

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Premises: Maybury Court, Shaftesbury Road, Woking Surrey GU22 7DT

**Applicant
Nominee**

Purchaser: Maybury Court (Woking) RTM Company Limited

**Applicant's
Solicitor:**

Mackrell Turner Garrett, Solicitors, 21-25 Church Street West,
Woking, Surrey, GU21 6DJ (Mr Duncan Scott)

Applicant's Surveyor: Mr Steven Hall MRICS, Pearce & Co

**Respondent:
Freeholder &**

Landlord:

Seagar and Hughes Limited, 5-6 Business Centre Hyde Street,
Winchester, Hampshire SO23 7TA

**Respondent's
Agent:**

Belgarium, The Estate Office, Old Manor Nursery, Kilham Lane,
Winchester SO22 5QD

**Respondent's
Surveyor:**

Mr Nicholas Harvey MRICS, Huggins, Edwards & Sharp

Mortgagee:

National Westminster, Bank Plc, Sheffield Securities Center,
PO Box 502, 2nd & 3rd Floor, 42 High Street, Sheffield, S1 2YW

Case Number:

CAM/43UM/OCE/2006/0035

Application:

An application to the Tribunal under Section 24 of the Leasehold
Reform Housing and Urban Development Act 1993 (the 1993 Act) to
determine matters in dispute in respect of the exercising of the right to
a collective enfranchisement

Tribunal:

Mr JR Morris (Chairman)
Mr J Dinwiddy FRICS
Mr JR Humphrys FRICS

Valuation Date:

15th March 2006

Hearing Date:

28th March 2007

Persons Attending:

Applicant:

Mr Raymond Davern, Counsel
Mr Steven Hall MRICS, Pearce & Co

Respondent:

Miss Siri Cope, Counsel
Ms Siobhan McDonnell, TWM Solicitors
Mr Nicholas Harvey MRICS, Huggins, Edwards & Sharp
Mr Brian Townsend FRICS, DipTP MRTPI, Huggins, Edwards & Sharp

STATEMENT OF REASONS

Application

1. This is an application to the Tribunal under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (1993 Act) to determine matters in dispute in respect of the exercising of the right to a collective enfranchisement of Maybury Court, Shaftsbury Road, Woking Surrey GU22 7DT.
2. The Applicant as Nominee Purchaser in an Initial Notice dated 12th December 2005 claims the right to acquire the freehold interest pursuant to s1(1) of the 1993 Act of the Specified Premises known as Maybury Court, Shaftsbury Road, Woking Surrey and shown on an accompanying plan together with the Additional Freehold pursuant to s1(2)(a) of the 1993 Act of the remainder of the land comprised in Title Number SY167958 and being access ways, garages, landscaped areas, bin storage areas and common parts and car parking areas serving Maybury Court and shown on an accompanying plan by the Tenants all of whom appear to be qualifying.
3. The Applicant proposed to pay £29,000 for the freehold interest of the Specified Premises and £1,000 for the Additional Freehold Property.
4. The Respondent in a Counter Notice admits the Tenants' right to purchase the freehold and the extent of the freehold interest in the Specified Premises pursuant to s1(1) and the Additional Freehold pursuant to s1(2)(a) of the 1993 Act.
5. The Respondent in the Counter Notice does not accept the price proposed by the Applicant and counter proposes the sum of £120,000 for the freehold interest of the Specified Premises and £12,000 for the Additional Freehold Property.
6. The Application identifies to be in dispute:
 - The price to be paid for the freehold interest in the Specified Premises and for the Additional Freehold
 - The provisions in the transfer.
7. Pursuant to section 126 of the Commonhold and Leasehold Reform Act 2002 the valuation date shall be the date of the Initial Notice, which appears to be the 12th December 2005.

Identification of Matters Agreed and in Dispute

8. The matters agreed were as follows:
 - Valuation date: 12th December 2005
 - Leases, ground rent, accommodation and size of flats as stated in the Valuation Reports
 - Value of short Leases £175,000
 - Value of Long Leases £194,000
 - Relativity 90%
 - Garages values-current £5,000
 - -Long leases £5,500
 - Yield on Ground Rents 7%

9. The matters not agreed were as follows:

Reversion	Claimant	6%
	Respondent	5%
Uplift to freehold	Claimant	0%
	Respondent	1%
Development Value	Claimant	Nil
	Respondent	£75,000
Amount payable	Claimant	£115,382
	Respondent	£215,462

10. The attached Transfer was agreed by the parties and approved by the Tribunal.

The Law

11. The provisions for Application to the Tribunal are under section 24 of the 1993 Act. The provisions for the determination of price are under section 32 and Schedule 6 of the 1993 Act.

The Subject Property

13. The Subject Property is a two storey block of twelve purpose built flats in communal grounds. There was some uncertainty as to the date of its construction although it appeared to the Tribunal to have been built in the late 1950s. The block comprises six flats on the first and six flats on the ground floor. All have access via their own front doors with no internal common parts. The first floor properties include the access to the roof space and the rights to this are included in the lease.
14. There are seven purpose built garages all of which are allocated to the flat owners under their respective leases except garage 7 which has a separate lease. Five of the flats do not have garages. The Subject property is situated in a predominantly residential area in a road of substantial houses about 0.7 miles from Woking Station.
15. The Subject property is all that comprised under Title Number SY167958 at the Land Registry.
16. The Management of the Subject Property is in the hands of a Right to Manage Company.

Inspection

17. An inspection of the exterior of the whole Property was made on the 28th March 2007.
18. Externally the Property was in fair condition although needing some maintenance. There was a mixture of plastic and metal windows. The grass of the grounds was not well kept. The footpaths around the Property were in fair condition.
19. The Tribunal noted an area of land, referred to in these Reasons as Area A, to the side of the block of flats comprising a large clothes-drying area in grass and a forecourt to the garages. It was noted that this was the area in respect of which the Respondent claimed development value. Access to the area was along a narrow driveway.

20. Under the Leases no parking is permitted on the Subject property other than in the garages themselves. However it was evident that the Leaseholders did not comply with this rule. Parking on the road is allowed under a resident's parking permit scheme at a cost of £10.00 per annum.

Evidence

21. Both Surveyors provided a copy of their Reports and valuation calculations. The Tribunal produced a comparative account of their valuations at **Schedule 1**.

Yield (Deferment Rate)

Applicant's Case

22. The Applicant's Surveyor submitted that a deferment of rate of 6% should be applied.
23. The Applicant's Surveyor stated in his report that some Leasehold Valuation Tribunal decisions after the Lands Tribunal decision in *Cadogan v Sportelli* had adopted a higher rate than 5%. He submitted that this was due to increasing misgivings about applying the decisions rigidly. He referred the Tribunal to a figure of 6% in case number 1204, 5.5% was agreed between the parties case number 1207 and 5.25% in case number 1208 on account of the obsolescence in the building.
24. The Applicant's Surveyor submitted in his report that the Subject Property should have a higher deferment rate applied to its valuation as it would be obsolescent when the lease reverted back to the Landlord.
25. In particular it was argued that new and recently built one and two bedroom properties were constructed and marketed as luxury developments for little more than the current value of Maybury Court. These properties are located closer to the town centre and the train station. A Woking Borough Council report was referred to which showed a substantial increase in future developments of newly built properties, a very high percentage of which are one and two bedroom properties.
26. This proliferation of newer properties was said to inevitably reduce the opportunities for growth and popularity of older properties such as the Subject Property. Purchasers will consider the benefits of a newer modern property with the lower maintenance costs, higher standards of insulation and efficiency (the Subject Property has Crittall single glazed windows) and without the burden of maintenance and repair of an older property. The Subject Property has been affected by the poor maintenance regime of the Landlord and there is a considerable backlog of repairs, which is now being addressed by the Right to Manage Company (Photographs were provided).
27. The architectural merits of the Subject Property were considered unlikely to be sought after and obsolescence is more likely to feature over time.
28. Counsel for the Applicant stated that the starting point was *Cadogan v Sportelli*. He referred to paragraph 123 of the decision which states that "before applying a rate that is different from 5% an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the ...flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate." He went on to say that the decision recognised that "an asset may be obsolescent and deteriorate physically" (paragraph 52) and whilst cautioning that

“only exceptionally” would it be the case that such factors were not fully reflected in the vacant possession value and the risk premium, evidence would be needed to establish that they were not reflected in this way (paragraph 91).

29. It was submitted that “only exceptionally” meant simply not as a rule and is not to be equated with other more restrictive phraseology such as “only in the rarest cases” or “only in the most exceptional circumstances”. It merely requires attention to be paid to the features of the individual case and to ask: is this an exception to the rule?
30. In addition all the valuers in their evidence accepted vacant possession values might not reflect age and structural issues. One, Mr Orr-Ewing reduced a rate by 0.75% in a case where there was a very low risk of obsolescence. Therefore it would follow that if there were a high risk of obsolescence then the rate would be increased.
31. In the light of the views expressed in the case the decision allows (and requires) a valuer or an LVT to a) look for particular features of a property which might cause obsolescence going beyond that to be found in the general case and b) to alter the deferment rate by putting a value on that obsolescence as the case requires with that value being property specific and might well be significant.
32. Counsel said that it was not accepted that the new build flats were for a different market and therefore would not make the Subject Property obsolescent. New build will always have an impact as developers will keep building but values will reduce especially for the older properties.
33. Therefore Counsel submitted that the age and construction of the building, the increase in the area of newly built properties of a similar kind to the Subject property and their construction closer to the town centre and station produced a risk of obsolescence justifying an increase in the deferment value of 1%. This was considered about right for a “high risk” of obsolescence in relation to the Subject Property taking into account Mr Orr Ewings allowance of 0.75% for a “low risk” of obsolescence in Cadogan Square.

Respondent's Case

34. The Respondent's Surveyor referred to *Cadogan v Sportelli* stating that the case fixed deferment rates for all properties other than those with a lease of less than 20 years at 5% for flats. He referred the Tribunal to paragraph 123 of the decision quoted above in the Applicant's submissions and added that there were no exceptional circumstances in this case to justify a departure from the Lands Tribunal decision.
35. The Respondent's Surveyor in cross examination from the Applicant's Counsel stated that he considered that only serious dilapidation or a problem with the construction of the building such as the use of high alumina cement in a concrete structure would justify a departure from the figure of 5%. When asked what departure percentage would he make for what he considered to be an exceptional circumstance he said he thought a deferment rate of 6% in really exceptional circumstances. He said that he understood exceptional to mean a particularly unusual factor such as the construction. In this case he said that the construction was not unusual and was basically sound. He was of the opinion that the Subject Property would keep its appeal.
36. The Respondent's Surveyor said that marketability would not be criteria. He was of the opinion that the current new build was for a different market.

37. Counsel for the Respondent referred the Tribunal to paragraph 121 of the *Cadogan v Sportelli* decision that states, "the deferment rate is unlikely to vary according to factors particular to the individual case". She added that the Applicant had not produced "compelling evidence" as required by the decision to show that there are matters which are not reflected in the vacant possession value of the Subject property which justify a departure from guidance set in the case.
38. In addition Counsel stated that new builds were very different from the Subject property. They are built as high-rise close to city centre at higher density. They are of different character they are often more expensive and command a premium. They are sold as a lifestyle and are therefore for a different market from the people who would be attracted to the Subject property. New building will not necessarily continue and be a factor for those choosing a place to live.

Uplift

Applicant's Case

39. Counsel for the Applicant states that there was no justification for uplift to be made on the values of the long leases to calculate a value for a virtual freehold. The Leases were not particularly restrictive and referred to the three areas in which the Respondent considered that they were, namely: (1) use of the communal areas, (2) use of the garden and (3) parking.
40. It was submitted that there were no restrictive covenants limiting the use of the communal areas or gardens. There is a power to reasonably regulate recreation under Schedule 2 clause 6 but this can only be exercised in the interests of the lessees and therefore they would not pay to have it removed. Also such regulation is a management function, which is exercised by the Right to Manage Company of the Applicant, and therefore the Respondent should not be compensated for the loss of a power it does not have.
41. It was accepted that Clause 3(xvi) of the Lease does restrict parking on pathways and the right of way over such paths expressly excludes parking under Schedule 2 clause 1. However 7 of the flats have garages and parking permits may be obtained at a cost of £10 per annum and therefore the removal of the parking restrictions is not as high as at first might appear.
42. Counsel also pointed out that the management functions have been taken over by the Applicant as a Right to Manage Company. He referred the Tribunal to section 96 of the Commonhold and Leasehold Reform Act 2002, which define the management functions as "functions with respect to services, repairs, improvements, insurance and management". He said it was designed to give the tenant autonomy. It was submitted that the Leaseholders already have, through the Right to Manage Company, the ability to overcome the regulations in the Lease and to permit parking. He further submitted that the term "management function" in the Act had a wider meaning than that given to the landlord's obligations in the Lease. He submitted that as a Right to Manage Company the Leaseholders already had the right to build garages and/or mark out parking spaces as these would be improvements within the meaning of section 96. He went further to say that section 96(2) gives the Company the exclusive right to carry out these works. This argument is also referred to in relation to development value.

Respondent's Case

43. The Respondent's Surveyor submitted that an uplift of 1% should be made on the values of the long leases to calculate a value for a virtual freehold. The most in these circumstances that could be submitted was 2%. After the Lessees have acquired their freehold they will be able to grant themselves 999-year leases at a peppercorn rent. This has more value than a long lease without a share of the freehold. With a share of the freehold they will not be fettered by the terms of the current lease, which are particularly restrictive in regard to the use of the communal areas, gardens and in relation to parking. Parking is not permitted other than in the garages.
44. In cross-examination the Respondent's Surveyor said that he considered 1% uplift overall about right. He did not consider 2% uplift a maximum it would depend on the lease. He said there is an increasing awareness amongst agents of the value of having a share in the freehold. It was accepted that the main bone of contention amongst lessees who did not have the freehold was management and that in the present case there was a Right to Manage Company run by the Leaseholders. Nevertheless the Respondent's Surveyor considered that there are other issues of parking which justify the uplift.
45. Counsel for the Respondent said that there was some cachet amongst tenants to own a share of the freehold and therefore it had an additional value. In addition in this particular case the parking restrictions were significant as street parking was problematic and the ability to relax them at the Subject Property would be of value.
46. In relation the Applicant's argument that the Applicant already had the ability to build garages due to the establishment of the Right to Manage Company, Counsel for the Respondent said that this was not the purpose of the Act. The Act was only designed to pass the management of the block to the Company. The Applicant was claiming this included the rights reserved by the Landlord, which it did not. She submitted that the right to build garages was not a management function but in this case was a right of the Landlord reserved in the Lease.

Development Value

Respondent's Case

47. The Respondent's Surveyor in his written Report submitted that Area A, which is an area to the North West of the block of flats comprising a large clothes-drying area of grass and a forecourt to the garages had development value for which the Respondent should be compensated. It was stated that it was suitable for the erection of residential properties or garages or car parking.
48. For the land to be developed for the erection of residential properties the Respondent's Surveyor stated that there were two caveats:
 - a) That the land is not required by the existing 12 maisonettes. It was suggested that it was little used for drying
 - b) That the Leaseholders did not object. They would have two avenues of objection. First in relation to planning and second in relation to the rights under their leases, which could not be removed, save by their agreement. The rights, which the Leaseholders would have to forego and be compensated for, are stated under Schedule 2 Clause 6 as follows:

"The right to use in common with the Lessors and the lessees and occupiers of the time being of other parts of the building and all persons authorised by them or any of them or having a like right to the garden for the purposes of recreation but only with

due regard to the comfort and convenience of others and subject to such reasonable regulations for the common enjoyment thereof as the Lessors may from time to time prescribe”

49. If the Respondent was to develop the land for garages or car parking the Respondent’s Surveyor stated that this could be undertaken under the Lease. Schedule 2 Clause 6 contains a proviso as follows:
“Provided Always that the Lessors shall be entitled should they see fit to erect in the garden additional garages and thereupon the Lessees right hereunder shall be extinguished in respect of such part of the garden as shall be appropriated for such garages”
50. In relation to developing Area A for houses it was stated that it is already served by a vehicular access. It was assumed for valuation purposes that two 3 or 4 bedroom houses could be erected on the site with a gross value of £540,000 being 45% of the selling price of the two houses of £1.2 million. Taking into account the costs and risks related to planning at 50%, the land would have a value of £270,00. From this would need to be deducted £12,000 per flat for the compensation in respect of the loss of the right to use the land und Schedule 2 Clause 6 together with legal costs would amount to a total of £195,000. This leaves a figure of £75,000 as the open market value for the land.
51. The Respondent’s Surveyor stated in his written report that the cost would be “no less than £195,000” but when questioned by the Applicant’s Surveyor he said this was an error and was in his opinion the appropriate allowance. It was also noted that if one Leaseholder did not agree the development could not take place.
52. The Respondent submitted a letter from Mr Townsend the Respondent’s Surveyor’s ‘in-house’ planning consultant. He estimated the site to be 0.08 ha (0.19 acres). It is an Urban Area of Special Residential Character subject to Policy HSG20 (a copy of which was provided). The Policy contains a number of constraints but there is a reasonable prospect of planning permission being granted provided the land is not required to serve the 12 maisonettes, and sufficient amenity space is preserved for 2 detached or a pair of semi-detached two storey 3 or 4 bedroom houses each with 2 car parking spaces. However in the light of the weight of objection from the Leaseholders an appeal may be necessary.
53. In answer to a question from the Tribunal Mr Townsend agreed that the aspect of looking out onto the Subject Property’s garages would not be an attractive one.
54. In relation to the garages the Respondent’s Surveyor stated that the Respondent had obtained planning permission for 5 garages but that this had now lapsed. It was submitted that at least one garage per flat would be allowed and probably one and a half per flat making a total of 12 new garages. It was stated that new garages would have a selling value of £10,000. Planning consent and construction would cost £40,000 resulting in a valuation of the interest in the freehold land of £80,000. A deduction of 20% for costs would give a figure of £60,000.
55. In relation to the parking the Respondent’s Surveyor was of the opinion that these would sell for £5,000 each. If twelve bays were constructed after management the value would be £60,000. From this the following deductions would need to be made of: £1,500 for planning consent, £12,000 to obtain the Leaseholder’s consent as the Lease only permits the construction of garages not parking bays and £8,750 for construction costs. It was submitted that the overall value would be say £50,000

56. In answer to the Tribunals' questions the Respondent's Surveyor said that he did not know how many tenants wanted to buy garages or what the demand is from those who are not Leaseholders. However in his experience demand for garages was generally high.
57. Counsel for the Respondent stated that Schedule 2 Clause 1 which related to the granting of rights to use the paths and driveways was wide enough to enable the Landlord to give permission for a third party to drive a vehicle over the driveway to use the garages.
58. Therefore depending on the development the value would be:
 £75,000 for houses
 £60,000 for garages
 £50,000 for parking bays

Applicant's Case

59. In respect of the Development Value the Applicant's Surveyor submitted that Area A could only be used for the construction of garages as this was all that was permitted by the Lease. These garages could not be let to a person other than the Leaseholders as there are no rights reserved over the driveways to give access to third parties to use the garages nor is there any mechanism for a third party to contribute to their maintenance.
60. In addition Counsel for the Applicant referred the Tribunal to the Lease of Flat 5 which, unlike the other Leases, states the Leaseholder has an unqualified and indefeasible right to use any garden area in the Estate for purposes of quiet recreation only.
61. Because the use of the garages would be limited to Leaseholders no value was attributed to their development by the Applicant.
62. The Applicant's Surveyor stated in his written Report confirmed by Counsel at the Hearing that any other development was not viable because:
 - The Lease did not intend Area A to be developed unlike the southwest area, which had been sold off.
 - It is the only open space and its loss would damage the amenity of the site
 - It was submitted that the Thames Basin Heath Provision would mean that English Nature would be likely to object to development, which it has done successfully in the past
 - Woking has produced schemes with a view to releasing land but the Subject Property is not part of such a scheme at present
 - There are restrictive covenants in the Lease as to the use of the land
 - The Subject Property is part of an area, which has Special Residential Character designation, and therefore there will be additional constraints on development
 - The Leaseholders and local residents are likely to object to the construction of additional housing on the land.
63. In relation to the garages and parking spaces Counsel for the Applicant referred the Tribunal to his argument in relation to uplift in which he stated that section 96 of the Commonhold and Leasehold Reform Act 2002, defined the management functions so as to include improvements. He submitted that the Landlord's right to build garages

under Schedule 2 Clause 6 was a right to make an improvement that had passed to the Right to Manage Company giving the Company the exclusive right to carry out these works.

64. It was also submitted that notwithstanding the establishment of the Right to Manage Company and section 96 of the Commonhold and Leasehold Reform Act 2002 if the Landlord still retained the right to terminate the lessees' rights of recreation over Area A by building garages, none of the Leases (including Flat 5) reserves a right of the Landlord to grant rights of way over the pathways so as to afford access to any additional garages in favour of persons who are not Leaseholders. Therefore the right could not be exercised other than to build garages for persons who already have a right of way and the only persons who have a right of way are the Leaseholders therefore garages could only be built to accommodate the Leaseholders.
65. In addition it was submitted that under Recital 2 the Subject Property was intended to be a general scheme allowing for lessees to enforce covenants mutually. Clause 5(iv) states that the Lessor covenants to bear the cost of complying with the maintenance obligation created by Clause 6(2) in respect of the garages "until such time or times as the said ... garage is so leased in accordance with the scheme." This indicates that garages can only be leased to Leaseholders, as they are the only persons who are members of the Scheme and have the right to mutually enforce the covenants such as that of maintenance. Nevertheless it was accepted that there may well be demand amongst the Leaseholders for garages.
66. Specifically in relation to parking spaces Counsel for the Applicant stated that the Respondent would need to obtain the Leaseholder's consent. This appeared to be accepted by the Respondent and such consent would be likely to be forthcoming. It was accepted that there may well be demand for parking spaces.
67. The Applicant therefore submitted that there is no Development Value

Decision

68. The Tribunal considered the written and oral evidence submitted.

Yield (Deferment Rate)

69. The Tribunal noted the parties submissions in relation to the Deferment Rate and referred to paragraph 121 of the *Cadogan v Sportelli* decision which states that "the deferment rate is unlikely to vary according to factors particular to the individual case and also to paragraph 123 of the decision which states that "before applying a rate that is different from 5% a valuer and LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the ... flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate." The Tribunal also noted that there should be "compelling evidence" of those features and that "only exceptionally" would it be the case that such factors were not fully be reflected in the vacant possession value and the risk premium. It accepted that the construction of a building might be a feature that falls outside the matters that are reflected in the vacant possession value of a property.
70. The Tribunal inspected the Subject Property found it to be a building of standard construction, in fair condition and situated in a good location. The Tribunal did not find that the evidence adduced by the Applicant that the Subject Property's architecture, age and state of repair together with the predominance of newer properties close to

the town centre now and in the future would necessarily make the Subject Property obsolescent at the date of the reversion. Therefore in the absence of compelling evidence to justify a departure from the guidance set in the persuasive decision of *Cadogan v Sportelli* the Tribunal applied a deferment rate of 5%.

71. The Tribunal observed that both the experienced valuers agreed that in the absence of the *Cadogan v Sportelli* decision they would have applied a deferment rate of 7%. In this respect the Tribunal is uncomfortable in applying countrywide deferment rates because it doubts that it properly reflects the true value of an investor when comparing the subject properties with the Great London Estates.

Uplift

72. The Tribunal noted that the management was already in the hands of the Applicant, a Right to Manage Company having been set up. In addition the Tribunal found that the Lease did not contain any covenants, which granted the Landlord rights from which the Applicant would benefit on the transfer of the freehold to warrant an uplift. The prohibition on the right to park vehicles on the Subject Property are included in all the Leases and would require all the Leaseholders to agree to a variation of their Leases to have this prohibition removed or altered whether the Applicant or the Respondent were the landlord. The Tribunal therefore found that the transfer of the freehold would not be any more beneficial or be of any greater value than a long lease.
73. The Tribunal therefore did not apply an uplift to the long lease values.

Development Value


74. The Tribunal considered the arguments of both parties in relation to Development Value.
75. In relation to the possibility of constructing houses on the Area A the Tribunal were of the opinion that this was far too speculative to be viable. First the matters listed by the Applicant's Surveyor of the difficulties in obtaining planning permission were found to be realistic. Even the Respondent's witness, Mr Townsend, considered that an appeal was a real possibility. Secondly the Tribunal was sceptical that the agreement of all the Leaseholders for the compensation suggested would be obtained. Thirdly the Tribunal found that the provision of Schedule 2 Clause 1 of the Lease was open to being interpreted as omitting any scope for the Landlord to grant access to a third party to Area A. Fourthly the Tribunal found in their knowledge and experience that the houses would not have an attractive view which Mr Townsend conceded. Fifthly the Tribunal on its inspection noted that there was a very narrow and unattractive access to the Area and that this could deter the developer and future purchasers further.
76. In relation to the possibility of constructing garages on Area A the Tribunal agreed with the Respondent's submission that s 96 did not give the Right to Manage Company the Respondent's right to build garages on Area A and considered this to be a proprietary right not a management function. The Tribunal therefore found that there was development value of Area A on the basis that garages could be constructed there.
77. The Tribunal found from the respective arguments of the parties that the combination of Recital 2, Clause 5(iv) meant that the Lease could be interpreted as only permitting the garages to be let to the Leaseholders and alternatively it was possible for Schedule 2 Clause 1 of the Lease to be interpreted to allow the Respondent to grant

a licence to a third party to use the garage. The Tribunal is not required to decide between the two views but note the effect that the possibility of two interpretations could have on the valuation. In this instance the Tribunal considered that a Landlord would seek to sell the garages to Leaseholders rather than engage in a legal argument taking into account the likely return. This may have been in the Respondent's mind when it allowed the planning permission for the construction of a further 5 garages to lapse.

78. The Tribunal noted that both parties accepted that the Leaseholder's consent would be needed for parking spaces but that this was likely to be forthcoming. The Tribunal was of the opinion that there would be demand for both garages and parking spaces amongst Leaseholders as was evidenced by the current parking arrangement observed at the inspection. The Tribunal found that this demand could be translated into Development Value.
79. The Tribunal therefore considered that the development value for 5 garages and 6 car parking spaces would be £15,500. No evidence was given relating to actual demand or sales evidence. The residual valuations were unsupported and thus unreliable. Accordingly, the Tribunal adopted a conservative spot figure.

Summary

80. The Tribunal determined on the matters in issue that:
- A Deferment Rate of 5% should be adopted
 - No Uplift percentage should be applied
 - The Development Value is £15,000
 - The Landlord's Compensation is calculated as **£138,871**
- as set out in the Tribunal's valuation in **Schedule 2**.


JR Morris, Chairman

Appendix 1 Tribunal's Comparison of Valuer's Calculations
Collective Enfranchisement

Property: Maybury Court
Shaftesbury Road, Woking, Surrey GU22 7QT

Valuation Date (Claim date)	12-Dec-05	6%	0.0226653	5% yrs	0.04194650	65
			0.0213704		0.03994900	66
			0.0003237		0.00049938	.25 diff'ce
			0.0223415		0.04144713	65.25
Lease terms: Flats 1,3,4,10,11 & 12 with garages	99 years to 24-Dec-2070	Unexpired term of years:	65.25		PV£	
Flats 7 & 9 without garages	99 years to 24-Dec-2070	Unexpired term of years:	65.25			
Flat 6 & 8 Non Participating	99 years to 24-Dec-2070	Unexpired term of years:	65.25			
Flat 2	99 years to 28-Dec-2094	Unexpired term of years:	89			
Flat 5	99 years to 28-Dec-2092	Unexpired term of years:	87			
Garage 7	99 years to 24-Dec-2070	Unexpired term of years:	65.25			
Agreed						
1 Present Lease - Flats	Capital Value (ex. Improvements)		£175,000			
2 Extended Lease - Flats	Capital Value		£194,444	before any uplift		
3 Present Lease - Garages	Capital Value		£5,000			
4 Extended Lease - Garages	Capital Value		£5,500			
1 Term	All flats and garages	<i>Hall Harvey</i>	£10,680	Value of Term		
	£86 each /		£10,852	£10,766		£10,766
2 Reversion		Capital Value (ex. Improvements)		Value of Reversion		
Flats 7 & 9		£194,444	2	388,888		
Flats 1,3,4,10,11 & 12 with garages		£194,444	6	1,166,664		
		£5,500	6	33,000		
Garage 7		£5,000	1	5,000		
Non Participating Flat 6		£194,444	1	194,444		
Non Participating Flat 8		£194,444	1	194,444	£1,987,440	
Flat 8 garage		£5,000	1	5,000	+ 1%	
				£1,987,440	£2,007,314	
PV£ in	65.25 yrs @	6%	0.02234	£44,402	5% 0.04144713	£83,197
					£194,444	
					+ 1%	
Flat 2		£194,444	1	194,444	£196,388	
PV£ in	89 yrs @	6%	0.0055947	£1,088	5% 0.0130063	£2,554
					£194,444	
					+ 1%	
Flat 5		£194,444	1	194,444	£196,388	
PV£ in	87 yrs @	6%	0.0057911	£1,126	5% 0.0143394	£2,816
				Landlord's Interest	£57,382	£99,334
3 Marriage value on	Flats 1,3,4,7,9,10,11 & 12	Flat 6 and 8 non part'g; Flat 2 and 5 + 80 yrs				
Landlord's Proposed Interest				£ nil		
Tenant's Proposed Interest						
Flats 1,3,4,7,9,10,11 & 12		£194,444	8	£1,555,552	£1,571,108	£1,555,552
Flat garages 1,3,4,10,11 & 12; Garage 7		£5,500	7	£38,500	£38,885	+ 1%
Less Tenant's Present Interest						
		£175,000	8	£1,400,000		
		£5,000	7	£35,000	-£1,435,000	-£1,435,000
Less Landlord's Present Interest				-£57,382	-£99,334	
				£101,670	£75,659	
Landlord's Share		at	50%	£50,835	50%	£37,829
4 Landlord's interest				£57,382		£99,334
Share of Marriage value				£50,835		£37,829
Development Value and Other rights				£0		£75,000
Landlord's compensation				£108,217		£212,163

Property: Maybury Court, Shaftesbury Road, Woking, Surrey GU22 7QT

As agreed:

Valuation Date (Claim date) 12-Dec-05

Lease terms:

Flats 1,3,4,10,11 with garages	99	years to	24-Dec-2070	Unexpired term:	65.25 years
Flats 7 & 9 without garages	99	years to	24-Dec-2070	Unexpired term:	65.25 years
Flat 6 & 8 Non Participating	99	years to	24-Dec-2070	Unexpired term:	65.25 years
Flat 2	99	years to	28-Dec-2094	Unexpired term:	89 years
Flat 5	99	years to	28-Dec-2092	Unexpired term:	87 years
Garage 7	99	years to	24-Dec-2070	Unexpired term:	65.25 years

1 Present Lease - Flats	Capital Value (ex. Improvements)	£175,000	except Flats 2 & 5
2 Extended Lease - Flats	Capital Value	£194,444	without any uplift
3 Present Lease - Garages	Capital Value	£5,000	
4 Extended Lease - Garages	Capital Value	£5,500	

1	Term	All flats and garages		Value of Term	As agreed	£10,797
2	Reversion		Capital Value (ex. Improvements)		Value of Reversion	
		Flats 7 & 9	£194,444	2	388,888	
		Flats 1,3,4,10,11 & 12 with garages	£194,444	6	1,166,664	
			£5,500	6	33,000	
		Garage 7	£5,000	1	5,000	
		Flat 6 Non Participating	£194,444	1	194,444	
		Flat 8 Non Participating	£194,444	1	194,444	
		Flat 8 garage	£5,000	1	5,000	
					£1,987,440	
	PV£ in	65.25 yrs @	5%		0.041447125	£82,374
		Flat 2	£194,444	1	194,444	
	PV£ in	89 yrs @	5%		0.0130063	£2,529
		Flat 5	£194,444	1	194,444	
	PV£ in	87 yrs @	5%		0.0143394	£2,788
						Landlord's Interest
						<u>£87,691</u>
3	Marriage value on	Flats 1,3,4,7,9,10,11 & 12			Flats 6 and 8 non participating; Flats 2 and 5 over 80 yrs unexpired	
		Landlord's Proposed Interest			£ nil	
		Tenant's Proposed Interest				
		Flats 1,3,4,7,9,10,11 & 12	£194,444	8	£1,555,552	
		Flat garages 1,3,4,10,11 & 12; Garage 7	£5,500	7	£38,500	
		Less Tenant's Present Interest				
			£175,000	8	£1,400,000	
			£5,000	7	£35,000	-£1,435,000
		Less Landlord's Present Interest			<u>-£87,691</u>	
					£71,361	
		Landlord's Share		at	50%	<u>£35,681</u>
4	Landlord's Interest					£87,691
		Share of Marriage value				£35,681
		Development Value and Other rights:	Site value of 5 Garages	£2500 ea.	£12,500	
			Site value of 6 Car spaces	£500 ea.	£3,000	
		Landlord's compensation				<u>£138,871</u>

CAM/43UM/OCE/2006/035

LEASEHOLD VALUATION TRIBUNALS (PROCEDURE)

(ENGLAND) REGULATIONS 2003

REGULATION 18

CERTIFICATE OF CORRECTION

I hereby certify that due to a clerical error the amount for Development Value of £15,500 stated in Paragraphs 79 and 80 in the Decision sent by cover of letter dated 30th April 2007 in respect of **Maybury Court, Shaftesbury Road, Woking, Surrey GU22 7DT** which was signed by me was incorrect.

The correct amount was **£16,000**. This correction certificate supersedes any previous notification.


.....
Mr J R Morris
Chairman

Dated...22nd May 2007...

Property: Maybury Court, Shaftesbury Road, Woking, Surrey GU22 7QT

As agreed:

Valuation Date (Claim date) 12-Dec-05

Lease terms:

Flats 1,3,4,10,11 with garages	99	years to	24-Dec-2070	Unexpired term:	65.25 years
Flats 7 & 9 without garages	99	years to	24-Dec-2070	Unexpired term:	65.25 years
Flat 6 & 8 Non Participating	99	years to	24-Dec-2070	Unexpired term:	65.25 years
Flat 2	99	years to	28-Dec-2094	Unexpired term:	89 years
Flat 5	99	years to	28-Dec-2092	Unexpired term:	87 years
Garage 7	99	years to	24-Dec-2070	Unexpired term:	65.25 years

1 Present Lease - Flats	Capital Value (ex. Improvements)	£175,000	<i>except Flats 2 & 5</i>
2 Extended Lease - Flats	Capital Value	£194,444	<i>without any uplift</i>
3 Present Lease - Garages	Capital Value	£5,000	
4 Extended Lease - Garages	Capital Value	£5,500	

1 **Term** All flats and garages **As agreed** Value of Term £10,797

2 **Reversion** Capital Value (ex. Improvements) Values of Reversion

Flats 7 & 9	£194,444	2	388,888
Flats 1,3,4,10,11 & 12 with garages	£194,444	6	1,166,664
	£5,500	6	33,000
Garage 7	£5,000	1	5,000
Flat 6 Non Participating	£194,444	1	194,444
Flat 8 Non Participating	£194,444	1	194,444
Flat 8 garage	£5,000	1	5,000
			<u>£1,987,440</u>
PVE in 65.25 yrs @ 5%			0.041447125
			<u>£82,374</u>
Flat 2	£194,444	1	194,444
PVE in 89 yrs @ 5%			0.0130063
			<u>£2,529</u>
Flat 5	£194,444	1	194,444
PVE in 87 yrs @ 5%			0.0143394
			<u>£2,788</u>

Landlord's Interest £98,488

3 **Marriage value on Flats 1,3,4,7,9,10,11 & 12** Flats 6 and 8 non participating; Flats 2 and 5 over 80 yrs unexpired

Landlord's Proposed Interest		£ nil	
Tenant's Proposed Interest			
Flats 1,3,4,7,9,10,11 & 12	£194,444	8	£1,555,552
Flat garages 1,3,4,10,11 & 12; Garage 7	£5,500	7	£38,500
Less Tenant's Present Interest			
	£175,000	8	£1,400,000
	£5,000	7	£35,000
			<u>-£1,435,000</u>
Less Landlord's Present Interest			<u>-£98,488</u>
			<u>£60,564</u>

Landlord's Share at 50% £30,282

4 **Landlord's Interest** £98,488

Share of Marriage value £30,282

Development Value and Other rights: Site value of 5 Garages £2000 ea. £10,000
Site value of 6 Car spaces £1000 ea. £6,000

Landlord's compensation *as corrected* £144,770