SOUTHERN RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

DECISION AND REASONS ON AN APPLICATION UNDER SECTION 24 OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Case No:	HI/00ML/OCE/2007/0061
Property:	20 Ventnor Villas, Hove, East Sussex BN3 3DE
Applicant:	20 Ventnor Villas (Hove) Limited
Respondent:	Tulipwood Limited
Application:	05 September 2007
Directions:	13 September 2007
Hearing:	03 December 2007
Decision:	21 December 2007
Appearances:	For the Applicant: Mr G P Holden FRICS For the Respondent: Mr E Price, Counsel Mr L A Nesbitt FRICS

Members of the Tribunal:

Ms J A Talbot MA (Chairman)
Mr A O Mackay FRICS
Mr N J Cleverton FRICS

Summary of Decision
The Tribunal decided that the deferment rate should be 5%. There was no compelling evidence to depart from the guidance in the *Sportelli* appeals. As all the other elements of valuation were agreed the Tribunal did not examine these. The parties' valuers are to produce a final agreed valuation by 14 January 2008 which must be submitted to the Tribunal for approval so that the price to be paid for the freehold interest can be finally determined and a brief addendum to this Decision issued.

Introduction

1. This is an application pursuant to Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 ("The Act") by the nominee purchaser for a determination of the price to be paid for the freehold interest in 20 Ventnor Villas, Hove, East Sussex BN3 3DE ("the Property").

2. A Notice of Claim under Section 13 of the Act dated 3 January 2007 was served by the participating tenants on the landlord, Tulipwood Ltd. The purpose of the Notice was to exercise the participating tenants' claimed right of collective enfranchisement of the Property. The Notice nominated 20 Ventnor Villas (Hove) Ltd to be the Nominee Purchaser on behalf of the participating tenants.

3. The claim to collective enfranchisement was admitted by a Counter Notice dated 12 March 2007. The matter was subsequently referred to the Leasehold Valuation Tribunal for us to determine the purchase price payable for the freehold interest in the Property.

Law

4. Schedule 6 to the Act provides that the price to be paid by the nominee purchaser for the freehold interest shall be the aggregate of the value of the freeholder's interest, the freeholder's share of the marriage value, and compensation for any other loss.

5. The value of the freehold interest is the amount which at the valuation date that interest might expect to realise if sold on the open market subject to the tenancy by a willing seller (with the nominee purchaser, or a tenant of premises within the specified premises or an owner of an interest in the premises not buying or seeking to buy) on the assumption that the tenant has no rights under the Act either to acquire the freehold interest or to acquire a new lease.

6. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50% and that any marriage value is to be ignored where the unexpired term of the lease exceeds 80 years at the valuation date.

Inspection

7. The members of the Tribunal inspected the Property before the hearing accompanied by Mr Mellish, the owner of Flat 6. The Property consisted of a 4 storey substantial end of terrace house built in the 19th century of brick construction under a slate roof, now converted into 6 self contained flats. Externally the Property was in fair condition and decorative order.

8. We had access to the interior of Flats 1 and 2 in the basement, Flat 3 on the ground floor and Flat 6 on the second floor, all of which were in good condition and decorative order. The common parts were in fair condition although the carpet was worn.

Hearing

9. A hearing took place at Shoreham on 3 December 2007, attended by Mr G P Holden, a valuer instructed by the Nominee Purchaser, and by Mr L A Nesbitt, a valuer instructed by the Landlord, and Mr E Price of Counsel.

10. Directions were issued on 13 September 2007 requiring the parties to exchange valuers' reports, then for the valuers to meet and produce a joint report setting out those matters upon which they were able to agree and identifying all of the issues remaining in dispute. As a result, a Statement of Agreed Facts and Areas in Dispute was supplied in advance of the hearing along with the respective valuation reports, which were carefully considered by the tribunal.

Agreed Matters

11. In summary, these were:

    a. Details of the accommodation:
    Flat 1: Studio flat on the lower ground floor with use of front garden
    Flat 2: 1 bedroom flat on lower ground floor with enclosed patio
    Flat 3: 2 bedroom flat on the whole ground floor with rear garden
    Flat 4: Studio flat at the first floor rear
    Flat 5: 1 bedroom flat at the first floor front
    Flat 6: 2 bedroom flat on the whole of the second floor.

    b. The leases of all 6 flats are for a term of 99 years from 25 December 1981. The current ground rent for flats 1, 2 & 4 is £37.50pa riding to £56.25 and £84.37pa in 2030 and 2055. The current ground rent for flats 3 & 6 is £52.50pa rising to £78.75 and £118.12. The current ground rent for Flat 5 is £45pa rising to £76.50 and £101.25pa.

    c. The valuation date is 3 January 2007, the date of the Initial Notice.

    d. The unexpired lease term as at the valuation date was approximately 74 years.

    e. The unimproved value of the participating tenants' flats:

Flat 1	£100,000
Flat 2	£140,000
Flat 3	£230,000
Flat 6	£200,000
Total	£670,000

    f. Flats 4 & 5 are not participating. The agreed value of these flats on reversion is £110,000 and £137,500 respectively.

    g. The capitalization rate is 7%.

    h. The marriage value uplift is 6%.

i. At the hearing it was confirmed that the legal and valuation costs payable by the Nominee Purchaser to the landlord are £1,250 and £900 respectively each with VAT to be added as appropriate.

j. It was also confirmed that the terms of the transfer save as to price were agreed, although no draft of the transfer was produced.

Issues in dispute

12. Therefore the only item remaining in dispute, upon which the tribunal would be required to decide, was the deferment rate. Mr Holden contended for 6% and Mr Nesbitt for 5%.

13. The tribunal put to the parties that in view of the measure of agreement we would expect to see an agreed valuation, subject only to the deferment rate. We allowed some time for the valuers to discuss this. Mr Holden's valuation was £31,103 and Mr Nesbitt's was £39,530, with all elements agreed except for the deferment rate.

14. The parties confirmed that they were, in essence, seeking a determination in principle of what the deferment rate in respect of this property should be, in light of the Court of Appeal judgment in the *Sportelli* case, handed down on 25 October 2007 (neutral citation number [2007] EWCA Civ 1042).

The tenants' case

15. Mr Holden submitted that the starting point for any valuation of the freehold interest was Schedule 6 of the Act. Paragraph 3 referred to the value that the freehold interest might expect to realise on the open market. In his view, open market values would vary according to location, so the open market implicitly meant a local area.

16. In his view, the Lands Tribunal decision in *Sportelli* envisaged, at para.123, that there could be a departure from the generic rate of 5%. This was confirmed by the Court of Appeal in para.102 of its judgment, which in summary states that, in relation to properties outside Prime Central London (PCL) the deferment rate of 5% would no doubt be regarded as a starting point. However, issues relevant to the risk premium in different areas outside PCL should be considered by valuers and Tribunals. Mr Holden put forward 3 main points of evidence to support a departure from the starting point of 5%.

17. First, the Property was outside PCL and the area of Hove in which it was situated was inherently less attractive to investors. This in itself meant that a higher deferment rate applied. Secondly, the flats in the property were small, of relatively low value, and that the quality of tenants likely to be on low incomes could present management problems which would affect risk and therefore the deferment rate. Thirdly, the property was fully developed, having been converted into 6 flats rather than the normal 3 or 4 for a building of this type. In 74 years time it might well be obsolete but the size and location of the site offered no scope for further development.

18. Mr Holden concluded that taken together, these factors should be reflected in the open market value. His opinion based on instinct and experience was that a 1% increase to the 5% generic rate was appropriate.

19. In cross examination Mr Holden accepted that as a period property the risk of obsolescence was not the same as for a purpose built block of flats constructed in the 1970's, but stressed that location was still the prime factor with a strong local market for freehold reversions.

The landlord's case

20. Mr Nesbitt contended in his valuation that the deferment rate should be 5% and that there was no reason for departing from the *Sportelli* guidance in this case. In his view the market for freehold reversions was a national one. He therefore placed less importance on location. Whilst the properties in the *Sportelli* appeals were obviously of higher value than the subject property, he did not accept that this affected the risk premium because by acquiring more reversions for the same level of investment the exposure to risk was reduced by spreading risk potentially over many more reversions.

21. On the quality of tenants, Mr Nesbitt did not agree that this would be a reason to adjust the risk premium upwards. Legal remedies were available to landlords for breach of covenant regardless of the value of the flats. The values of the subject flats, though less than in the *Sportelli* appeals, were not insignificant and the tenants as owner occupiers had an equal incentive to look after their homes, as did buy-to-let investors to protect their investments.

22. On obsolescence, Mr Nesbitt contended that the subject property was comparable in age, style and character to the properties in the *Sportelli* appeals, (apart from Maybury Court) being of traditional construction from the Victorian period. He saw no reason why it should become obsolete.

23. Mr Nesbitt did not consider that the risk premium should be adjusted on the basis of a difference between expected rates of growth in capital values between Hove and the *Sportelli* properties. His research from the Land Registry indicated that property prices in Brighton and Hove had in fact risen at a higher rate than those in the City of Westminster and Kensington & Chelsea. He therefore concluded that there was no higher risk believed that analysis of market comparables was not the method of valuation used or endorsed by *Sportelli* this was not a basis on which to determine whether the generic rate of 5% for flats applied outside PCL.

24. Mr Evans emphasised the precedent effect of the Court of Appeal judgment and relied especially on para. 91 onwards. When dealing with properties outside PCL, substantive evidence was required to justify a departure from the generic rate. In his submission Mr Holden's points were impressionistic and did not amount to adequate reasons for such departure.

Decision

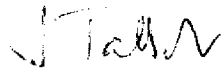
25. The tribunal considered all the written evidence and the representations made at the hearing. It was satisfied that the guidance in *Sportelli* must be followed and took particular account at para.102, that the deferment rate of 5% for flats "should be the starting point" for rates outside the PCL area, and that "it was possible to envisage other evidence being called, for example, on issues relevant to the risk premium for residential property in different areas".

26. It was for Mr Holden to justify any departure from the 5% starting point. The tribunal was not persuaded that the 3 factors put forward would affect the risk premium, and no other components of the generic rate were addressed. Although the property is outside the PCL area, the location itself did not inherently mean that the deferment rate should be higher; Hove was still an attractive area for investment purposes as at the valuation date, and in any event the tribunal took Mr Nesbitt's point on the national market in freehold reversions and the spreading of investment risk. The tribunal did not accept that there was a significantly higher possibility of management problems to as to adjust the risk premium and did not find the obsolescence

27. The tribunal therefore concluded that Mr Holden's evidence was not specific or compelling enough to justify a departure from the deferment rate of 5% and saw no reason to depart from the *Sportelli* guidance.

28. The deferment rate to be applied is therefore 5%. As all the other elements of the valuation were agreed the Tribunal did not examine these. The parties' valuers are to produce a final agreed valuation by 14 January 2008 which must be submitted to the Tribunal for approval so that the price to be paid for the freehold interest can be finally determined. A brief addendum to this Decision will then be issued.

Dated 21 December 2007



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Ms J A Talbot MA
Chairman