0084536	£60,463	£93,996
As Existing Non-Participating Term 1 Profit Rent YP 17 Yrs @ 7.5%	£42 9.430	£396	
Term 2Profit Rent YP 25 yrs @ 7.5% PV 17 yrs @7.5%	£88 11.1469 0.2924530	£287	
Term 3 Profit Rent YP 24 yrs @ 7.5% PV 42 yrs @ 7.5%	£183 10.9830 0.0479562	<u>£96</u> £779	
Reversion to Capital Value Less tenants improvements PV 66 yrs @7.5%	£210,530 £210,530 0.0084536	£1,780	
Total Existing			£2,559 £96,555

## After Grant of Freehold

Freeholder's interest Diminution in Value of Freehold		£0	£0	£96,555
Marriage Value of Participating Flat	s			
Lessee' Present Interest Less value of Studio flat 12 Less for tenant's improvements	£6,470,000 £185,000 £0 £6,285,000			
Freeholder's present interest participating	£93,996			
Total value of current interests		£6,378	,996	
Lessee's new interest Less non participating flat Freeholder's interest after grant Total value of proposed interests	£7,362,860 £210,530 £0	£7,152	2,334	
Hence Marriage Value		£773	,334	
At 50% split				£386,667
Marriage Value of Non-Participatin	g Flat			
Less for tenant's improvements		5,000 £0 5,000		
Freeholders present interest	£	2,559		
Total value of current interests			£187,559	
Lessee's new interest Freeholders interest after grant Total value of proposed interests	£210	0,530 £0	£210,530	
Hence marriage value			£22,971	
Hope Value of Marriage Value 259	<b>%</b>			£5,743
Premium				£488,965

Say £489,000

## Appendix 3

## Leasehold Valuation Tribunal's Valuation

## Valuation of Hartley Court

## i) Capitalisation of Ground Rental Income

Ground rents 2005 – 2022 16 Flats @ £94 8 Flats @ £42 Common Parts @ £10 YP 17 yrs @ 7.5%	£1,504 £ 336 £ 10	£1,850 9.434	£17,452
Ground rents 2022 – 2047	C2 1 <b>52</b>		
16 Flats @ £197	£3,152 £ 704		
8 Flats @ £88	£ 704 £ 10		
Common Parts @ £10	£ 10	£3,866	
YP 25 yrs @ 7.5%	11.1469	25,000	
PV of £1 in 17 yrs @ 7.5%	0.2924		
1 V 01 21 m 17 y13 @ 7.370	<u>0.272 1</u>	<u>3.2593</u>	
		<u> </u>	£12,600
Ground rents 2047 – 2071			,
16 Flats @ £413	£6,608		
8 Flats @ £183	£1,464		
Common Parts @ £10	£ 10		
<u> </u>		£8,082	
YP 25 yrs @ 7.5%	11.1469		
PV of £1 in 42 yrs @ 7.5%	0.0479		
		<u>0.526</u>	
			£ 4,251
			£34,303

## ii) Value of Reversion

Reversion to Capital Value PV of £1 in 66 yrs @7.5%	£6,970,898 <u>0.0084</u>	
		£58,555
Total value of Freeholder's in	terest	£92,858c/f

£92,858 b/f Marriage Value £6,970,898 Proposed Freehold Interest Less 1. Current unimproved leasehold interests £6,280,088 2. Current Freeholder's Interest £ 92,858 £6,372,946 £597,952 Marriage Value £298,976 Freeholders's 50%share £391,834 Less Marriage Value of Flat 12 i) Capitalisation of Ground Rental Income £42 Ground rents 2005 – 2022 YP 17 yrs @ 7.5% <u>9.434</u> £396 £88 Ground rents 2022 - 2047 11.1469 YP 25 yrs @ 7.5% PV of £1 in 17 yrs @ 7.5% 0.2924 3.2593 £287 £183 Ground rents 2047 – 2071 11.1469 YP 25 yrs @ 7.5% PV of £1 in 42 yrs @ 7.5% <u>0.0479</u> 0.526 £ 96 £776 ii) Value of Reversion £180,000 Reversion to Capital Value 0.0084PV of £1 in 66 yrs @7.5% £1,512

Total value of Freeholder's interest

£2,288

Proposed interest

£180,000

£15,550

Less

1. Existing unimproved leasehold interests £162,162

2. Freeholder's Interest

£ 2,288 £164,450

Marriage Value

Freeholders's 50%share

£7,775

£384,059

Hope Value

Marriage Value of Flat12 £7,775

Hope Value at 10%

£777

£777 £384,836

Premium Say

£384,840