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**HM Courts  
& Tribunals  
Service**

**LEASEHOLD VALUATION TRIBUNAL**

**Sections 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")**

<b>Case Number:</b>	<b>CHI/21UC/OCE/2012/0015</b>
<b>Property:</b>	<b>15 Mayfield Place, Eastbourne, East Sussex BN22 8XJ</b>
<b>Date of Application:</b>	<b>26 March 2012</b>
<b>Applicant:</b>	<b>Mayfield Place (Eastbourne) Ltd (on behalf of Ian John Skinner and Gemma Kay Edwards)</b>
<b>Respondents:</b>	<b>John Michael Anderson and Janice Margaret Anderson</b>
<b>Appearances for Applicants:</b>	<b>Mr Mark McFadden MRICS ACI Arb, Expert Valuer/Representative</b>
<b>Appearances for Respondent:</b>	<b>None</b>
<b>Date of hearing:</b>	<b>16 August 2012</b>
<b>Tribunal:</b>	<b>Ms E Morrison LLB JD (Lawyer Chairman) Mr B H R Simms FRICS MCI Arb (Valuer Member) Mr Roger Wilkey FRICS (Valuer Member)</b>
<b>Date of the Tribunal's Decision:</b>	<b>4 September 2012</b>

## Summary of Decision

1. The price payable by the Applicant as Nominee Purchaser for the acquisition of the freehold of the subject premises is £9040. This is calculated by applying a capitalisation rate of 8%, a deferment rate of 5.25%, and relativity of 94 %. The combined long leasehold value is £193,000. The full calculation appears at the end of this decision.

## Background

2. On 26 March 2010 the qualifying tenants Ian John Skinner and Gemma Kay Edwards applied to the court for an order vesting in them the freehold of 15 Mayfield Place, Eastbourne BN22 8XJ. The application was made under section 26 of the Act on the ground that the freeholders/landlords (who are named as the Respondents in these proceedings) could not be found. On 20 April 2010 the court ordered that the freehold be vested in a company to be formed by the qualifying tenants, and directing that the terms of acquisition of the freehold be determined by the Tribunal in accordance with the Act. The Respondents have accordingly played no part in the proceedings before the Tribunal.

## The Law

3. The price to be paid by a nominee purchaser for the freehold is governed by Schedule 6 of the Act. Paragraph 2 states:
  - (1) Subject to the provisions of this paragraph, where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of:
    - (a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,
    - (b) the freeholder's share of the marriage value as determined in accordance with paragraph 4, and
    - (c) any amount of compensation payable to the freeholder under paragraph 5.
4. Where the freeholder is missing, Section 27 of the Act provides that the Tribunal shall determine the terms of acquisition of the freehold. The appropriate sum, which is to be paid into court, shall comprise the price and any other sums due to the transferor from any of the leaseholders at the time the freehold interest is transferred.
5. Section 34 and Schedule 7 of the Act contain provisions relating to the form and content of the document transferring of the freehold interest and the Tribunal is required to approve this.

## The Freehold Title

6. The land is registered under Title No. EB4378 with title absolute, the Respondents having been the registered proprietors since 1 May 1973.

### **The Leases**

7. Each of the two flats at 15 Mayfield Place is held on a lease for a term of 99 years from 25 March 1983. The Ground floor flat lease is dated 20 December 1983 with a level ground rent throughout the term of £50 per annum. The First floor flat lease is dated 9 November 1983 with a level ground rent of £35 per annum throughout the term. The freeholder is responsible for insuring the building and for the repair and maintenance of the main structure and jointly used conduits, and for exterior redecoration. Each lessee is required to contribute half the freeholder's costs of carrying out these responsibilities by way of a service charge.

### **Inspection**

8. The Tribunal inspected the property on the morning of the hearing. The Applicants and Mr McFadden were present. The property comprises a terraced house which was probably constructed towards the end of the 19th century and subsequently converted into two self-contained one bedroom flats with a shared ground floor entrance hall. It is located in an established residential area to the north of Eastbourne Town Centre comprising mainly properties of similar age and type. The main roofs are pitched and the original slate covering has been renewed with interlocking tiles. The front elevations are brick but cement rendered at rear. The outside of the property is being reasonably well maintained but paint is flaking to some timber surfaces and there are cracks to rendering at rear. Most of the original timber windows have been replaced with aluminium or upvc double glazed casements.
9. The Tribunal inspected the interior of the flats and found them to be in generally satisfactory condition. The kitchen and bathroom fittings are of acceptable modern type and have been installed since the grant of the lease. The ground floor flat enjoys the benefit of the rear garden and a lean-to addition which has been incorporated into the dining area by partial removal of a former external wall.

### **Representation and Evidence at the Hearing**

10. The Applicant was represented by Mr McFadden, who had prepared a valuation report dated 27 January 2012. Mr McFadden's valuation produced a price for the freehold of £15,540. Mr Ian Skinner also attended the hearing and gave some brief evidence. There was no evidence or attendance by or on behalf of the Respondents.

### **Preliminary Matters**

11. Mr McFadden clarified that the relevant date for valuation purposes was 26 March 2010, rather than 27 March 2010 as stated in his report.
12. Mr Wilkins told the Tribunal that although a previous leaseholder, Mr Brian Reading, had acted as Receiver (pursuant to an order of the Eastbourne County Court made in 1997), collecting ground rent and arranging the buildings insurance,

this had ceased two or three years when Mr Reading had died. Mr Reading's daughter had informed Mr Skinner that there would be no further involvement with the property. Since then no-one had demanded any ground rent or other monies, and no payments had been made by either of the Applicants. Mr Skinner now arranges the buildings insurance.

### The Price – Submissions and Determination

13. Unexpired term: Mr McFadden's calculations were all based on an unexpired term of 63.04 years. During the Tribunal's deliberations following the hearing, it was realised that this was incorrect. The leases expire on 24 March 2082, not 24 March 2073. The actual unexpired term is therefore 72 years as at the valuation date and this period needs to be substituted for 63.04 years in the appropriate components of the price calculation.
14. Capitalisation of rental income: Mr McFadden accepted that his calculations had been based on an annual rental income of £70, whereas the correct figure was £85. He proposed a yield of 8%, on the basis that £85 was a very low figure, fixed throughout the remaining term, which therefore, combined with costs of collection, would be unattractive to investors. The Tribunal agrees and determines a yield of 8%.
15. Deferment rate: Mr McFadden submitted that the generic deferment rate for flats set by the Lands Tribunal in *Cadogan v Sportelli* [2007] 1 EGLR 153 at 5% should be adjusted upwards in this case to 6%. The risk premium should be increased by .25% to reflect additional risk of obsolescence and by .75% to reflect lower growth prospects in Eastbourne, both as compared with the Prime Central London ('PCL') properties that were under consideration in *Sportelli*.
16. In *Sportelli*, the Lands Tribunal was clear that leasehold valuation tribunals should follow its finding on deferment rates unless there was "compelling evidence" to the contrary. On appeal the Court of Appeal agreed it was appropriate for the Lands Tribunal to set generic deferment rates and to expect tribunals to follow its guidance. However, Carnwath LJ, giving the leading judgment, recognised a distinction between PCL and other parts of the country. He stated:

*"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 judgement 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 other areas. The deferment rate adopted by the Tribunal will no doubt be the starting point, and its conclusion 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."*  
[2007] EWCA Civ 1042 at [102]

As to the evidence required to justify a departure from the generic rates, he said:

*"The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or 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 house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate". [123]*

17. In *Zuckerman v Trustees of the Calthorpe Estate* [2009] UKUT 235 (LC) the Upper Tribunal departed from the *Sportelli* generic rates. It increased the deferment rate to 6% for flats at Kelton Court, Edgbaston, West Midlands by making three adjustments to the risk premium:

(a) An increase of 0.25% for obsolescence. This reflected the finding that it was economically viable to repair high value properties in PCL for considerably longer than for similar sized flats in Kelton Court, and as a result there was a greater risk of deterioration at Kelton Court;

(b) An increase of 0.5% to reflect different growth rates between PCL and the Midlands. This was based on a careful examination of detailed data from the Nationwide BS from 1973 onwards and the Knight Frank Index for Kensington and Chelsea from 1976. This showed that "... the difference between past rates of long-term price increases in PCL and the West Midlands has been not slight but considerable."

(c) An increase of 0.25% to reflect management problems regarding flats as opposed to houses. This adjustment was made as a consequence of the introduction of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations"). Although introduced before the decision in *Sportelli*, these were said to have impacted on the market at some later stage.

18. Mr McFadden's submission was that, following *Kelton Court*, there should be the same increase of .25% for obsolescence, and that the .5% addition to reflect different growth rates should in this case be increased to .75%. However he did not propose any increase to reflect management problems consequent to the 2003 Regulations.

19. Dealing first with obsolescence, Mr McFadden argued that this Tribunal should, as in *Kelton Court*, find that properties in PCL will be economically viable to repair for considerably longer than similar sized properties in Eastbourne, because while repair costs did not differ much between the two areas, the PCL properties had a much higher value and so would be more likely to be kept in repair.

20. When questioned by the Tribunal, Mr McFadden conceded that with 15 Mayfield Place the risk of problems arising in respect of repair was relatively small but he felt some adjustment should be made simply because leaseholders in Eastbourne were less likely to be able to afford repairs than those in PCL. However the Tribunal is not persuaded there are grounds to increase the risk premium for obsolescence in this case. This factor is generally, as stated in *Sportelli*, reflected in the reversionary value and generic risk premium. In *Kelton Court* the property comprised 1970s blocks of flats on a large estate, and there were nearby derelict buildings and blocks of flats in a state of deterioration. The Lands Tribunal found there was a greater risk of deterioration at Kelton Court than in PCL properties that

was not reflected in the respective vacant possession values. However, 15 Mayfield Place is a Victorian house in an established residential area where properties are generally well-maintained. There is no evidence about the property, the leaseholders, or about the extent of likely repairs, that supports a finding of increased risk in this case.

21. As to the proposed adjustment in respect of capital growth, Mr McFadden relied on a report produced by Savills for the last quarter of 2011 which suggested that while PCL properties had increased in price by 15.6% from peak (in 2007/8), mainstream South East properties had decreased in value by 7.7% over the same period. The same report, and another report published in May 2011 by D & G Asset Management, suggested PCL properties would continue to be an attractive investment. Mr McFadden said this evidence supported a .75% adjustment for 15, Mayfield Place.
22. In the very recent case of *City and Country Properties Ltd v Yeats* [2012] UKUT 227 (LC) 2 July 2012, the Upper Tribunal considered a proposed adjustment to the *Sportelli* starting point of 5% deferment rate on the ground of differential growth rates between the property (25 Bishopric Court, Horsham) and PCL. The Leasehold Valuation Tribunal had allowed a .5% adjustment, following *Kelton Court*, but on appeal the Upper Tribunal disallowed this. Having surveyed the earlier Lands Tribunal decisions of *Hildron Finance Ltd v Greenhill Hampstead Ltd* (2008), *The Holt* (2008) and *Kelton Court* (2009) as to what evidence was required to justify a departure from *Sportelli* on this ground, the Upper Tribunal (HHJ Nicholas Huskinson and N J Rose FRICS) stated:

*"56. The conclusions we draw from these decisions are the following. 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 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.*

*57. In Zuckerman the Tribunal found that there had been a consistent pattern of price movements in the West Midlands from 1973 to 2008 (Nationwide) and from 1983 to 2008 (Halifax) and that a similar pattern had applied in the subject block of flats in Edgbaston between 1974 and 2008. This consistent pattern, based on statistics ranging variously over 25,34 and 35 years, all pointed to significantly lower growth in the West Midlands than had been seen in PCL over 32 years (Knight Frank).*

*58. By contrast, the evidence of growth which has been put forward in this appeal is very thin. Like Mr Rutledge in Zuckerman, Mr Pridell relied on the Knight Frank graph for PCL to show price movements there over a 32 year period. For the purpose of illustrating similar movements in Horsham, he relied on figures over 19 years, not in West Sussex but for the entire Outer Metropolitan area (Nationwide). He also produced sale prices in Bishopric Court over 26 years, but in cross examination he accepted that only the*

*figures for the last 11 years were of real significance. In our view the evidence of market movements in Horsham which has been produced in this appeal is of scarcely more assistance than that which was rejected by the Tribunal in The Holt. It is insufficient to persuade us that there was at the valuation date a prospect of significantly slower growth in values in Horsham over the long term than in PCL..."*

23. The evidence submitted by Mr McFadden in this case is much more limited than the evidence which was rejected in *Bishopric Court* as being 'very thin'. There is no evidence before this Tribunal of price movements prior to 2007. The only evidence for the period 2007-2012 is the Savills report which suggests growth rates for all PCL and South East mainstream properties without further differentiation based on property type or area, and a Zoopla graph for 2007-2012 which appears to show postcode SW7 properties generally holding their value over the same period compared with a very slight drop in value (not calculable with any precision from the graph) for postcode BN22 properties over the same period. The trends suggested by the Zoopla graph do not appear to support the Savills' figures for PCL growth in any event. Following *Bishopric Court*, the Tribunal finds no evidence in this case to support any adjustment to the deferment rate on the grounds of different growth rates.

24. As stated above, Mr McFadden did not propose a further adjustment on the ground of the additional management risks posed by the 2003 Regulations. However the Tribunal find that a .25% upwards adjustment on this ground should be made. In *Bishopric Court*, the valuation date was 29 March 2010, just 3 days later than the valuation date in this case. The Upper Tribunal in that case accepted evidence that there are a substantial number of cases where landlords and tenants are embroiled in service charge disputes regarding the 2003 Regulations, and referred in particular to the case of *Daejan Investments v Benson* [2011] EWCA Civ 28 where permission has been given for an appeal to the Supreme Court. At para. 45 the Upper Tribunal stated:

*"In our judgment those investing in freehold reversions upon flats would as at the valuation date have had a raised concern about possible management problems during the course of the tenancy, i.e. raised above the level of concern recognised in Sportelli. This raised level of concern would have arisen from the 2003 Regulations and from their subsequent interpretation and application especially in a case such as Daejan v Benson..."*

25. The Upper Tribunal went on to hold that, in addition to the .25% adjustment to the generic rate made in *Sportelli* for all flats, there should be a .25% addition to reflect the actual burden of management (taking into account the 2003 Regulations) which will fall upon the purchaser or which may fall upon the purchaser during the course of the lease. Only if there was clear evidence which would persuade the purchaser of the freehold that it was extremely improbable he would ever be burdened with responsibility for management would this addition not be appropriate (para. 46).

26. While Bishopric Court is a purpose-built block of flats, and 15 Mayfield Place comprises only 2 flats converted from a house, the 2003 Regulations will still apply to repair works and indeed, given that almost any works are likely to cost more than £500, will have to be followed even for relatively minor projects which in a more substantial development might fall outside their ambit. In accordance with the reasoning and authority of the *Bishopric Court*, the Tribunal determines that a .25% increase of the deferment rate is justified on this ground.
27. The Tribunal therefore finds that the correct deferment rate is 5.25%.
28. Relativity: In his report, Mr McFadden used relativity graphs produced by Austin Gray and Andrew Pridell Associates Ltd. He explained at the hearing that he believed these two graphs were the most relevant of those available as the underlying data came from sales of flats in the South-East. He had taken the midpoint between the relativity suggested by each graph to produce the appropriate relativity for this case. However his calculations were based on an erroneous calculation of the unexpired term as explained above. Following the hearing Mr McFadden was directed to submit further written submissions as to the appropriate relativity to be used in the price calculation. Using the same two graphs and the same methodology he proposed a relativity of 94.112% rounded down to 94.1%. The Tribunal accepts this is a reasonable method and basis of calculation and, rounding down, applies a relativity of 94%.
29. Long leasehold values: Mr McFadden suggested the long leasehold value for the ground floor flat was £108,000.00 and for the first floor flat was £100,000.00. His report referred to comparables and the Tribunal accepts these figures. However Mr McFadden had assumed there were no tenants' improvements justifying a downward adjustment. It was clear from the inspection, and the lease plan of the ground floor flat, that there have been improvements since the date of the lease. Specifically, the kitchens and bathrooms in both flats have been updated or refitted and the lean-to has been incorporated into the ground floor flat dining-room adding substantial space, light and amenity. Given the absence of the landlord for very many years, combined with Mr Skinner's evidence that a previous leaseholder incorporated the lean-to, the Tribunal finds on a balance of probabilities that these are all tenants' improvements.
30. Mr McFadden submitted that if there were to be an adjustment in respect of these improvements the value for the ground floor flat should be reduced by £10,000 and the value of the first floor flat by £5000. This took into account an estimated cost of kitchen/bathroom upgrades of £5000 - £10,000 per flat. The Tribunal does not disagree with these figures and therefore values the ground floor flat at £98,000 and the first floor flat at £95,000.
31. Other elements of the valuation: The value of the freeholder's interest must include the value of the undemised common parts which will also be acquired. These common parts comprise the front garden area and internal hall and stairway. Mr McFadden had not considered these in his written report. At the hearing he suggested a figure of £500 but offered no evidence to support this figure. Having regard to the limited extent of these areas, the existing rights over them, and the



33. The Tribunal determines there are no other sums due to the freeholders. Rent has not been paid for at least two years but is not due because the Respondents have not complied with section 48(1) of the Landlord and Tenant Act 1987 and section 166 of the Commonhold and Leasehold Reform Act 2002.

**Other matters**

34. The Transfer is attached to this decision in its approved form.
35. The court order of 20 April 2010 states that the qualifying leaseholders' costs of the application are to be assessed by the Leasehold Valuation Tribunal. Sections 33 and 91 of the Act set out the Tribunal's jurisdiction in respect of costs matters. There is no jurisdiction to assess leaseholders' costs.

**Concluding Remarks**

36. The price determined by the Tribunal is significantly lower than the price proposed by the Applicant's own valuer. This is mainly due to errors made by the valuer in his report and calculations, some of which worked against his client. The Tribunal is entitled to expect that all witnesses and representatives appearing before it, and particularly professional experts, will take proper care to ensure their evidence is complete and accurate. The absence of a participating opponent is no excuse for lack of appropriate attention to detail. Unfortunately that expectation was not met in this case.

Chairman:   
E Morrison LLB JD

Dated: 4 September 2012

Address 15 Mayfield Place EASTBOURNE

Facts used

Value of long leases £193,000  
    Relativity 94%  
Value of existing unimproved leasehold £181,420  
    Valuation date 26 March 2010  
    yield - term 8.00%  
    yield - reversion 5.25%  
Unexpired term at valuation date 72 years  
Ground Rent £85.00 for 72 yrs

Value of landlord's interest

Capitalise ground rent for current term

	Ground rent	£85.00	
YP	8.00% 72 years	<u>12.45098</u>	1,451
<b>Plus</b>			
Landord's reversion to long leases in possession	£193,000		
Pv	5.25% 72 years	<u>0.02512</u>	<u>4,848</u>
<b>Value of landlord's existing interest</b>		6,299	<b>£6,299</b>

Landlord's share of marriage value

Value of reversionary interests £193,000

**Less**

Value of landlord's existing interest lost (see above)	£6,299	
Value of tenant's existing interests	£181,420	187,719
<b>Marriage value</b>	£5,281	
Landlord's share of marriage value at 50%		<b>£2,640</b>
Compensation		Nil
Value of freehold common parts and front garden		<b>£100</b>
<b>Price payable</b>		<b><u>£9,040</u></b>