LEASEHOLD VALUATION TRIBUNAL

APPLICATION UNDER SECTIONS 48(1) AND 91(2) LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993 ('the Act')

Case reference: CHI/45UF/OLR/2010/0051

Premises	25 Bishopric Court, Horsham, West Sussex RH12 1TH
Applicant	Mr A Yeats (Leaseholder)
Representation	Mr Andrew Pridell (Andrew Pridell Associates Limited, surveyors and valuers) (instructed by Griffith Smith Farrington Webb LLP, solicitors)
Respondents	City and Country Properties (freeholders) and Fencott Limited (intermediate landlords)
Representation	Mr Carl Fain of counsel (instructed by Wallace LLP, solicitors) and Mr Robin Sharp (valuer)
Inspection and Hearing	1 November 2010
The Tribunal	Professor James Driscoll, LLM LLB, solicitor (chair); Lady Davies FRICS and Mr Nigel Robinson FRICS
Decision	22 November 2010

The Decisions Summarised

1. The premium payable to the freeholder is the sum of **£8,906**.
2. This is based on applying a deferment rate of 6% and using a relativity of 86%.
3. It was agreed that the applicant should pay the sum of **£1,312** to the intermediate landlord so that the total sum to be paid is **£10,208**.
4. The applicant will pay the freeholder the sum of **£750** in respect of their valuer's costs.

INTRODUCTION

1. This is an application under sections 48(1) and 91(2) of the Act for a determination of the premium payable for the grant of a new lease under section 39 of the Act and for a determination of the costs payable under that claim.
2. The applicant is the leaseholder of Flat 25 in the subject premises. We will refer to him as the 'leaseholder'. He holds a lease which was granted for 99 years from 25 March 1977 and dated 31 May 1984. There is an intermediate lease for one day longer than his lease which is currently held by Fencott Limited.
3. The respondents are the owners of the freehold to the building and the holders of an intermediate lease. We will refer to them as the freeholder and the intermediate landlord respectively.
4. In a notice dated 29 March 2010 the leaseholder gave the freeholder (as the 'competent landlord') a notice seeking the grant of a new lease under the provisions in the Act and gave a copy of the notice to the intermediate landlord. He proposed a premium of £6,156 for the new lease and a figure of £1,312 to the intermediate landlord.
5. In a counter-notice dated 20 April 2010 the freeholder admitted that the leaseholder is entitled to a new lease and (on behalf of the intermediate landlord) accepted the figure of £1,312 payable to that landlord. However, they proposed the figure of

£23,373 as the premium for the grant of the new lease. A draft of the proposed new lease was annexed to the counter-notice.

6. As the parties could not agree terms, application was made to the tribunal under sections 48(1) and 91(2) of the Act. Directions were given by the tribunal on 8 July 2010.

THE HEARING

7. At the hearing held on 1 November 2010 the leaseholder was represented by Mr Pridell who appeared as an advocate and an expert witness on valuation. The freeholder was represented by Mr Fain of counsel who called Mr Sharp to give expert evidence on valuation. Both valuers prepared written valuations. A bundle of documents was prepared by the leaseholder's solicitors. Mr Fain served copies of a skeleton argument.

Matters agreed

8. In a statement of 'agreed facts' the valuers agreed on:
   - a brief description of the Flat
   - the tenure
   - the intermediate and underlease rents
   - the unexpired lease term (at 66 years)
   - the valuation date (29 March 2010)
   - the yield rate on the capitalisation of the ground rental income (at 7%)

9. The parties disagreed on:
   - relativity with Mr Pridell arguing for 89.5% and Mr Sharp arguing for 83.20%
   - the reversionary discount rate (that is the deferment rate) where Mr Pridell contends for a rate of 6% whilst Mr Sharp contends 5%
   - whether or not the freeholder loses rent after the grant of the new lease (Mr Pridell denies this, Mr Sharp considers that it will)
   - Costs

The inspection

10. Before the hearing started we carried out both an internal and external inspection of the premises and its surroundings. We were accompanied by the leaseholder, Mr Pridell, Mr Fain and Mr Sharp.

11. No 25 Bishopric Court is a first floor flat in a 4 storey purpose built block of 54 flats C 1930 . Though the block is situated close to the centre of town it is poorly sited at the rear of a secondary parade of shops with flats over the shops . A small block of 22 garages is adjacent to the site and there is limited parking at the front with severe clamping restrictions for unauthorized users. An unsightly bin area is situated to the side and close to the front of the building.

12. Bishopric Court is a very plain building with spartan communal staircases leading to galleried open landings serving flats at each floor level. The communal areas are somewhat bleak have not been well maintained and are due for redecoration . There is one small passenger lift in the centre of the block. However, this was not working at the time of our inspection. The block forms an irregular horseshoe shape around a garden area and overlooks a bowling club at the rear.

13. Overall the block is unattractive and 'tired' with evidence of peeling paintwork . There is a general air of a lack of any planned maintenance, or any sign of upgrading, or improvement. The building is of plain brick construction under a part tiled and part flat roof. The dated windows are principally of metal 'crittall' style in timber sub frames. The flats are provided with central heating radiators and hot water from a communal oil fired boiler.

14. We inspected Flat numbered 25 internally . The accomodation comprises a small living room, 2 very small bedrooms, a tiny kitchen with dated units and a small bathroom / WC with basic white fittings. Three radiators are provided as part of the communal system.

Evidence and submissions made on behalf of the leaseholder

15. Mr Pridell gave his evidence on valuation. He was cross-examined by Mr Fain and asked questions by the tribunal.

16. On the basis of comparable sales evidence, and his own knowledge and experience of properties in the immediate area, he concluded that the value of the unimproved long leasehold interest is £134,000. There are, he suggests, no qualifying leaseholder improvements to take account of.

17. As a matter of construction of the lease he concludes that the rent payable under the intermediate lease will continue after the new lease is granted. The freeholder will not, therefore, lose any rent.

18. On the deferment rate he relies on the decision of the Upper Tribunal in *Zuckerman (and others) v the Calthorpe Estate* [2009] UKUT 235 (LC) where that Tribunal departed from the generic 5% rate propounded by the Tribunal in *Cadogan Estate v Sportelli* (and an approach which was upheld by the Court of Appeal, see: [2007] EWCA Civ 1042)).

19. Following that decision, Mr Pridell argues that the same factors that the Tribunal used to justify a rate of 6% in *Zuckmeran* apply to this case. These factors are: 'obsolescence', capital growth and increased management difficulties (with flats); they justify together an additional 1% addition to the 5% generic rate.

20. Mr Pridell submits that he relied on this analysis in his evidence to this tribunal in *Ashdown Hove Limited v Remstar Properties Limited* [2010] 37 EG 138 (leasehold valuation tribunal) where the tribunal determined that a 6% deferment rate should be used because of the existance of these factors was made out to the satisfaction of the

tribunal. He adds that his evidence and submissions also led this tribunal to determine a deferment rate of 5.75% in *Hardwick House Freehold Ltd v Land & Equity Holdings Limited* (2010) .

21. Turning to 'relativity', based on past tribunal decisions, and his experience of settling this issue in a number of cases, he concludes that the appropriate relavity is 89.5%. In reaching this conclusion he relies also on the decision of the Upper Tribunal in *Arrowdell v Coniston Court (North) Hove Ltd* [2007] RVR 39. Mr Pridell explained that he had been involved with a large number of leasehold enfranchisement and new lease cases (approaching 1,500); he also sat on the RICS working party on relativity which reported in 2009 (see the reference in paragraph 55 below).

22. Relativity is, in his opinion, an academic concept as there is little or no evidence of market transactions which are untainted by the Act. He referred to the *Arrowdell Ltd v Coniston Court (North) Hove Ltd* decision of the Upper Tribunal (LRA/72/2005) where a relativity of 88.5% was decided on a 1960's block of 32 flats in Hove with 64 years to run which he submits is similar to the subject premises.

23. He referred to a graph of relativity covering Greater London and England at Tab 8 in Mr Sharp's bundle. This showed graphs from Beckett and Kay, Austin Gray, Nesbitt & Co, South East Leasehold and Andrew Pridell Ltd. Mr Pridell said that his own graph included outer London and that in his experience relativity is always at a lower rate in London than it is elsewhere. In his view, 89.5% was appropriate in this instance.

24. When asked about the *Nailrile v Cadogan* [2008] decision of the Upper Tribunal, (where there were comments on how to assess relativity) Mr Pridell said that this was not one of his cases. He did, however, refer to the work of the RICS working party where, due to the various conceptual difficulties involved, it had taken a long time to come to an answer and members of that party were unable to agree on a general approach to measuring relativity.

25. In response to questions, Mr Pridell confirmed that 90% of his work experience was on behalf of tenants. His graph was prepared in August 2008 and covered 500 flats in London and the South East over a six year period. When considering the 'Graph of Graphs', he suggested that his figure was within the range although he acknowledged it was at the higher level.

26. Mr Pridell also relies on his analysis of sales in the Bishopric block from 1999 to 2009 and on a graph showing growth in residential property sales to 2010 which he submits support his position. He also submits that the service charges for the block are high and he produced statements made by the managing agents for the leaseholder's flat showing averages of around £2,800 per annum. He says that the leaseholder is of the view that the leaseholders in the block are unhappy with the management and have considered exercising the right to manage (that is under the provisions in Part 2 of the Commonhold and Leasehold Reform Act 2002).

27. His overall conclusion is that the premium for the new lease should be £9,115 (which includes the agreed sum of £1,312 payable to the intermediate landlord) .

Evidence and submissions made on behalf of the freeholder

28. Mr Sharp gave evidence and he was cross-examined by Mr Pridell and re-examined by Mr Fain. He was also asked questions by the tribunal. He pointed out that the management responsibilites lie with the intermediate leaseholder in this case and therefore doubted the justificition for any departure from the 5% generic rate. We asked him about the effects on the head rent payable bearing in mind that there have been five other new leases granted in that block. Mr Sharp told us that in conversation with the current managing agents that the full rent due under the lease was being taken though the agents are considering reducing this in light of the new leases already granted and with the new lease soon to be granted for the subject premises.

29. To determine 'long leasehold value' he says that there is no evidence of recent long lease sales in the block. Instead he has used sales of similar properties and he concludes that the long leasehold value is £125,000 to which he adds 1% to arrive at the freehold value at £126,250. Mr Sharp argues for a relativity of 83.25%. He acknowledged that one needed to remove the effect of the Act and he had done this by looking at the market and the imponderables. He considered the short lease values at Bishopric Court on the high side. On questioning, Mr Sharp agreed that relativity is not always the same and changes between locations. He did not however agree with Mr Pridell that relativity was lower in London, certainly not now in his view.

30. For the existing or current leasehold value he draws attention to sales in the block (including the subject property) which he concludes points to an existing lease value of £105,000 for the subject property. Unlike Mr Pridell he believes that one such recent sale of flat 51 in the block at a price of £80,000 is a relevant comparable and not a 'rogue sale' as Mr Pridell described it. Using the bottom end of lines on the Beckett and Kay relativity graphs and the RICS relativity graphs he considers that relativity should be circa 83.25%.

31. On the deferment rate Mr Sharp submits that the generic 5% rate should be used and he sees no reasons for departing from it. In summary, he argues
    - there are no exceptional management difficulties in this case, not least as the intermediate landlord takes on these responsibilities, not the freeholder
    - there is no reliable evidence that there are higher growth in prime central London than in Horsham
    - he produces analysis of growth between Westminster, London and West Sussex
    - the degree of obsolescence is not greater in Horsham than in Prime Central London

32. In conclusion he submits that the premium for the grant of the new lease should be £13,779.

OUR CONCLUSIONS ON THE DEFERMENT RATE AND RELATIVITY

The deferment rate

33. On balance we prefer the evidence and the submissions of Mr Pridell on the deferment rate. Accordingly we determine that there should be an upward adjustment of 1% to make the rate 6% in this case. Thus having considered the evidence and the submissions we have concluded that the deferment rate to be applied to the freehold vacant possession value for the subject premises is 6%. Our conclusions are that to the 5% generic rate should be added first, 0.5% for additional risk that growth will not be achieved, second, 0.25% for the obsolescence factor and third, an additional 0.25% for the risks involved in the management of this block of leasehold flats.

34. In the *Sportelli* litigation the Lands Tribunal (now called the Upper Tribunal) decided (amongst other matters) that generic rates should be used: 4.75% for house enfranchisement claims and 5% for flat new lease or collective enfranchisement claims (the additional fraction of 0.25% to reflect the greater potential risks caused by the problems of managing blocks of leasehold flats).

35. In *Sportelli* the Lands Tribunal also decided that expert evidence from the financial markets was to be used instead of property market evidence as the latter is considered to have been (in a sense) 'tainted' by the very statutory rights that allow leaseholders to demand as of right new or extended leases or the freehold. In the valuation formulae in the Leasehold Reform Act 1967 (for house leases) and in Schedules 6 and 13 of the 1993 Act, one has to disregard several factors, including the statutory rights of leaseholders. This approach is sometimes referred to as valuing in the 'No Act' world.

36. The Lands Tribunal used a different approach by adopting generic rates based on the formula DR = Risk Free Rate (of 2.25%) less the Real Growth Rate (2%) plus Risk Premium (4.5%) and an increased figure of 0.25% for the management risks for flats rather than houses. The Tribunal also stated that the generic rates should be used generally for all residential leasehold property regardless of its location. The properties which were considered by that Tribunal are all to be found in very expensive areas of London, called 'Prime Central London' (or the PCL). However, the Lands Tribunal emphasised that the generic rates should be used regardless of location. To put it another way, the rates apply to properties both within an outside the PCL.

37. Appeals and cross-appeals followed the *Sportelli* decisions. The Court of Appeal upheld the approach of the Lands Tribunal holding that the rejection of property market evidence in favour of a generic rate approach drawn from the financial markets was not an irrational decision. Nor was the rule or guidance from the Lands Tribunal, that leasehold valuation tribunals across England and Wales apply the generic rates (and not confince it to the PCL), irrational or wrong in law.

38. This approach was upheld by the Court of Appeal ([2007] EWCA Civ 1042). However, the Court also stated that '*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 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 relevent to the risk premium for residential property in different areas.' (paragraph 102).

39. There was no appeal against these decisions of the Court of Appeal (though there was an appeal to the House of Lords against the Court's decision on a matter known as 'hope value', which is not an issue in this case).

40. There have been several Lands Tribunal decisions since the Court of Appeal's decision which upheld the use of the generic rates and until recently all such appeals urging the departure from the generic rates failed. For example, in *Culley v Daegan Properties Ltd* [2009] UKUT 168 was not persuaded to depart from the 5% generic rate in an enfranchisement claim.

41. However, the Lands Tribunal allowed an appeal in *Zuckerman v Trustees of the Calthorpe Estates* (2009) and determined that a higher rate should be applied. It made three adjustments to the guideline rate of 5%: 0.5% to reflect different growth rates between London and the Midlands; 0.25% for obsolescence and 0.25% (in addition to the 0.25% sanctioned in *Sportelli*) to reflect management problems regarding flats as opposed to houses. The case *Zuckerman* concerned a claims for new leases.

42. In another Lands Tribunal decision, *Re Lethaby* [2010] UKUT 86 (LC), a collective enfranchisement claim involving a block of just two flats an addition of 0.25% was added to the 5% generic rate. But no additional increase was made for different growth rates between that part of London in which the property was situated and the PCL. This was because the leaseholders produced no evidence to support this. As to the additional risks with leasehold management, the Tribunal stated this: *The risk is likely to be greatest in those cases where expensive building work has been undertaken to the structure and/or common parts of a block of flats.* (paragraph 17). No addition to the 0.25% sanctioned in *Sportelli* was justified in this case, a small block of just two flats. As to obsolescence or deterioration the Upper Tribunal determined that having regard to the differences in value in properties in that part of London (east London) in comparison to the PCL: *an investor would conclude that, in this case, there was a greater risk than in Sportelli of eventual deterioration in the state of the property towards the end of the lease term, which would in practice have to be remedied by the freeholder notwithstanding the lessees' contractual repairing obligations. In my judgment this increased risk would be reflected by an increase of 0.25% in the risk premium.*

43. We will explain our reasons for departing from the generic 5% rate in this case by comparing the conclusions of the Upper Tribunal in the *Zuckerman* and *Re Lethaby* decisions with our assessment of the evidence in this application. In *Zuckerman*, the first case where the Upper Tribunal sanctioned a departure from the generic rate in

flat claims, it was said '..*my conclusion in this appeal differs from the one reached by the Tribunal in Culley namely that there was no justification for a departure from the Sportelli starting point. In Culley, as in the present appeal, the basis of the Tribunal's decision was the expert evidence adduced by the parties'* (at paragraph 58).

44. In *Zuckerman* the Upper Tribunal heard evidence that the values of the properties in the *Sportelli* decision were of a different magnitude to those in Kelton Court, situated in the Midlands. We have concluded that the difference between the value of the flats in this application and those considered in the *Sportelli* case is very significant. Added to that is Mr Pridell's experience that building costs in the local area are comparable to those in London. We conclude, therefore, that it is likely to remain economically viable to repair high value flats in PCL for much longer than will be the case for similar sized flats in the subject premises. Even though the flats are leased on full repairing covenants, there is a much greater risk of deterioration at the subject premises than there is in PCL and this is not reflected in the vacant possession values. This leads us to the conclusion that an investor would expect an additional 0.25% in the risk premium to reflect this factor. This is also supported by the decisions in the *Re Lethaby* case as well as the *Zuckerman* case.

45. As to the prospects for future growth, Mr Pridell produced evidence which he argues shows a much slower growth rate for properties in the local area. He told us that he has adapted the methodology used in the *Zuckerman* case in his report (having spoken to the leaseholder's valuer in that case). As the Upper Tribunal noted in *Zuckerman* , there are limitations on the use of statistical evidence but there, as in this case, the available evidence suggests a significantly lower growth rate than in the PCL. Conversely, in the *Re Lethaby* decision the leaseholders did not produce any evidence to compare growth rates in East London (where that property is located) and the PCL.

46. Mr Sharp produced evidence in the form of comparison of prices in the Westminster and West Sussex areas to try show that growth rates are similar in the two areas. However, our reading of his graphs suggests a different conclusion, namely that with the exception of periods between 2003 and 2005 that property prices were higher in the Westminster area, a trend that has become pronounced since the beginning of 2008.

47. The evidence put forward leads us to conclude that an investor who is examining long-term growth would not be confident that the PCL rate of growth would be achieved in the Horsham area and that he would adjust his bid for the subject premises accordingly. Following the reasoning in *Zuckerman* we conclude that the prospect of such a reduction in an investors bid should be assessed by a further increase in the risk premium by 0.5 %.

48. This brings us to third factor that can affect the deferment rate, that is the difference between the rates for houses and flats to reflect the greater management risks with the latter. In *Sportelli* the Upper Tribunal concluded that an adjustment to the deferment rate should be made to reflect the greater management problems associated with flats.

The Tribunal added '.. *.although we do not consider it appropriate to differentiate between flats that are subject to head leases and those which are not.....Even where flats are efficiently managed, service charge and repairs problems inevitably occur, and the management exercise itself is, we feel, sufficiently more complex to warrant a generalised 0.25% additions for flats' (paragraph 95).*

49. In *Zuckermann* the Upper Tribunal took this a stage further and decided that the impact of the Service Charges (Consultation Requirements) (England) Regulations 2003 meant that the market would have been more aware of the challenges that face landlords under the Regulations than was the case when *Sportelli* was decided. On this occasion the Tribunal decided that 'in the eleven cases with which I am currently concerned, investors would have required an addition of 0.5% to reflect the greater management problems associate with flats than with houses' (*Zuckermann,* paragraph 56).

50. The Tribunal added that if the head lease had still been in existence it would not have considered it appropriate to depart from the *Sportelli* uplift. However, we have found it difficult to reconcile the two positions taken by the Lands Tribunal on the effects of there being a head lease on this aspect of the risk factor. We have concluded that we should apply the principle adopted by the Lands Tribunal in *Sportelli* as its decisions on the deferment rate were upheld by the Court of Appeal. In other words, one should not differentiate between cases where the flats have head leases and those who do not. In *Sportelli* the Lands Tribunal said this: *We think, however, that an adjustment needs to be made to reflect the management problems, although we do not consider it appropriate to differentiate between flats that are the subject of headleases and those that are not. Nor do we think the management concerns are necessarily so much less for a single flat than for a block to warrant a different adjustment. Even when flats are efficiently managed, service charges and repairs problems inevitably occur, and the management exercise in itself is, we feel, sufficiently more complex to warrant a generalised 0.25% addition for flats'* (paragraph [95]).

51. In the *Re Lethaby* decision the Tribunal did not make an additional uplift in a case where, with two flats, the leaseholders shared the repair and upkeep and roof and foundations of the building, the landlord's responsibilities in that case are minimal. The risk to the landlord was, therefore, much less than it was in *Zuckerman* where the landlord's responsibilities included the maintenance of the structure and common areas of the flats and a separate block of garages, private roads and amenity areas.

52. We conclude that an investor would require an addition of 0.5% to reflect in this case, the greater management responsibilities with flats than with houses. As our inspection revealed, the block bears the marks of a poorly maintained building with higher service charges that (on the basis of our professional experience) are higher than one would expect for a block of this size.

53. The risks that apply to flat management were illustrated by another recent decision of the Lands Tribunal in *Daejan Investments Limted v Benson (and others)* [2009] where the landlord's appeal against the refusal of a leasehold valuation tribunal to

exercise its discretion to dispense with the consultation requirements in section 20 of the Landlord and Tenant Act 1985 was dismissed. Lord Justice Carnwath, the senior president of the Upper Tribunal, stated '*..The potential effects - draconian on the one side and a windfall on the other- are an intrinsic part of the legislative scheme*' (paragraph 40). In that appeal the landlord's charges were some £270,000. As a result of their failure to comply in full with the statutory consultation requirements they could only recover £250 from each of the five leaseholders. This is an example of how the stricter legal framework governing leasehold flat management carries additional financial risks. At the Lands Tribunal concluded in the *Zuckerman* case the market has become aware of the effects of the new legal framework.

54. In summary, we conclude that the evidence produced by the applicant justifies a departure from the generic deferment rate by adding to that 5% rate, an additional 0.25% for obsolescence, an additional 0.5% because of the risk that the potential growth may not be achieved, and an additional 0.25% relating to the differences between managing houses and flats. This results in a 6% deferment rate in this particular case. We would add that this additional 1% reflects the fact that the evidence shows here that investors would require this by comparison to the risks of investing in dwellings in the PCL. It is also consistent with the approach in the *Zuckermann* and the *Re Lethaby* decisions where a departure from the generic rate was made.

Relativity

55. The parties disagreed on the correct 'relativity' to be applied. This has been defined as '..the value of a dwelling held on an existing lease at any given unexpired term divided by the value of the same dwelling in possession to the freeholder, expressed as a percentage' (*Leasehold Reform: Graphs of Relativity (RJCS Research Report (October 2009))* (paragraph 2.1).

56. Mr Fain referred us to the decision of the Upper Tribunal in *Nailrile Ltd v Cadogan Estate* (LRA/114/2006) but without referring to any particular passage. We find that the following passage of assistance: 'Relativity is best established by doing the best one can with such transaction evidence as may be available and graphs of relativity' (paragraph 229).

57. We have concluded that the appropriate relativity is 86% which is the mid-way point between the positions taken by the parties. This is based on their evidence.

58. The recent short lease sales evidence for the block is limited and considered to be tainted by a rogue sale as suggested by Mr Pridell. There is of course no "no Act" evidence at all of short lease sales. There is no long lease sale evidence for the block and that for property in the vicinity has to be treated with care given the nature and condition of this block as previously described. The unhelpful nature of the information available is perhaps confirmed by the difference between the two valuers and the fact that the tenant's valuer has come to higher values than the landlord's valuer, even for a long lease.

59. Looking at the evidence presented to us, we found ourselves swayed by Mr Sharp's opinion that the freehold and long lease values would be £126,250 and £125,000 respectively. However, we considered that even the limited short lease sale information did not support his existing lease "no Act" value. Similarly, applying a relativity of 89.5% to Mr Sharp's long lease figure gave too high a figure in our opinion and also 83.2% too low a figure. Both valuers acknowledged that their figures were within the range suggested by the graphs but at opposite ends of the scale. We are not happy with the extremes of interpretation placed on the graphs and so believe that 86% is appropriate.

OUR OTHER CONCLUSIONS

Will the freeholder suffer a loss of rent once the new flat lease has been granted?

60. We now turn to the dispute over the proper construction of the lease and whether the freeholder will suffer a loss when a new lease of Flat 25 is granted to the leaseholders. As this will be a new lease, 90 years longer than the current lease, at a peppercorn rent (section 56(1) of the Act).

61. Under the head lease (starting on page 93 of the bundle) an annual rent of £2,662 is payable by the intermediate landlord to the freeholder. This rent can be increased by any increases in the ground rents payable under the flat underleases. We think that this means that as the rents payable under the flat leases are periodically reviewed and increased that the rent payable to the freeholder can be increased proportionally. Mr Fain invited us to consider another provision to rent in the same opening part of the head lease which states '...and in the event that such Underleases are surrendered to the the Lessee in return for Underleases for longer terms at increased ground rents and/or containing different rent review dates then the rent hereunder shall be varied accordingly'. He submits that as the effect of the grant of the new lease is in effect being granted following a surrender of the current lease.

62. We reject these submissions. Although it may be fair to describe the effects of the new lease amounting to a surrender of the current lease, far from their being a new rent payable, the rent is a nominal rent for the whole of the term of the new lease. This is why the intermediate landlord is paid a premium to compensate for the loss of the ground rent. That figure was agreed by the parties. We can see no justification for the freeholder to claim compensation; they suffer no loss on the grant of the new lease in their capacity as the competent landlord for the purposes of the claim. Their position on this was also undermined as Mr Sharp told us that following a conversation with the landlord's agents that they have continued to receive the full rent of £2,662 even though there have been other new leases granted under the Act. We conclude that as new leases are granted there will be a continuing shortfall between what the intermediate landlord receives and what is payable to the freeholder.

Costs

63. Finally we turn to consider the dispute over costs. It is common ground that the leaseholder is responsible for the landlord's reasonable costs including those incurred in the valuation elements of the claim (under section 60 of the Act). We were informed at the hearing that the parties have agreed the landlord's legal costs. But the costs of the landlord employing Mr Sharp were not agreed. Mr Sharp claims £750 for his work in investgating the claim, and in obtaining and examaning comparable evidence. For the leaseholder Mr Pridell says that his fee for advising the leaseholder (£450 + VAT) shows that the work can be done cheaper.

64. We cannot see how Mr Sharp's fees can be described as unreasonable. The landlord is entitled to chose to instruct an experienced valuer and given the work he did (including the investigation of comparable market evidence) we determine that the leaseholder must pay the landlord the sum of £750 (there is no VAT payable) for the costs of using Mr Sharp's services.

65. Our determinations are summarised the beginning of this decision.

66. Our valuation is appended to this decision.

[Signed]

James Driscoll (Lawyer Chair)

22 November 2010

APPENDIX

25 Bishopric Court, Horsham	**Statutory Lease Extension**		
Valuation Date	29th March 2010		
Freehold Value	£126,250.00		
Tenant's Improvements	£ nil		
Value of extended lease (unimproved)	£125,000.00		
Freehold Reversionary Value uplift	1%		
Value of existing Lease (unimproved)	£108,575.00		
Yield, Ground Rent	7%		
Deferment Rate	6%		
Unexpired term at valuation date	66 years		
New Lease term (plus 90 years)	156 years		
Ground Rent	£90.00 for 33 years		
Then	£120.00 for remaining 33 years		
Diminution in value of Landlord's present interest			
Head Lessee			
Agreed Amount	£1,312.00		
Head Lease Reversion	£ nil		£ 1,312.00
Freeholder			
Reversion to Freehold Value	£126,250.00		
PV £1 in 66 years @ 6%	0.0213704	£2,698.01	
Less value of Landlord's proposed interest	£126,250.00		
PV £1 in 156 years @ 6%	0.0001128	£ 14.24	£ 2,683.77
			£ 3,995.77
Plus Landlord's share of marriage value			
Capital value of extended lease	£125,000.00		
Landlord's proposed interest	£ 14.24	£125,014.24	
Less			
Capital value of existing lease	£108,575.00		
Landlord's present interest	£ 3,995.77	£112,570.77	
Marriage value		£ 12,443.47	
Landlord's share, 50%			£ 6,221.74
Lease Extension Premium			£10,217.51
To Head Lessee			£ 1,312.00
To Freeholder			£ 8,906.00
			£10,218.00