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**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CHI/OOHA/OLR/2013/0200-0208**

**Property** : **6,8,10,12,13,14, 21, 24 & 29  
Mayfields, Keynsham, Bristol BS31  
1BW  
David & Dawn Williams (Flats 6,8,  
12, & 13)**

**Applicant** : **Helen Meek (Flats 10 & 12)  
Robert Williams (Flats 21 & 24)  
Constance Coe (Flat 29)  
Piers Harrison, counsel instructed**

**Representative** : **by Whittuck, Taylor & Caines,  
solicitors**

**Respondent** : **Kingley Properties Limited**

**Representative** : **Stan Gallagher, counsel, instructed  
by Winckworth Sherwood,  
solicitors**

**Type of Application** : **Determination of premium or  
other terms of acquisition  
remaining in dispute section 48 of  
the Leasehold Reform, Housing  
and Urban Development Act 1993**

**Tribunal Members** : **Judge Tildesley OBE  
Mr I Perry FRICS**

**Date and venue of  
Hearing** : **13 and 14 February 2014 Vintry  
House, Wine Street, Bristol BS1  
2BP  
Decision deferred until end of April  
pending further directions on  
outstanding matters**

**Date of Decision** : **8 May 2014**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines the premium payable for each of the new leases for 6, 8, 10, 12, 14, 21 and 24 Mayfields, Keynsham at £15,700 in accordance with section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (1993 Act).
- (2) The Tribunal determines the premium payable for each of the new leases for 13 and 29 Mayfields, Keynsham at £15,940 in accordance with section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (1993 Act).
- (3) The terms of the new leases for the flats are those as agreed by the parties and set out in the copies of the forms of leases lodged with the Tribunal by the Respondent's solicitors on 12 March 2014.
- (4) The order for the Respondent's costs is set out in a separate determination.

## **The Application**

1. The Applicants seek a determination of the premium payable for each of the new leases in respect of 6, 8, 10, 12, 13, 14, 21, 24 and 29 Mayfields, Keynsham in accordance with section 48 of the 1993 Act.
2. The premiums proposed by the Applicants in the section 42 Notice were £11,000 each for 6, 8, 10, 12, 14, 21, and 24 Mayfields, and £11,200 each for 13 and 29 Mayfields. Flats 13 and 29 Mayfields had the benefit of garages. The Respondent proposed in its counter notice a premium of £28,500 for each flat.
3. By the end of the hearing the difference between the parties' respective proposals in respect of the premium had narrowed slightly. The Applicants' proposals were £11,901 (6, 8, 10, 12, 14, 21, and 24 Mayfields) and £12,089 (13 and 29 Mayfields). In contrast the Respondent's proposals were £25,236 (6, 8, 10, 12, 14, 21, and 24 Mayfields), and £27,262 (13 and 29 Mayfields)
4. The matters agreed between the parties in respect of the premium were as follows:
  - Valuation date : 14 May 2013
  - Ground rents: £6.30 for flats 6, 8, 10, 12, 14, 21, and 24 Mayfields; £7.35 for flats 13 and 29 Mayfields.
  - Lease expiry date: 29 February 2056

- Unexpired term: 42.79 years (Tribunal adopted 42 years 9 months)
- Capitalisation Rate: 7 per cent
- Share of marriage value: 50 per cent
- Flats 6, 8, 10, 12, 14, 21, and 24 Mayfields were of equal value irrespective of layout/level.
- Flats 13 and 29 Mayfields were of equal value irrespective of layout/level.
- Flats to be valued in their original state.

5. The matters in dispute were:

- Extended lease value
- Existing lease value
- The value to be allocated to a garage
- Deferment rate
- Premium

6. There had been three previous Tribunal decisions relating to flats on Mayfields. The first one<sup>1</sup> related to the flats which were the subject of this application except flat 29, and was released on 16 May 2011. The Tribunal determined a premium of £11,133 for all flats except flat 13, the premium of which was £11,457. The second decision concerned the premiums payable for flats 23 and 32, and was released on 25 June 2012. The premiums fixed were £11,200 and £11,000 for flats 23 and 32 respectively<sup>2</sup>. The Respondent sought permission to Appeal this decision, which was refused by the then Leasehold Valuation Tribunal and by the Upper Tribunal (Lands). The High Court refused the Respondent leave to review the decision of the Upper Tribunal. The final Tribunal concerned the premiums for flats 4 and 7 and was released 11 December 2013<sup>3</sup>. The premiums determined were £12,250 and £11,000 respectively for flats 4 and 7. The circumstances of this decision were out of the ordinary in that Mr Leon for the Respondent was barred from taking a further part in the proceedings.

7. Mr Gallagher for the Respondent requested the Tribunal to make a preliminary ruling on the weight to be attached to the previous Tribunal decisions. Mr Gallagher's position was that the Tribunal should be very slow to give any weight to the values decided in the earlier decisions, but should decide the case on the evidence before it.

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<sup>1</sup> BIR/00HA/OLR?2011/0018 Valuation Date: 12 May 2010.

<sup>2</sup> BIR/00HA/OLR/2012/0009 Valuation Dates: 15 September 2011 & 20 October 2011

<sup>3</sup> CHI/00HA/OLR/2012/0179 Valuation Dates: 17 October 2012 & 12 December 2011

8. Mr Harrison for the Applicants disagreed. He argued that unless it could be demonstrated that the previous findings of the Tribunals have been arrived at under a fundamental misapprehension, it was the duty of Tribunal to have regard to the previous findings as properly made. According to Mr Harrison, the landlord should only be allowed to put successive tenants to the trouble of re-litigating the same issue if it could be shown that the earlier decision was manifestly wrong.
9. Counsel referred to the following cases: *31 Cadogan Square Freehold v Earl Cadogan* [2010] UKUT 321 (LC) and *London Rent Assessment v St George's Court Limited* [1984] 1 EGLR 99.
10. The Tribunal considers the circumstances of the previous decisions part of the factual matrix of this application. They were particularly relevant in understanding the approach adopted by Mr Furze, the expert witness for the Applicants. The Tribunal, however, accepted that the previous decisions were not determinative of the issues in this application, which would be decided on an evaluation of the totality of the evidence. Both counsel agreed with the Tribunal's stance.

### **The Properties**

11. The properties were part of the Mayfields development which comprised 32 flats in eight blocks built in the 1950s to look like semi-detached houses. The buildings were of cavity construction with stone faced concrete blocks. They had timber framed pitched and tiled roofs. The dividing floors between the flats were of suspended timber joist construction. There were gardens to the front, rear and to the side of the blocks. The gardens were divided up between the flats for each block.
12. The overall perspective of the Mayfields development was uninspiring and had the initial appearance of a council estate. The development was within 250 metres of Keynsham High Street and adjacent to a public car park. Some of the flats had the benefit of garages located on a separate block on the development.
13. Keynsham was a small town approximately five miles from the centre of Bristol. Keynsham benefits from its own train station serving Bristol and Bath and was well situated for easy access to the A4.
14. The subject properties were all two bed room flats, with a mixture of first and ground floor locations. The square area (48.99 square metres) of the ground floor flats was slightly larger than that (44.20 square metres) of the first floor flats. The first floor flats had access to a balcony. Flats 13 and 29 also had the benefit of garages.
15. At the time the properties were built in 1957 they would have had single metal framed windows, a coal fire in the living room with a back boiler

providing hot water, a kitchen with sink unit and one worktop, and a bathroom with a three piece suite and heated towel rail.

16. All the subject properties have been improved to a greater or lesser degree. Some have replacement uPVC framed doubled glazed windows and doors, kitchens and bathrooms have been refitted, and central heating has been installed.
17. The Applicants held the properties under separate leases with identical clauses for terms of 99 years from 1 March 1957. The ground rent for the properties was £6.30 per annum except for flats 12 and 29 for which it was £7.30 per annum. The ground rent was fixed for the entire term.
18. Under the leases the Applicants' repairing obligations were:

“..to well and substantially repair, renovate, maintain, support, paint, pave, distemper, paper, cleanse and keep the demised premises and fixtures therein and all cisterns, pipes, wires, ducts, walls, drains, paths, screen fences in good repair, condition and cultivation”.
19. The Respondent's repairing obligations as landlord under the lease included:

“substantially repair and maintain (including replacement whenever such shall be necessary) the roofs of the said property both pitched and flat including timbers, tiles, roofing, felt, flashings, soakers, rainwater gutters and down pipes and to main walls, chimney stacks and foundations”.
20. Under the lease the costs of the Respondent's repairing obligations were to be charged back to the lessees.
21. The suspended timber joist construction of the dividing floors had very poor sound proofing qualities. This form of construction was not resistant to the spread of fire. There was evidence of cracks in the concrete blocks for most flats.
22. The Respondent had effectively relinquished its maintenance and management responsibilities under the lease with the result that the condition of the flats had been allowed to deteriorate. There was evidence of collapsing balconies at flats 28 and 30, broken and missing guttering on the block containing flat 25, the poor condition and state of the garage block and the lack of external redecoration<sup>4</sup>. Some lessees had decided to carry out the maintenance themselves. In this respect Mr Furze adduced evidence of an invoice for works to the roofing, guttering and fascias which were paid by the lessee.

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<sup>4</sup> A lessee's obligation which the Respondent had failed to enforce.

## The Law

23. The statutory provisions dealing with the premium payable by the Applicants for the grant of a new lease are found in paragraph 2, part 11 of schedule 13 of the 1993 Act. The premium is the aggregate of
- (i) The diminution in value of the landlord's interest in the tenant's flat.
  - (ii) The landlord's share of the marriage value.
  - (iii) Any amount of compensation payable to the landlord.
24. Paragraph 3(1) states that the diminution in value of the landlord's interest is the difference between:
- (i) The value of the landlord's interest in the tenant's flat prior to the grant of the new lease: and
  - (ii) the value of his interest in the flat once the new lease is granted.
25. Paragraph 3(2) spells out the factors to be taken into account when valuing the landlord's interest. Essentially the valuation equates with the value of an open market sale by a willing seller of an estate in fee simple which ignores the right to acquire a new lease and disregards any value attributable to tenant's improvements.
26. The value of the landlord's interest comprises two elements:
- (i) The right to receive rent under the existing lease for the remainder of the term (*The term*).
  - (ii) The right to vacant possession at the end of term subject to the tenant's right to remain in occupation (*The reversion*).
27. Paragraph 4 of schedule 13 deals with marriage value which is calculated by aggregating the values of the landlord's and tenant's interests after the new lease had been granted, and deducting the corresponding values prior to the grant of the new lease. The landlord is entitled to a 50 per cent share of the marriage value.
28. Paragraph 5 of schedule 13 enables compensation to be paid to a landlord for any loss or damage arising out of the grant of a new lease. The question of loss or damage was not an issue in this Application.

## The Hearing

29. The hearing was held on 13 and 14 February 2014. At the end of which the Tribunal deferred its decision on the premiums payable in order to give the parties an opportunity to indicate how they intended to proceed on the outstanding matters of the terms of the leases and costs. In this respect directions were issued requiring the parties to advise the Tribunal on the outstanding matters by 10 March 2014. The parties indicated that they had reached agreement on the terms of the new

leases but there was a dispute on landlord's costs. The directions stated that the Tribunal would determine the reasonable costs on the papers unless a party requested an oral hearing. No such request was made. The directions gave the parties until 7 April 2014 to make their representations on costs. The decision on costs is issued separately.

30. At the hearing the Tribunal heard evidence from the following:
- (i) Philip John Furze FRICS who was the expert witness called by the Applicants. Mr Furze was a chartered valuation surveyor of more than 30 years experience of valuing and surveying residential property. He was a partner in Davies & Way, Chartered Surveyors and Estate Agents which had been established in Keynsham since the 1960's, specialising in the sale and letting of residential and commercial property. Mr Furze had been based in Bath/Bristol throughout his career. He considered that he had expert knowledge of the residential property market in those areas.
  - (ii) Mr Furze's witness statement was dated 20 January 2014. Mr Furze declared that his primary duty was to the Tribunal and that he had endeavoured to ensure the accuracy of his opinions. His declaration was in the form required by the Civil Procedure Rules Part 35.
  - (iii) Mr Furze disclosed that he was part owner of the long leasehold interest in flat 23 Mayfields. The property was purchased in March 2006. The Tribunal determined the premium to extend the lease on 19 April 2012 (*BIR/00HA/OLR/2012/0009*). At previous Tribunal hearings the Respondent argued unsuccessfully that Mr Furze's duty as an expert witness was compromised by his interest in one of the flats on the Mayfields estate. With this Application the Respondent did not renew its challenge on Mr Furze's status as an expert witness.
  - (iv) Mr Furze supplied valuations of the premiums payable for the subject properties. Following the hearing Mr Furze provided an amended valuation dated 6 March 2014.
  - (v) James William Hamand BA (Hons) MRICS was the expert witness called by the Respondent. Mr Hamand qualified as a chartered surveyor in 2008. He was an associate of Douglas and Gordon Limited and manager of the valuation department where he had worked since July 2011. During his career he has undertaken a large number of valuations and negotiations for both landlords and lessees in enfranchisement and leasehold extensions.

- (vi) Mr Hamand supplied two witness statements dated 16 December 2013 and 31 January 2014 which contained the appropriate declarations on his expert witness status in accordance with the Civil Procedure Rules Part 35.
- (vii) Mr Hamand stated that the basis of his valuation in his first witness statement was derived from information provided in the form of valuation reports and information supplied by the freeholder. Mr Hamand acknowledged that he did not have the benefit of inspecting properties as at the valuation date.
- (viii) Mr Hamand stated in his second witness statement that he was prepared to defer to the expertise of Mr Freston in respect of the long leasehold values he had attributed to flats without garages. Mr Hamand, however, made clear at the hearing that he was adhering to his valuations of the long leasehold interests in his first witness statement, not those put forward in his second statement. Mr Hamand said that he had prepared the second statement at the Respondent's request, but that in his status as an expert witness he could not wholeheartedly support the valuations advanced by Mr Freston.
- (ix) Mr Hamand supplied two separate valuations of the premiums payable dated 16 December 2013 and 31 January 2014 respectively.
- (x) Nigel Kern Freston BSc FRICS was the second expert witness called by the Respondent. Mr Freston's professional work comprised residential valuations and private residential homebuyers and valuation reports in Bristol and surrounding areas.
- (xi) Mr Freston's witness statement was dated 30 January 2014 and contained the appropriate declaration regarding his expert witness status. Mr Freston did not supply valuations of the premium payable. Instead he proposed a value for a long leasehold interest in a flat on the Mayfields estate and gave an opinion on the value of the land adjoining flat 2 Mayfields.
- (xii) Michael Leon supplied a witness statement dated 3 February 2014 for the Respondent. Mr Leon was employed by the Respondent to assist in relation to the Tribunal hearing and the various statutory notices associated with the Applicants' claim for a new lease.
- (xiii) Mr Leon's evidence dealt with the marketing of flat 10 and potential sale of flat 13, his dealings with Mr and Mrs Stephens, the freeholders of flat 2, and a pre-application enquiry to Chris



Griggs-Trevarthan, Planning Officer at Bath and North East Somerset Council regarding land adjacent to flat 2 Mayfields.

31. After the hearing the Tribunal inspected several of the subject properties, the garage block, and the land adjacent to flat 2. The Tribunal also carried out external inspections of the comparable properties relied upon by the Respondent. Both counsel indicated that they did not wish to attend the inspection. Mr Leon also decided not to attend. Mr Williams, one of the Applicants, was present during the inspection of the Mayfields' properties. The Tribunal had previously inspected the development in connection with the earlier proceedings involving flats 4 and 7 in November 2013.

### **The Disputed Matters**

#### **The Extended Lease Value**

32. Mr Furze for the Applicants stated in his expert opinion that as at 14 May 2013 the value of the flats without garages with extended leases was £98,000.
33. Mr Furze's valuation was derived from the open market sale of 15 Mayfields which was completed on 8 July 2011 at £98,000. 15 Mayfields was a ground floor flat with a 149 year lease from 1997.
34. Mr Furze inspected 15 Mayfields immediately prior to exchange of contracts. He recorded the following improvements to the property: double glazed windows and door, the installation of gas fired central heating, refitted kitchen and bathroom, new fireplace with a coal effect gas fire, and covings to ceilings. Mr Furze originally placed a value of £5,000 on the improvements, however, a previous Tribunal<sup>5</sup> decided that the improvements were worth £2,000. Given the Tribunal's finding, Mr Furze reluctantly adjusted the sale price of flat 15 by £2,000 to £96,000 to reflect the unimproved value of the flat with an extended lease.
35. Mr Furze made one further adjustment to arrive at his valuation of £98,000 for an extended lease, which was to update the unimproved value (£96,000) to the valuation date of 14 May 2013. In this regard Mr Furze applied the Land Registry indices for Bath and North East Somerset to produce a figure of £98,411, which he rounded down to £98,000.
36. Mr Furze considered the circumstances of the abortive sale of flat 10 Mayfields in November 2011 supported his conclusion on the value of the extended lease at £98,000. Mr Furze adduced evidence which

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<sup>5</sup> BIR/00HA/OLR/2012/0009

showed that flat 10 with an extended lease was offered on the market at £110,000. A sale of £99,000 was agreed in November 2011 but did not progress as the seller was unable to agree with the Respondent an extension to the lease.

37. Mr Furze did not rely on comparables outside Mayfields estate. At the hearings before the previous Tribunals on 16 May 2011 and 4 April 2012 he referred to two sales of flats in St Keyna Road. Mr Furze did not consider evidence of these sales relevant to this application. Mr Furze was of the view that transactional evidence of flats located on the same development as the subject properties was persuasive evidence of value.
38. Mr Furze was unconcerned that 15 Mayfields was a probate sale. He pointed out the property had been marketed in the normal way for house sales, and the sale price of £98,000 was achieved in the open market.
39. In his first witness statement Mr Hamand identified the following sales which he considered to be relevant in determining the unimproved value of a two bedroom flat on Mayfields:
  - 15 Mayfields: sold in July 2011 for £98,000 on a lease with an unexpired term of 135 years.
  - 14 St Keyna Road: a two bedroom first floor flat with a balcony and private garden which sold in November 2010 for £105,000 on a 996 year lease. The flat was part of a block of four flats which was constructed at the same time and in an identical fashion to the blocks on the Mayfields Estate. The sale particulars stated that it had scope for improvement. The sale particulars revealed that the property had the benefit of night storage heaters, secondary glazing, fitted wall and floor units in the kitchen, and a Triton shower above the bath. St Keyna Road was situated less than 100 yards from the Mayfields estate. Mr Hamand stated that its value at the valuation date was £108,112.
  - 20 St Keyna Road: a two bedroom ground floor flat with a garden which sold in November 2010 for £122,500 on a 996 year lease, and part of the same development as 14 St Keyna Road. According to Mr Hamand, its value at the valuation date was £126,130. The sale particulars showed that property had the benefit of gas central heating, refitted kitchen and bathroom, uPVC windows and a wall mounted coal effect gas fire.
  - Flat 10 Abbey Apartments: a one bedroom first floor flat which sold on a 996 year lease in January 2011 for £94,500 (£98,290 as at valuation date). Abbey Apartments were situated above commercial

units in Charlton Road just off Keynsham High Street. According to Mr Hamand, the flat did not have the benefit of a balcony or a garden and was likely to be considerably noisier than any flat on Mayfields estate. Mr Hamand did not have a floor plan for the property.

- 43a West View Road: a two bedroom ground floor flat which sold in September 2011 for £135,000 on a 977 year lease (£139,830 as at valuation date). Mr Hamand stated that the property was located within a period conversion and benefits from a small private courtyard. According to Mr Hamand, the property appears to have been sold in a reasonable condition, and that West View Road itself was a more pleasant area than the Mayfields Estate.
- 36 Carpenters Lane: a one bedroom ground floor flat with no outside space which sold for £115,000 in November 2011 on a 994 year lease (£119,114 as at valuation date). The particulars described it as a one double bedroom unfurnished flat, with gas central heating in new development close to all local amenities with easy access by road and rail to Bristol or Bath. Further it was tastefully unfurnished, fitted kitchen, washer/dryer, fridge, oven, bathroom with shower and double glazing. According to Mr Hamand, the nature of the property was similar, if not slightly inferior to the properties on Mayfields. Mr Hamand also believed that the property overlooked a car park.

40. Mr Hamand acknowledged that the sale of flat 15 provided the most useful evidence for the value of a flat with an extended lease on the Mayfields estate. Mr Hamand did not consider the quality of the sales evidence for flat 15 was undermined by the fact that it was a probate sale.
41. Mr Hamand, however, was concerned with the scarcity of sales on Mayfields estate, and reluctant, therefore, to base his valuation on just one sale. In his view, it was necessary to examine the sales evidence of 15 Mayfields, in the context of sales from the surrounding area. Mr Hamand's opinion was that the flat on West View Road was superior to the Mayfields flats, whilst Abbey apartments were without question an inferior block. St Keyna Road, on the other hand, was a slightly more pleasant environment but otherwise very comparable to the location and nature of the subject flats. Having regard to all these factors Mr Hamand arrived at a valuation of £110,000 for the unimproved value of the hypothetical freehold interests in the subject properties without a garage. Mr Hamand said that the unimproved value of an extended lease with 132.79 years remaining was one per cent lower than that of the hypothetical freehold (£108,900).
42. Mr Hamand did not put a value on the improvements carried out on flat 15 Mayfields when arriving at his valuation for the extended lease for the subject properties. Mr Hamand was unconvinced of the case for

such an adjustment, arguing that the changes made by the tenant in respect of flat 15 were cosmetic rather than structural.

43. Mr Hamand supplied a second witness statement where he provided a revised valuation for the long leaseholds for the subject properties. In his revised valuation he applied a value of £125,000 for the hypothetical freehold, and £123,750 for the extended lease. Mr Hamand's rationale for his revised valuations was that the Respondent had instructed him to do so following Mr Freston's report. Mr Hamand was not in a position to contradict Mr Freston's expert opinion because he had not been able to inspect the properties. Mr Hamand, however, informed the Tribunal that in respect of his expert evidence he was relying on the valuations in his first witness statement.
44. Mr Freston valued the long leasehold for the subject properties at £125,000 as at 14 May 2013. In arriving at his valuation Mr Freston relied on the sales evidence of six properties, three of which had also been considered by Mr Hamand ((10A Abbey Apartments, 43a West View Road, and 36 Carpenter Lane).
45. The three new comparables used by Mr Freston were:
  - 6 Reubens Close: a purpose built two bedroom flat with a 999 year lease from 1960 which sold for £120,000 on 4 July 2013. According to Mr Freston, the property was in need of some updating. He considered that this property in better condition would have achieved between £125,000 and £130,000.
  - 11 Chelsea Close: a two bedroom ground floor flat on a 999 year lease from 1 January 1985 which sold for £109,000 on 8 February 2013. Mr Freston said that the flat was in very poor presentation and would have fetched in the region of £125,000 if in good condition.
  - 1 Dragons Hill Court: a two bedroom flat on a 999 year lease from 1967 which sold for £135,000 on 28 February 2013. Mr Freston said that Dragons Hill Court was a better location than Mayfields. Also this property had the benefit of a garage.
46. Mr Freston said that his instructions were to prepare a report on the value of two bedroom flats on Mayfields with extended leases. He had not been given beforehand a copy of Mr Hamand's first witness statement, and had not considered his conclusions in detail.
47. Mr Freston accepted that sales of flats on Mayfields should be included in his assessment of value. He was unable to give a satisfactory explanation for why the sale of 15 Mayfields was omitted from his evaluation. Mr Freston said that it did not come to his attention

because the sale took place in 2011. Mr Freston, however, took into account sales of three other properties which took place in 2011.

48. Mr Freston had not inspected the comparable properties cited in his witness statement. Mr Freston's analysis was essentially a desk top one, although he had a conversation with the agent marketing 6 Reubens Close.
49. Mr Freston fairly acknowledged that Reubens Close, Chelsea Close, Dragon Hills and West View were better locations in Keynsham than Mayfields. He assessed the better locations for Reubens Close and Chelsea Court would constitute respectively around five to ten per cent and five to fifteen per cent of the sale prices.
50. Mr Freston had made no adjustments for improvements to the sold properties. He estimated that the value of the improvements would be in the region of £10,000.
51. Mr Freston was unable to give a coherent rationale for how he derived a value of at least £125,000 for a Mayfields flat with extended lease from the evidence of comparables cited in his statement.
52. Mr Furze was asked to comment on the comparables relied upon by the Respondent's expert witnesses:
  - 6 Reubens Close: the location being a little further from the town centre was in his view a better location. Mr Furze said the properties were of superior construction having concrete floors. The estate was well maintained, having a high proportion of owner occupiers.
  - 11 Chelsea Close: Mr Furze was unable to offer a view on the property. He had not spoken to the agent who sold it.
  - 1 Dragons Hill: Mr Furze was of the view that it was of similar construction to that of Reubens Close and was in a better location than the Mayfields properties. Mr Furze also pointed out it included a garage
  - 43A West View: this was a period property in a far superior location to the Mayfields properties.
  - Abbey Apartments and Carpenters Lane: these flats were purpose built of modern construction and easy to maintain.

### **Consideration of the Extended Lease Value**

53. The Tribunal considers the dispute is between Mr Furze's valuation of £98,000 and Mr Hamand's valuation of £108,900 (£110,000 freehold value) in his first witness statement. At the hearing Mr Hamand effectively disowned the valuation presented in his second statement. Mr Freston's valuation of at least £125,000 was undermined by his inability to give a coherent rationale for arriving at this figure, and by his failure to take account of the sales evidence for flat 15 Mayfields
54. Mr Hamand was satisfied that 15 Mayfields was an open market transaction unaffected by it being a probate sale. Mr Hamand agreed with Mr Furze that the sale of 15 Mayfields provided the most useful evidence of the value for a flat on Mayfields with an extended lease. Mr Hamand also agreed with Mr Furze's adjusted sale price of £98,412 for 15 Mayfields. The Tribunal, therefore, adopts this adjusted sale price of £98,412. The Tribunal notes that Mr Furze argued for a higher deduction (£5,000) in respect of the improvements to 15 Mayfield, which if successful would have produced a lower sale price. The Tribunal was not persuaded by Mr Furze's argument, and valued the improvements at £2,000 which incidentally was the decision of the previous Tribunals.
55. Where Mr Hamand differed from Mr Furze was that he was reluctant to base his valuation on just one sale, and that it was necessary to examine the sale evidence of 15 Mayfields in the context of other sales from the surrounding area.
56. The Tribunal preferred Mr Hamand's approach which was consistent with general principles of deriving a valuation from the application of expert opinion to a basket of evidence. In this respect the Tribunal is not critical of the stance taken by Mr Furze. At the hearings of previous Tribunals Mr Furze had introduced sales evidence of the comparables, in St Keyna Road. The previous Tribunals, however, had largely disregarded the comparables and placed weight on the transaction for flat 15.
57. Also in this application Mr Furze referred to the aborted sale of flat 10 Mayfields, which in the Tribunal's opinion carried some weight. This is because it appeared that the parties had agreed an open market price for the sale of the flat only to be thwarted by what the seller considered to be the Respondent's excessive demands in respect of the premium for the lease extension.
58. In total the Respondent's witnesses cited eight comparables, of which five were relied upon by Mr Hamand in his first witness statement. Of

those five, three were two bedroom flats, and the remaining two were one bedroom flats. The Tribunal placed little weight on the sales of the one bedroom flats. The sales particulars for the one bedroom flats were minimal and they appeared to be of modern construction. The three expert witnesses were agreed that the two bedroom flat at 43A West View Road was a period property and located in a superior area to that for the flats on Mayfields. This in effect left the two sales on St Keyna Road as meaningful comparables.

59. The properties on St Keyna Road were constructed at the same time and in an identical fashion to those on Mayfields, and on the face of it provided good evidence of value for the Mayfields flats. Mr Furze, however, asserted that St Keyna Road was a much better area than Mayfields, which warranted an uplift of about 10 per cent on the purchase price. Mr Furze's opinion was corroborated by the higher price achieved on the sale of 20 St Keyna Road than that for 15 Mayfields. Both were ground floor flats with gardens and in the same good modernised condition. The Tribunal is satisfied that the sale prices for the properties on St Keyna Road would have included a premium for their good location.
60. The Tribunal in its consideration did not totally disregard the evidence provided by the sales of the properties on Reuben Close, Chelsea Close and Dragons Hill. The Tribunal, however, noted that both Mr Furze and Mr Freston were agreed that these properties were in better locations and of more modern construction than the flats on Mayfields. Also Dragons Hill had a garage. In those circumstances the Tribunal considers the sales figure for these properties would have required significant adjustments downwards to provide probative evidence of value. Mr Freston did not perform the necessary analysis.
61. The Tribunal also took into account the facts that Mr Hamand had not inspected the properties and had declined to suggest a figure for the improvements which would have been reflected in the sale prices for the properties on St Keyna Road.
62. The Tribunal understands Mr Hamand's evidence to be that his valuation of the comparables required no adjustments for improvements because the Act was only concerned with major structural improvements. Mr Hamand described installation of uPVC windows, central heating, and new kitchen as cosmetic improvements. The Tribunal disagrees. Paragraph 3(2)(c) of schedule 13 requires the Tribunal to disregard any increase in the value of a flat which is attributable to an improvement carried out at the tenant's expense. The Act does not restrict improvements to structural ones. The Tribunal considers that the sales particulars for the properties on St Keyna Road revealed that they had undergone a series of improvements from their original state of construction. In the Tribunal's view, Mr Hamand's

valuation of these comparables required some adjustment for improvements.

63. The Tribunal considers the gulf between the respective valuations of Mr Furze and Mr Hamand for the extended leasehold was not that wide in the first place, a matter of £10,000. The Tribunal finds that Mr Hamand's valuation was on the high side because of his lack of local knowledge of the Keynsham property market, and his reluctance to put a value on improvements in respect of the comparable properties. The consequence of these findings is that the gulf between the two valuations has narrowed significantly. The Tribunal regards the adjusted sale price of £98,412 for 15 Mayfields pivotal for determining the unimproved extended lease value. The Tribunal, however, accepts that reliance on one piece of evidence has its own inherent risks. The Tribunal, therefore, considered the figure of £98,412 in the context of the sales evidence for flats 14 and 20 St Keyna Road, which the Tribunal decided were the most meaningful comparables. The Tribunal has already highlighted the requirement of further adjustments to Mr Hamand's adjusted sales figures of £108,000 and £126,000 for the St Keyna Road properties. Given all the circumstances the Tribunal determines a value of **£100,000 (£101,000 freehold value<sup>6</sup>) for the extended lease of flats 6, 8, 10, 12, 14, 21 and 24 Mayfields.**

#### **The Value Attributed to the Garages**

64. Mr Furze put a value of £4,000 for the addition of a garage. Mr Freston suggested £5,000, whilst Mr Hamand argued for £10,000. Mr Hamand, however, in evidence accepted that he had no knowledge of the market for garages in Keynsham. In those circumstances he indicated that he was prepared to give way to the views of the local valuers. The Tribunal notes that previous Tribunals have decided on values of £5,000 and £4,500 for a garage.
65. Having inspected the block of garages the Tribunal decided on a value of £4,000 for a garage on Mayfields.
66. The Tribunal, therefore, determines a value of **£104,000 (£105,000 freehold value) for the extended lease of flats 13 and 29 Mayfields.**

#### **Existing Lease Value**

67. Mr Furze valued an existing lease for a Mayfield flat with 42.79 years remaining at £83,125 and £87,125 for flats with garages. In contrast, Mr Hamand in his first witness statement valued the existing lease at £78,100 and £85,209 for flats with garages. In his second witness

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<sup>6</sup> The parties agreed to one per cent uplift for freehold value.



statement, the values attributed for the existing lease were £88,750 and £95,850 respectively.

68. Mr Hamand's valuations in his second witness were a result of applying a relativity rate of 71 per cent to the extended lease values. As Mr Hamand has effectively disowned the extended lease valuations in his second witness statement, the Tribunal places no weight on the existing lease valuations in Mr Hamand's second witness statement.
69. Mr Furze relied on the sales evidence of flat 2 Mayfields, which sold for £90,000 on the 18 November 2010 with an unexpired term of 46 years. Flat 2 was of the same construction and layout of other ground floor flats on the estate except that it had a large side garden with ample parking within the curtilage. Mr Furze pointed out the majority of purchasers of Mayfield flats were either older people or investors. He contended that a large side garden would be viewed as a disadvantage by that set of purchasers. Mr Furze, however, had adjusted the sale price for 2 Mayfields by deducting £2,500 for the amenity value of the large side garden which was in accordance with the previous Tribunal decision released 25 June 2012.
70. Mr Furze made further alterations to the adjusted sale price of £87,500 to arrive at his valuation for the existing lease. First he updated the figure to that as at the valuation date of 14 May 2013 which took into account the rise in sale prices as against the reduction in value arising from a shorter unexpired term. Next he deducted five per cent to reflect the "No Act world" which produced valuations for the existing lease at £83,125 and £87,125 (with garage).
71. Mr Furze relied solely on the sales evidence for flat 2 for his valuation of the existing lease. He pointed out that the previous Tribunals had regarded flat 2 to be a clear and reliable comparable. Mr Furze acknowledged there had been a number of historic sales in Mayfields but he did not regard them as relevant because they related to different market conditions and value levels.
72. Mr Furze accepted that his valuations for the existing and extended leases produced a relativity percentage in excess of that portrayed by the RICS relativity graphs for leases with an outstanding term 42.79 years. Mr Furze, however, maintained that reliable transactional evidence should take precedence over the outcomes suggested by the relativity graphs.
73. Mr Hamand argued that flat 2 Mayfields was not directly comparable to the other Mayfield flats, and, in those circumstances, he considered it inappropriate to use the sale evidence in his valuation of the existing lease.

74. Mr Hamand was of the view that the unusually large garden set apart flat 2 from the other flats. Mr Hamand fairly acknowledged that he was unable to ascribe a value which the large garden brought to the flat because he had not inspected the property and did not have sufficient knowledge on the likelihood of obtaining planning consent. Mr Hamand, however, sought to demonstrate the unreliability of the sales evidence by showing that relatively small differences in the value of the garden area would have a huge impact on the existing lease value and relativity. In support of his proposition on its unreliability Mr Hamand also referred to the analysis carried out by Mr Armstrong, the Respondent's expert witness at the previous Tribunal, who said that the garden area added £100,000 to the value of the extended lease if it had planning permission from which Mr Hamand assumed the added value of the garden to the existing value would be between £39,000 to £55,000.
75. Mr Hamand instead derived his valuation by an analysis of historic sales of Mayfields flats from which he made certain conclusions with the assistance of the RICS relativity graphs on the price relativity of an existing lease to the value for the extended lease.
76. In his second witness statement Mr Hamand analysed the sales of leases for flats 7, 9 and 12 with unexpired terms of 49.5 years to 51.7 years which occurred between July 2004 to September 2006 against the sale of 15 Mayfields with an unexpired term of 140.8 years in May 2005. According to Mr Hamand the analysis produced relativities of the adjusted existing lease value to the adjusted extended lease value of between 56.99 to 67.34 per cent.
77. In his first statement Mr Hamand mentioned the sales of flats 10 and 31 Mayfields in 2001. Flat 10 with an unexpired term of 55 years sold for £60,000, whilst flat 31 on a term of 149 years sold for £71,750 which produced a relativity of 79.44 per cent. Mr Hamand said that this fell directly on the Moss Kay 2005 graph, which showed a relativity of 71 per cent for a lease with an unexpired term of 42.79 years.
78. Mr Hamand examined the RICS' graphs of relativities which showed a range of relativities between 59 and 76 per cent for leases with unexpired terms of 42.79 years. In particular, Mr Hamand drew attention to the following graphs:
- The Savills 1992 graph which showed a relativity of approximately 63 per cent.
  - The Gerald Eve graph 1996 which showed a relativity of 68.3 per cent

- The LEASE LVT determinations 1994-2007 graph which showed a relativity of 68.3 per cent.
79. Mr Hamand said that he believed leasehold values when discussed as a percentage of freehold values ought to be lower outside Prime Central London, and as such if it were not for the sale of flat 2 Mayfields, Mr Hamand's view that relativities in the region of 63 to 68 per cent would be applicable to the Mayfields flats. Mr Hamand, however, said that the sale of flat 2 could not be ignored altogether and some weight had to be placed on it. In those circumstances Mr Hamand concluded that the appropriate relativity to apply was 71 per cent, which produced values of £78,100 and £85,200 (with garages) for the existing leasehold.
  80. Mr Freston was not asked to give a valuation for the existing leasehold, although he said that the unimproved value of a flat with an unexpired term of 43 years would probably need to be calculated on a relativity basis. The Respondent, however, requested his advice on the development value of the adjoining garden to flat 2. He assumed that the land was capable of accommodating at least one detached dwelling. In his opinion Mr Freston said that a building plot in this location would be worth around £120,000, which would give a hope value of between £40,000 and £60,000.
  81. Mr Leon gave evidence of a meeting with Mr and Mrs Stevens, the purchasers of flat 2 in 2010, in a Costa's coffee shop on 19 November 2013 and of e-mail communications with them. According to Mr Leon, they discussed the possibility of Mr Leon purchasing the additional land at flat 2. Mr Leon said that he made an initial offer of £20,000 which Mr Stevens turned down as not being enough. Apparently Mr Stevens said that he would not consider anything below £50,000. In an e-mail of 13 December 2013, Mr Leon increased his offer to £40,000 and would also pay Mr Steven's legal costs. Mr Stevens responded the same day saying that having discussed Mr Leon's offer with his wife, they were not prepared to proceed any further with Mr Leon's proposals.
  82. Mr Leon also got in touch with a Mr Tume, a local architectural consultant, who assisted Mr Leon with the making of a pre-planning application enquiry to Bath and North East Somerset Council regarding proposals for the land adjacent to flat 2 Mayfields.
  83. Mr Griggs-Trevarthen responded on behalf of the Council who said that
 

"In conclusion, whilst the principle of residential development is acceptable in this location the site is too narrow to comfortably accommodate a pair of semi-detached dwellings (or flats) without appearing cramped or contrived. A single dwelling (or two flats) could be comfortably accommodated on the site but the design will need to be

carefully considered and would need to be in keeping with the character of the surrounding area”.

### **Consideration of the Existing Lease Value**

84. Determining the value of an existing lease can be a difficult exercise because of the paucity of open market transactions. This paucity has led to the development and use of relativity graphs to work out the values for existing leases. In this Application, however, there was evidence of a recent open market transaction for a short lease on the Mayfields estate upon which the Applicants relied. The Respondent argued that such evidence was manifestly unreliable and produced a value for the existing lease which bore no rational relationship to the extended lease value. The Respondent instead preferred an approach which used a relativity quotient partly derived from evidence of past sales.
85. The Tribunal starts with the examination of the reliability of the sales evidence for flat 2 Mayfields. The three previous Tribunals placed weight on this evidence. The Tribunal on 16 May 2011 recorded that the surveyors for the Applicants and the Respondent were of the opinion there was sufficient market evidence of short lease sales to make the use of relativity graphs unnecessary. Mr Lee for the Respondent quoted a number of transactions but only analysed the sale price for flat 2 Mayfields. The second Tribunal (decision released 25 June 2012) decided that where reliable sales evidence was available it took priority over relativities. The Tribunal went on to say that flat 2 was the only sale comparable raised by the parties, and that it found flat 2 to be a clear and reliable comparable. The last Tribunal in November 2013 agreed with the previous Tribunal's finding of flat 2 being a reliable comparable.
86. The question of developmental value of the added land was considered in detail by the second Tribunal. According to Mr Leon, the Respondent's surveyor at the first Tribunal did not raise the possibility of added value due to development potential.
87. The second Tribunal found there was no adequate evidence that the garden of flat 2 had developmental value capable of reliable assessment because:
- There was no explanation to show why the original developers had included it in the demise of flat 2.
  - No evidence was brought to show that the freeholders had ever applied for planning permission to develop it with four maisonettes or otherwise.

- No evidence was brought to explain why the freeholders had not taken the opportunity of buying in the lease of flat 2 when it came to the market in 2010.
  - No evidence was brought to show whether the freeholder had approached the lessee to negotiate surrender of the lease.
88. The second Tribunal, therefore, decided that the garden to flat 2 had no developmental value but deducted £2,500 from its sale price to represent the amenity value of a larger garden.
89. This Tribunal was not persuaded by the Respondent's attempts to discredit the findings made by previous Tribunals on the evidential value of the sales evidence for flat 2 Mayfields.
90. Mr Leon sought to demonstrate that the sale price achieved for flat 2 in November 2010 was significantly distorted by the potential developmental value of the large garden.
91. The Tribunal considers Mr Leon's engagement with Mr Stevens, the owner of flat 2, clumsy and contrived. It was open to Mr Leon to ask Mr Stevens to give evidence before the Tribunal, and if Mr Stevens refused, to request the Tribunal to issue a witness summons.
92. Mr Leon's recollection of his conversation with Mr and Mrs Stevens and the contents of his e-mail communications did not provide elucidation of whether the purchase price paid for flat 2 included an element for development potential. The Tribunal's sole conclusion on Mr Leon's engagement was that Mr Stevens turned down Mr Leon's offer to purchase the garden of flat 2.
93. In the Tribunal's view, the Council's response to Mr Leon's pre-planning enquiry when looked at as whole confirmed the speculative nature of the potential development of the garden to flat 2 and reinforced the finding of the second Tribunal about the vagaries of assessing a value for development potential of the garden. In this respect Mr Freston's valuation of £40,000 to £60,000 for hope value did not address the correct question, namely, what was the premium, if any, paid for the large garden by Mr Stevens when he purchased flat 2.
94. Mr Hamand's approach was more subtle. He initially discounted the sales evidence of flat 2 and instead built a construct which incorporated historic sales evidence on Mayfields and the RICS' relativity graphs.
95. The use of relativity graphs was approved of by the then Lands Tribunal in *Arrowdell Ltd v Coniston Court (North) Hove Limited* [2007] RVR 39 which at paragraphs 39 and 57 said:

“The difficulty that confronts every LVT, as it now confronts us, in seeking to determine the appropriate relativity to apply in a particular case is the inadequacy of the available evidence. If no assistance is to be derived from earlier LVT decisions for the reasons we have just given, the same will go for settlements that have themselves been based on such decisions. In such circumstances, in our view, it is necessary for the tribunal to do the best it can with any evidence of transactions that can usefully be applied, even though such transactions take place in the real world rather than the no-Act world. Regard can also be had to graphs of relativity, as we say below, and later on we suggest that greater guidance could be derived from this particular type of evidence”.

“As we have said above, we have been acutely aware of the difficulty of reaching a satisfactory conclusion on relativity in the light of the inadequacy of the available evidence, and it is clear that this is a problem that is liable to confront LVTs in all such cases. The likelihood is that decisions will be varied and inconsistent, while if local perceptions of relativities are built up as the result of decisions and settlements it is improbable that these will properly reflect no-Act values. Against this background we consider that graphs of relativity are capable of providing the most useful guidance. While it may be that relativities will vary between one type of property and another and from area to area, we think that there is little doubt that the predominant factor is the length of the term. It ought, we believe, to be possible to produce standard graphs, distinguishing between mortgage-dependent markets and those that are not so dependent, on the basis of a survey of assessments made by experienced valuers addressing themselves properly to the hypothetical no-Act world. We express the hope that the Royal Institution of Chartered Surveyors may find itself able to carry out such an exercise and to produce guidance in the form of standard graphs that can readily be applied by valuers in carrying out enfranchisement valuations. Such graphs could be used as evidence by LVTs, with the relativities shown being applied by them in the absence of evidence compelling the adoption of other figures”.

96. The Tribunal finds Mr Hamand’s evidence problematical. The range of relativity percentages derived from the historic sales was wide with no discernable pattern. Mr Hamand had no information on the condition of the properties when sold, which meant that he was unable to make adjustments for lessee’s improvements which may have produced higher relativity percentages. His reasons for choosing the Moss Kay relativity graph over the LEASE graph which was the one preferred by the Upper Tribunal in *Re Coolrace Ltd and others* [2012] 2EGLR 69 were not obvious.
97. The Tribunal’s principal concern with Mr Hamand’s evidence was that he contradicted the basic premise for him resorting to a construct based on historic sales and relativity percentages. Mr Hamand initially argued that the sale of flat 2 was not directly comparable to the other Mayfields flats, and, therefore, should not be used in his analysis. Mr Hamand, however, later on in his witness statement acknowledged that he must place some weight on the sales evidence from flat 2.

98. The Tribunal is obliged to do its best with the evidence. The Tribunal places weight on the sales evidence for flat 2. The Tribunal notes the evidence has been the subject of detailed scrutiny by three previous Tribunals. Further the Upper Tribunal refused the Respondent permission to appeal the decision of the second Tribunal stating that the findings of fact by that Tribunal were unimpeachable.
99. The Tribunal is of the view that the evidence in this Application has not undermined the previous Tribunal's findings that flat 2 was a reliable comparable. This Tribunal, however, considers there is a case to suggest that Mr Stevens paid a premium for the potential development of flat 2 rather than for the amenity of a large garden. The Tribunal makes this conclusion on its own inspection of the property, and the marketing material for flat 2.
100. Mr Furze's firm, Davies & Wray, acted as the agent for the sale of flat 2 which was put on the market inviting offers in excess of £85,000. The marketing material stated that flat 2 was a ground floor flat with a large garden with future development potential. The fact that Mr Stevens paid £90,000 for flat 2 suggested that the premium was in the region of £5,000. The Tribunal considers a figure of about £5,000 reflected the highly speculative nature of the potential development.
101. The Tribunal determines on the evidence a value of £80,000 for the existing lease. The figure of £80,000 is principally derived from the sale of flat 2 for £90,000 which has been reduced by £10,000 to reflect the various adjustments for speculative potential development, No-Act world, and updating to the valuation date including the deduction for the shorter term. The Tribunal observes that when this figure of £80,000 is set against the Tribunal's determination of £100,000 for the extended lease value, it produces a relativity of 80 per cent. The Tribunal is satisfied that a relativity of 80 per cent was not beyond the bounds of probability, particularly if compared with the LEASE graph which gives a relativity of 74 per cent for terms of 42.79 years.
102. The Tribunal, therefore, determines a value of **£80,000 for the value of the existing lease of flats 6, 8, 10, 12, 14, 21 and 24 Mayfields and £84,000 for value of the existing lease of flats 13 and 29 Mayfields.**

### **The Deferment Rate**

103. Mr Furze for the Applicants contended for a deferment rate of 5.75 per cent. Mr Furze relied on the Upper Tribunal (Lands) decision in *Zuckerman v Trustees of the Calthorpe Estates* [2009] UK UT 235 LC for proposing a rate above the generic rate of 5 per cent for flats as advocated in *Earl Cadogan and another v Sportelli and another* [2007] EWCA Civ 1042.

104. Mr Furze argued the capital growth rate for properties in Keynsham was not strong and certainly had no relationship to the growth rate for properties in Prime Central London. In support of his proposition Mr Furze adduced evidence of the Land Registry house price indices for the period January 1995 to May 2013 for the City of Westminster and Bath and North East Somerset. Mr Furze said that the growth rate for City of Westminster of 100 to 535.18 outpaced that for Bath and North East Somerset of 100 to 343.62. Further Mr Furze stated that the index for Bath and North East Somerset had been heavily influenced by the strong growth in the City of Bath which was not apparent in Keynsham.
105. Mr Furze also considered there was a greater risk of deterioration and obsolescence in the Mayfields properties because of the slow growth rate. Mr Furze referred to the poor management of the Mayfields estate by the Respondent, which had not carried out its responsibilities under the lease in respect of repairing and enforcing tenants' redecoration covenant. Further the Respondent had failed to insure the properties. Mr Furze concluded that the high risks of obsolescence and low capital growth justified an addition of 0.75 per cent to the generic rate of five per cent.
106. Mr Hamand argued there should be no departure from the generic rate of five per cent. Mr Hamand relied on the *Sportelli* decision for his assertion that there should be no adjustment to the generic rate to reflect regional or local considerations in respect of growth rates unless there was clear evidence to the contrary. Mr Hamand considered Mr Furze's evidence on the slow growth rate for Keynsham flawed, in that it did not demonstrate a long term change in the growth rate.
107. Mr Hamand acknowledged that he had not inspected the subject properties but the fact they were fully occupied strongly suggested to him that they were not obsolescent. Mr Hamand also pointed out that *Sportelli* ruled that it would only be in exceptional cases where obsolescence and condition were not fully reflected in the vacant possession value of the subject properties.

### **Consideration of Deferment Rate**

108. The Tribunal's starting point is the Court of Appeal decision in *Sportelli*. The Court of Appeal confirmed the Lands Tribunal decision that the generic deferment rate for flats should be five per cent, which comprised

Risk free rate	2.25%, minus
Real growth rate	2.00%, plus
Risk premium	4.5%, plus
Increased management risks for flats	0.25%



109. The facts of *Sportelli* were concerned with residential properties in Prime Central London. Lord Justice Carnwath pointed out in the course of his judgment in the appeal at para 102:

“The issues within the PCL were fully examined in a fully contested dispute between directly interested parties. The same cannot be said in respect of other areas. The judgment that the same deferment rate should apply outside the PCL area was made, and could only be made, on the evidence then available. That must leave the way open to the possibility of further evidence being called by other parties in other cases directly concerned with different areas. The deferment rate adopted by the tribunal will no doubt be the starting point; and their conclusions on the methodology, including the limitations of market evidence, are likely to remain valid. However, it is possible to envisage other evidence being called, for example, on issues relevant to the risk premium for residential property in different areas. That will be a matter for those advising future parties, and for the tribunals, to consider as such issues arise.”

110. Thus the Court of Appeal left open the possibility that the generic deferment rate may not apply to properties in geographical areas outside Prime Central London. In this respect the *Zuckerman* decision is instructive in that the Lands Tribunal decided upon a deferment rate of six per cent for properties in the West Midlands.

111. The Lands Tribunal increased the generic rate by 0.25 per cent for increased obsolescence. The Tribunal gave its rationale at paragraph 46:

“Mr Rutledge produced a schedule showing that the values of the properties considered in *Sportelli* were of a different order of magnitude from those of the flats in Kelton Court. Of the six PCL buildings considered in *Sportelli*, the LVT decisions provided the necessary information to enable the value per square foot of four to be calculated. These values ranged from £740 to £1,100 per sq ft. and the relevant valuation dates were between December 2003 and July 2005. By contrast, the value of Kelton Court as at September/October 2007 was only £198.50 per sq ft. I do not consider that the fact that there has been extensive redevelopment in Birmingham proves that the previously existing buildings had become obsolete. Nor does the fact that most of the *Sportelli* properties are in a conservation area mean that they cannot become obsolete. Nevertheless, as Mr Rutledge observed, the difference between the value of flats in Kelton Court and those considered in *Sportelli* is striking. Although building costs were somewhat higher in London than in Edgbaston, I accept Mr Rutledge’s opinion that it is likely to remain economically viable to repair high value properties in PCL for considerably longer than it will for similar sized flats in Kelton Court. As a result, whilst the individual flats might be leased on full repairing terms, there is a greater risk of deterioration at Kelton Court than in PCL properties, but this is not reflected in the respective vacant possession values. I find that a purchaser of the freehold reversion to Kelton Court would have required an increase of 0.25% in the risk premium to 4.75% to compensate for this difference”.

112. The instructive part of the *Zuckerman* decision is the interpretation of obsolescence in terms of whether the properties are likely to remain economically viable to repair. In the Tribunal's view, this interpretation widens the scope of obsolescence from an examination limited to the age and construction of a property, and its current condition.
113. The Tribunal finds in respect of the Mayfields estate that the freeholder had persistently neglected its repairing and insuring obligations, and had shown no inclination to set up a coherent service charge regime. Counsel for the Respondent argued the freeholder's indifference towards its responsibilities was immaterial because it was open to the lessees to take over the management of the properties. The Tribunal was not persuaded by Counsel's argument. The Tribunal considers it highly unlikely that lessees would be interested in taking over the management in view of the long history of neglect associated with the estate, coupled with the inherent risks associated with the right to manage.
114. The Tribunal is satisfied that a knowledgeable hypothetical purchaser having regard to the dated construction of the Mayfield properties, their current poor condition, and the long absence of effective management of the estate would conclude that the extent of deterioration would be so great that the flats would no longer be worth repairing. In the Tribunal's view, this greater risk of deterioration would not be reflected in the vacant possession values of flats, and that a knowledgeable hypothetical purchaser would expect an increase in the risk premium to compensate for this difference. The Tribunal considers an increase of 0.25 per cent would be sufficient to compensate for this difference.
115. The other aspect of the Applicant's case for an increase in the generic deferment rate was the purported poor long term growth rate for the Mayfields properties. The Upper Tribunal in *Zuckerman* justified an increase in the generic rate on this ground with the following reasoning at:
- "As I have said, the 5% deferment rate determined in *Sportelli* for flats in PCL is the starting point for calculating the appropriate rate for Kelton Court. Since, as I have found, an investor considering long term growth prospects at Kelton Court would not be confident that the PCL growth rate would be achieved (or, put another way, would be less confident that the real growth rate of 2% would be achieved in the West Midlands than in PCL), he would reduce his bid for Kelton Court accordingly. The appropriate way to assess that reduction, in my view, is by further increasing the risk premium by 0.5% to 5.25%".
116. The Upper Tribunal in *City & Country Properties Limited v Yeats* [2012] UKUT 227 LC has provided further guidance on adjustments to the deferment rate as a result of capital growth.

117. At paragraph 56 the Upper Tribunal expressed its view about the nature of evidence required to assess long term growth trends:

“In order to assess long-term growth trends one should ideally look for evidence extending back 50 years and consider different starting dates. Evidence of prices over a period of only 13 or 15 years is inadequate to indicate the long term position. Where information covering more than 15 years but less than 50 years is available it might, depending on the length of time and the particular circumstances be sufficient to indicate a trend which an investor would consider produced a reliable guide to future performance”.

118. At paragraph 59 the Tribunal considered the comparison of Land Registry house indices in West Sussex and Westminster for a period of 15 years prior to the valuation date was not of sufficient length to enable any useful conclusions to be reached.

119. Finally at 61 the Tribunal said:

“It is appropriate for us finally to note that all of the evidence and argument upon whether an adjustment should be made to the deferment rate in respect of growth was directed towards the question of whether there could be found a long term difference in growth rates between Horsham and PCL. It was this comparison that was concentrated upon. No evidence was called nor was any argument advanced upon the question of whether, ignoring wholly growth rates in PCL, the statistical information showed that the real growth rate in respect of flats in Horsham had (over any particular period) been at 2 per cent or had exceeded or fallen short of 2 per cent, which was the real growth rate assumed to be present in *Sportelli*”.

120. In support of his proposal for an increase of 0.5 per cent in the risk premium rate for low capital growth. Mr Furze relied on 18 years of data comparing the Land Registry price indices for the City of Westminster with those for Bath and North East Somerset. The graph produced by Mr Furze showed that the growth in the indices for the two areas were effectively the same from January 1995 to January 2007. It was only after January 2007 that the index for the City of Westminster took off. Mr Furze adduced no evidence relating to the capital growth or otherwise of the Mayfields flats or of properties in Keynsham.

121. The Tribunal is conscious that the three previous Tribunals had decided on a higher risk premium to reflect the lower capital growth for Keynsham properties as compared with those in Prime Central London. In the first Tribunal the parties had agreed upon a deferment rate of 5.75 per cent. The last two Tribunals had effectively given a 0.25 per cent uplift to reflect the higher risks associated with low capital growth.

122. This Tribunal, however, must decide the issue on the evidence before it. The Tribunal considers the evidence adduced by Mr Furze insufficient

to support his proposition of a significant risk that the Mayfield properties would not achieve the two per cent long term growth rate as advocated in *Sportelli*.

123. Mr Furze's evidence solely comprised a comparison of the respective growth rates of Prime Central London with Bath and North East Somerset. That evidence in itself was of insufficient length to make firm conclusions on long term growth rates, and also did not necessarily support his conclusion that the index for Bath and North East Somerset lagged behind that for Prime Central London. In the first 12 years of the data the growth rates were effectively the same.
124. The principal flaw, however, with Mr Furze's evidence was that it addressed the wrong question. The question is not whether the growth rate for flats in Keynsham was less than that for flats in Prime Central London but whether the real growth rate for flats in Keynsham had exceeded or fallen below the two per cent growth rate as specified in *Sportelli* over a significant period of time. Mr Furze gave no evidence on the long term growth rates for flats in Keynsham.
125. The Tribunal, therefore, makes no adjustment to the risk premium in respect of the capital growth rate. The Tribunal determines a **deferment rate of 5.25 per cent which includes a 0.25 per cent uplift for the increased risk of obsolescence.**

### Decision

126. In view of its findings the Tribunal determines the premiums payable to extend leases under section 48 of the 1993 Act at **£15,700 each for flats 6, 8, 10, 12, 14, 21 and 24 Mayfields, Keynsham, and £15,940 each for flats 13 and 29 Mayfields, Keynsham.**
127. The Tribunal's calculations are set out in the schedules attached.

## RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

6,8,10,12,14, 21 and 24 Mayfields, Keynsham, BS31 1BW Date of valuation 14/5/13

99 years from 1<sup>st</sup> March 1957

1. Diminution in Value of Landlord's Interest per s.3(1):

(a) Value before grant of new lease:

Term

Ground Rent	£ 6.30	
Years Purchase 42 years 9 months	13.49	£ 85
@ 7%		

Reversion

Freehold value	£101,000	
Present Value £1 in 42 years 9 months	0.11220	£11,332
@ 5.25%		

**Less**

(b) Freehold value	£101,000	
Present Value £1 in 132 years 9 months		
@ 5.25%	0.00112	£ 113

Diminution in Value		£11,304
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2. Landlord's Share of Marriage Value per s.4(2):

(i) Value of Tenant's interest with extended lease	£100,000	
(ii) Value of Landlord's interest after new Lease	£ 113	£100,113

**Less**

(i) Value of Tenant's interest before new lease	£ 80,000	
(ii) Value of Landlord's interest before new lease	£ 11,304	£ 91,304

Marriage Value		£ 8,809
Landlord's share 50%		£ 4,405

Compensation Payable to Landlord		£15,709
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<b>SAY</b>		<b>£15,700</b>
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13 and 29 Mayfields, Keynsham, BS31 1BW

Date of valuation 14/05/13

99 years from 1<sup>st</sup> March 1957

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1. Diminution in Value of Landlord's Interest per s.3(1):

(a) Value before grant of new lease:

Term

Ground Rent	£ 7.35	
Years Purchase 42 years 9 months @ 7%	13.49	£ 99

Reversion

Freehold value	£105,000	
Present Value £1 42 years 9 months @ 5.25%	0.11220	£11,781

**Less**

(b) Freehold value	£105,000	
Present Value £1 in 132 years 9 months @ 5.25%	0.00112	£ 118

Diminution in Value		£11,762
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2. Landlord's Share of Marriage Value per s.4(2):

(i) Value of Tenant's interest with extended lease	£104,000	
(ii) Value of Landlord's interest after new Lease	£ 118	£104,118

**Less**

(i) Value of Tenant's interest before new lease	£ 84,000	
(ii) Value of Landlord's interest before new lease	£11,762	

£ 95,762

Marriage Value	£ 8,356	
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Landlord's share 50%		£ 4,178
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Compensation Payable to Landlord		<b>£15,940</b>
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13 and 29 Mayfields, Keynsham, BS31 1BW

Date of valuation 14/05/13

99 years from 1<sup>st</sup> March 1957

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