

2615

HM COURTS AND TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
CASE NO CHI/00HP/OCE/2012/0021

Application: Section 24 of the Leasehold Reform Housing & Urban Development Act 1993 (the 1993 Act)

Premises: Block C Salterns Point Salterns Way Lilliput Poole Dorset BH14 8LW

BETWEEN:

Salterns Point Freehold (Block C) Ltd

Applicant

-and-

(1) Salterns Point Freehold Ltd

(2) M Beazley

(3) White Knight Ltd

(4) MC Property Management Co Ltd

(5) Basing House Property Management Co Ltd

(6) PLH Property Investments Ltd

Respondents

Date of Directions: 9 May 2012

Date of Substantive Hearing: 29 November 2012

Venue: Salterns Harbourside Hotel, 38 Salterns Way, Lilliput, Poole, Dorset, BH14 8JR

Appearances for Applicant: Mr J Upton of Counsel

Appearances for Third and Fourth Respondents: Miss E Gibbons of Counsel

Members of Tribunal: Mr N P Jutton BSc (Chairman), Miss R B E Bray BSc (Hons) MRICS, Mr D Lintott FRICS

Date of Tribunal's Reasons: 21 December 2012

1 **Introduction**

2 The Applicant applies pursuant to Section 24 of the 1993 Act to the Tribunal to determine the terms of acquisition by way of collective enfranchisement of the

freehold and intermediate leasehold interest in the Premises. In particular the price payable for the intermediate leasehold interests in Flats 48, 53 and 54 of the Premises.

3 The freehold title of the Premises is registered under Title No DT318120 and is registered in the name of the First Respondent, Salterns Point Freehold Ltd. The Premises comprise 20 flats each subject to a lease for 999 years from 24 June 2004 at a peppercorn ground rent. Flats 48, 53 and 54 are each then subject to a sub or occupational lease for a term of 110 years (less 10 days) from 9 March 1973 at a ground rent of £100 per annum rising to £150 per annum on 1 January 2026 and thereafter increasing at the rate of £50 every 21 years. At the date of the initial notice (the Relevant Date) each sub lease had an unexpired term of 71.2 years.

4 The Initial Notice served by the Applicant dated 14 December 2011 set out the Applicant's proposed purchase price at Section 7 as follows:

"The purchase price proposed is:

- (i) for the freehold of the land edged red: £20*
- (ii) for the freehold of the land edged blue: £0.00*
- (iii) in respect of the leaseholds, the total sum of £71,220*

which is made up of the sum specified for each leaseholder as follows:

Participating tenants

Flat 48: £11,400

Flat 53: £14,000

Flat 54: £11,400

Non participating tenants

Flat 46: £8,203

Flat 49: £8,203

Flat 55: £9,811

Flat 60: £8,203

5 The First Respondent acting on its own behalf and that of the Second, Third, Fourth, Fifth and Sixth Respondents served a counter notice dated 16 February 2012.

6 The counter notice admitted that the participating tenants were on the date the Initial Notice was served entitled to exercise a collective right to enfranchise under the 1993 Act.

7 The counter notice then further provided as follows:

“1.1 The reversioner accepts the following proposals contained in the Initial Notice: ...

1.1.4 The proposal in numbered paragraph 7(i) and in (ii) being the purchase price for the freehold

1.2 The reversioner does not accept the following proposals contained in the Initial Notice:

1.2.1 The proposed purchase price specified in numbered paragraph 7(iii) of £71,220 for the leaseholds or the breakdown of that sum.

1.3 The reversioner makes the following counter proposals to each of the proposals which are not accepted by the reversioner:

1.3.1 The reversioner at the request of the other relevant landlords referred to below counter proposes that the purchase price for the leaseholds should be as follows:

1.3.1.1 £30,030 to Michael Nicholas Beazley in respect of Flat 46 Salterns Point

1.3.1.2 £30,030 to White Knight Ltd in respect of Flat 48 Salterns Point

1.3.1.3 £30,030 to White Knight Ltd in respect of Flat 49 Salterns Point

1.3.1.4 £30,030 to White Knight Ltd in respect of Flat 53 Salterns Point

1.3.1.5 £30,030 to MC Property Management Co Ltd in respect of Flat 54 Salterns Point

1.3.1.6 £37,522 to Basing House Management Co Ltd in respect of Flat 55 Salterns Point

1.3.1.7 £37,522 to PLH Property Investment Ltd in respect of Flat 60 Salterns Point

- 8 The Initial Notice was not registered and the four intermediate leases of the flats of the non participating tenants referred to in the Initial Notice being Flats 46, 49, 55 and 60 were transferred to Carolyn Verstag, those interests not being acquired by the Applicant.
- 9 The Applicant and the Third and Fourth Respondents (the Respondents) each instructed professional valuers. The Applicant instructed Mr B R Maunder-Taylor FRICS MAE. Mr Maunder-Taylor produced an initial report on 4 April 2012.
- 10 The Respondents instructed Mr Colin Weatherall BSc FRICS. Mr Weatherall produced an initial report on 2 August 2012
- 11 The Tribunal made directions on 9 May 2012 which provided for the exchange of experts' reports and for the experts to meet and to produce a joint report setting out those matters upon which they were agreed and identifying the issues that remained in dispute.
- 12 Mr Maunder-Taylor and Mr Weatherall produced a joint statement of agreed facts and disputed issues on 15 November 2012. That provided as follows:
 - i. It was agreed that the sum payable for the freehold land edged red and blue on the plan attached to the Initial Notice would be £20.
 - ii. That the intermediate leases granted in respect of Flats 46, 49, 55 and 60 would not be enfranchised.
 - iii. That the sums to be paid to the intermediate landlords in respect of Flats 48, 53 and 54 remained in dispute.

- iv. That there was agreement that the sums payable in respect of capitalised ground rent and deferred reversion pursuant to paragraph 3 of Schedule 6 of the 1993 Act were as follows:
 - a. In respect of Flat 48: £11,051
 - b. In respect of Flat 53: £11,360
 - c. In respect of Flat 54: £10,431
- v. It was agreed that the freehold vacant possession values un-improved with the ability to grant a 999 year lease at a peppercorn rent as at the valuation date in respect of the same flats were as follows:
 - a. Flat 48: £300,000
 - b. Flat 53: £310,000
 - c. Flat 54: £280,000
- vi. It was agreed that the remaining issue between the parties was the valuation of marriage value pursuant to paragraph 4 of Schedule 6 of the 1993 Act. Mr Maunder –Taylor for the Applicant contending that as the parties had agreed the price for the freehold interest of £20, that that included the marriage value to be shared between the First Respondent as freeholder and the Third and Fourth Respondents as intermediate lessors and accordingly as marriage value had been agreed, the Tribunal did not have jurisdiction to determine marriage value as that did not remain in dispute.
- vii. Mr Wetherall for the Third and Fourth Respondents contending that the marriage value in respect of the intermediate leasehold interests of Flats 48, 53 and 54 (the marriage value) had not been agreed and that accordingly the Tribunal retained jurisdiction to determine the amount to be paid.

13 Documents

- 14 The documents before the Tribunal were as follows:

Skeleton argument on behalf of the Applicant, 26 November 2012.

Skeleton argument on behalf of the Third and Fourth Respondents, 21 November 2012.

Expert's reports of Mr Maunder-Taylor on behalf of the Applicant, 4 April 2012 and 14 November 2012.

Expert's reports on behalf of the Third and Fourth Respondents of Mr Weatherall, 2 August 2012 and 19 November 2012.

Joint statement of experts, 15 November 2012.

Bundle containing a copy of the Initial Notice dated 14 December 2011, a copy of the counter notice dated 16 February 2012, HM Land Registry Official Copy Entries of the freehold title to the premises, the leasehold titles to Flats 48, 53 and 54, the sub lease or occupational leasehold titles to Flats 48, 53 and 54.

15 **Issues**

16 The issue between the parties is the amount payable in respect of marriage value by the Applicant in respect of the intermediate leasehold interest of Flats 48, 53 and 54. That issue is broken down into two parts:

- i. Whether or not the Tribunal has jurisdiction to determine the amount of the said marriage value; and
- ii. If it does, the amount of the marriage value.

17 **The Law**

18 Section 24(1) of the 1993 Act provides that where a counter notice has been served:

"If any of the terms of acquisition remain in dispute at the end of the period of 2 months beginning at the date on which the counter notice or further counter notice was so given, a Leasehold Valuation Tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute".

19 Section 24(8) of the 1993 Act provides:

"In this chapter 'the terms of acquisition', in relation to a claim made under this chapter means the terms of the proposed acquisition by the nominee purchaser, whether relating to –

... (c) the amount payable as the purchase price for such interest".

20 Section 32 of the 1993 Act provides that schedule 6 of the 1993 Act shall have effect. Schedule 6 of the 1993 Act sets out the basis of assessment of the price to be paid by the nominee purchaser (the Applicant).

21 Paragraph 9 of the 6th schedule to the 1993 Act provides

"9(1) This paragraph applies where paragraph 2 applies and:

(a) the price payable for the freehold of the specified premises includes an amount in respect of the freeholder's share of the marriage value, and

(b) the nominee purchaser is to acquire any intermediate leasehold interest.

(2) The amount payable to the freeholder in respect of his share of the marriage value shall be divided between the freeholder and the owners of the intermediate leasehold interest in proportion to the value of their respective interests in the specified premises (as determined for the purposes of paragraph 2(1)(a) or paragraph 6(1)(b)(i) as the case may be).

(3) Where the owner of an intermediate leasehold interest is entitled in accordance with sub paragraph (2) to any part of the amount payable to the freeholder in respect of the freeholder's share of the marriage value, the amount to which he is so entitled shall be payable to him by the freeholder".

22 **Inspection**

23 The Tribunal inspected the Premises on the morning of 29 November 2012. The Tribunal inspected the exterior of the Premises and the interior of Flats 48, 53 and 54. The Tribunal also inspected the interior of Flat 56, a flat in an "unimproved" state.

24 **Flat 48**

25 Flat 48 is on the second floor of the Premises. It comprises an entrance hall, sitting room, balcony, kitchen, bedroom with en-suite bathroom, second bedroom and a family bathroom. A wall that had existed between the kitchen and the sitting room had been removed. The original boiler had been removed and a new 'combi' boiler fitted. The kitchen and bathrooms appear to have been refurbished.

26 **Flat 53**

27 Flat 53 is on the third floor of the Premises. It had been substantially refurbished 6 months ago after the date of service of the Initial Notice. It comprises an entrance hall, sitting room, balcony, open plan kitchen, bedroom with en-suite bathroom, second bedroom and a family bathroom.

28 **Flat 54**

29 Flat 54 is on the fourth floor of the Premises. It comprises an entrance hall, sitting room, balcony, kitchen, bedroom 1 with en-suite bathroom, bedroom 2 and family bathroom. Improvements have been carried out to the kitchen fittings, the en-suite bathroom and the family bathroom/shower room.

30 **Flat 56**

31 Flat 56 comprises an entrance hall, sitting room, kitchen, bedroom with en-suite bathroom, bedroom 2 and family bathroom. The only improvements appear to be new doors fitted to kitchen units and upgraded windows throughout.

32 **Issue 1, the Jurisdiction Point**

33 **The Applicant's Case**

34 Mr Upton on behalf of the Applicant confirmed that the figures set out at section 7(iii) of the Initial Notice in respect of Flats 48, 53 and 54 included in each case a figure in respect of marriage value. He accepted that the figure set out at clause 7(i) for the freehold interest of £20 did not include marriage value.

35 The Applicant's case is that the marriage value in respect of the intermediate leasehold interest of Flats 48, 53 and 54 does not remain in dispute. That as

such for the purpose of section 24(1) of the 1993 Act, the Tribunal does not have jurisdiction to determine the matter.

- 36 Mr Upton made reference to an unreported decision of this Tribunal **Denison Close v The Hampstead Garden Trust Ltd** (2002) in support of the Applicant's contention that once proposals as to price had been accepted, that they could not properly be regarded as "*remaining in dispute*" for the purpose of Section 24. Mr Upton accepted that that decision was not binding upon the Tribunal. That however the decision was cited by the authors of Hague on Leasehold Enfranchisement without criticism.
- 37 In Denison, the reversioner's counter notices accepted the proposed purchase prices set out in the nominee purchaser's Initial Notice. Subsequently, the nominee purchasers sought to argue for a lower figure in respect of the freehold interest than that which had been contained in the Initial Notice. The Tribunal accepted the reversioner's argument that the Tribunal did not have jurisdiction to determine the matter because the acceptance of the figures contained in the Initial Notice by reason of the counter notice meant that the terms as to price no longer remained in dispute or were matters in dispute for the purposes of section 24 of the 1993 Act.
- 38 The Applicant contends that by its counter notice the Respondents accepted the proposed purchase price for the freehold interest set out at section 7(i) of the Initial Notice of £20. That if that figure included the price payable in respect of marriage value then marriage value did not remain in dispute.
- 39 That accordingly the issue for the Tribunal to determine was whether or not the figure for marriage value was included in the freehold price of £20.
- 40 The Applicants says that where a nominee purchaser is to acquire one or more intermediate leasehold interests, a separate price is payable for each of those interests which is calculated in accordance with paragraphs 6 - 9 of schedule 6 to the 1993 Act. That paragraph 9 applies where the price payable for the

freehold includes an amount in respect of the freeholder's share of the marriage value, and the nominee purchaser is to acquire any intermediate leasehold interests. That the sum to be paid to the freeholder includes any sum that arises by way of marriage value in respect of the intermediate leasehold interests. That the intermediate lessors share of marriage value is then in turn payable by the freeholder from the monies that it receives for the freehold interest from the nominee purchaser (Paragraph 9 of the 6th Schedule). That as such the marriage value is not included in the price payable for the intermediate leasehold interests determined in accordance with para 7 of the 6th Schedule to the 1993 Act.

- 41 Mr Upton said the authors of Hague agree. That was plainly in his submission how the 1993 Act was intended to operate. He referred to footnote 62 of paragraph 25-10 of Hague in which the authors state:

"It should be noted that the price of the freehold interest includes the landlord's 50% share of the marriage value: see para 2(1)(a) of schedule 6 to the 1993 Act. This is then shared between the freeholder and any intermediate landlords in proportion to the value of their respective interests: para 9 of schedule 6. It sometimes happens that the tenants or the landlord (in the counter notice) share the marriage value in the figures proposed in the Initial Notice and counter notice. If this is done, it should be stated in terms to avoid later confusion".

- 42 The Applicant says that neither the Initial Notice nor the counter notice state that the marriage value is shared in the figures to be paid to the freeholder and to the intermediate landlords. That the 1993 Act simply requires the nominee purchaser to specify the price payable for the intermediate leasehold interest. That how the sum stated is broken down is irrelevant. That as such, it must be presumed that the marriage value is included in the figure given for the freehold price.

43 Mr Upton accepted that in the Initial Notice marriage value had been included in the price given for the intermediate leasehold interest. That he said was a mistake by the Applicant. However, it remained incumbent upon the Respondents on receipt of the Initial Notice to check to see whether or not the figure given for the freehold interest included marriage value. That if the Respondents did not accept that the figure of £20 for the freehold interest did not include or reflect marriage value, then they should not have accepted that sum was payable for the freehold interest in the counter notice. However, having done so they were bound by that acceptance.

44 Mr Upton accepted that the result was unattractive and perhaps harsh. However, the Respondents could not escape from the provisions of the 1993 Act.

45 **The Respondents' Case**

46 The Respondents' case is that as a matter of fact there is not and was not an agreement as to the purchase prices to be paid by the Applicant for the intermediate leasehold interests including the figures in respect of marriage value. That the Initial Notice distinguished between the purchase price to be paid for the intermediate leasehold interests of the flats of participating tenants and those of non participating tenants. There was a significant difference between the figures proposed for each. That the figures for the participating tenants were higher than those for the non participating tenants because marriage value was included in the former. The Initial Notice therefore recognised that marriage value was payable in respect of the interests of the Third and Fourth Respondents. The figures put forward in the Initial Notice at clause 7(iii) were clearly the figures proposed for the Third and Fourth Respondents' interests including marriage value as distinguished from the price proposed for the freehold interest at clause 7(i).

- 47 That quite simply as a matter of fact, the amount of marriage value to be paid by the Applicant had not been agreed. That remained a matter in dispute. That the figure of £20 for the freehold interest clearly did not and was not intended to include the marriage value payable to the Third and Fourth Respondents. That further, the figures contained in the counter notice, at paragraph 1.3.1 of the counter notice, were put forward on the same basis. That for the Applicant to argue that an agreement had been reached on a basis which was entirely different to that set out in the Initial Notice and counter notice was unattractive and disingenuous, and nothing more than a ploy by the Applicant to avoid paying monies to the Third and Fourth Respondents to which they were entitled.
- 48 Miss Gibbons referred to the same footnote in Hague. That although it may be conventional to include all of the marriage value (including that in respect of the intermediate leasehold interests) payable in the price proposed for the freehold interest, the authors of Hague said that in such event that the figures should be *“stated in terms to avoid later confusion”*. Miss Gibbons submitted that there was in this case no confusion. That the figures were understood by the freeholder and the Third and Fourth Respondents and were undoubtedly understood by the Applicant.
- 49 That it was simply a matter of practice pursuant to the provisions of the Act that the marriage value which is due to the intermediate leaseholders is paid to the freeholder, for the freeholder then to distribute it in accordance with the Act to the intermediate leaseholders. The freeholder is simply collecting payment on behalf of the intermediate leaseholders.
- 50 That both parties following service of the Initial Notice and counter notice had proceeded upon that basis. That it was not until the Applicant’s expert Mr Maunder-Taylor first reported on 4 April 2012 that the jurisdiction argument had been raised.

51 Miss Gibbons said that the consequence of the Applicant's argument being accepted went far higher than just being unfortunate and harsh. That the Applicant nominee purchaser company was made up of shareholders who were also shareholders of the First Respondent freehold company. The reality was therefore that the Applicant and First Respondents, the nominee purchaser and the freeholder, were on the same side. There was only the Third and Fourth Respondents who had different interests. That as such, with one hat on the qualifying tenants through the Applicant company were putting forward a figure for the freehold interest and with another hat on, were purporting to accept that figure on behalf of the First Respondent freehold company and the Third and Fourth Respondents. Thereby now allowing the Applicant to argue that the Third and Fourth Respondents could not receive payment for marriage value. This was in effect a scheme perpetuated by the qualifying tenants.

52 In response, Mr Upton said this was not a deliberate scheme by the Applicant to "*diddle*" the Third and Fourth Respondents. That was he said an unfair submission. There had been an innocent mistake as to how the 1993 Act properly worked but that did not affect how the Act should be interpreted.

53 **The Tribunal's Decision**

54 The Tribunal has jurisdiction to determine pursuant to section 24 of the 1993 Act terms of acquisition which remain in dispute between the parties. The Third and Fourth Respondents say that it is a matter of fact that the amount of marriage value payable by the Applicant remains in dispute. That that much is clear on the face of the Initial Notice and the counter notice. Further, that following service of the notices both parties proceeded upon that basis until the jurisdiction issue was first raised by the Applicant's expert in his report of 4 April 2012.

55 The Applicant accepts that the figures contained in the Initial Notice for the sums ultimately to be paid to the intermediate lessors included a sum for

marriage value. That in turn was reflected in the counter notice. That in essence a mistake was made by both parties. By the Applicant in including a figure for marriage value in the sum payable in relation to the intermediate leasehold interests. By the Respondents in accepting the sum stated as payable in relation to the freehold interest. The Applicant says that although unfortunate and unattractive, the parties cannot escape the provisions of the Act. That the Act is clear. That the sums payable in respect of marriage value for the intermediate leaseholders form part of the sum payable to the freeholder. That thereafter it is for the freeholder to apportion the payment received and to make payment in turn to the intermediate leaseholders.

56 The Tribunal does not find the Applicant's argument attractive. It acknowledges that nor does the Applicant.

57 The issue for the Tribunal is whether or not the marriage value payable in respect of the intermediate leasehold interests, ultimately payable to the Third and Fourth Respondents remains for the purpose of section 24 of the 1993 Act in dispute. Does the figure for that marriage value form part of or should be deemed to be included in the figure of £20 proposed by the Applicant and accepted by the Respondents as payable for the freehold interest.

58 The authors of Hague make the point that it is good practice to make it clear in the Initial Notice and counter notice how figures proposed for marriage value are to be shared between the freeholder and intermediate leaseholders. That to avoid confusion. Clearly that would be good practice.

59 In this case the Applicant accepts that the figures given in the Initial Notice in respect of marriage value payable to the Third and Fourth Respondents were included in section 7(iii) of the notice. Further it is clear to the Tribunal that the Third and Fourth Respondents understood that. They set out their own figures in their counter notice in respect of the intermediate leasehold interests of Flats 48, 53 and 54. That as a matter of fact, the Applicant was not misled by the

counter notice. The Applicant knew in reality that the amount ultimately payable to the intermediate lessors in relation to marriage value remained in dispute. Indeed both parties proceeded until April 2012 on that basis.

60 Accordingly, in the view of the Tribunal notwithstanding the acceptance by the freeholder on its own behalf and that of the Third and Fourth Respondents of the sum of £20 to be paid for the freehold interest, the sum to be paid in relation to the intermediate leasehold interests, in particular the marriage value, albeit to be paid to the freeholder and then in turn to the intermediate lessors, remains in dispute.

61 That as such, for the purpose of section 24 of the 1993 Act, the Tribunal does have jurisdiction to determine the amount of marriage value to be paid ultimately to the Third and Fourth Respondents.

62 **The Second Issue, the Amount of Marriage Value**

63 **The Applicant's case**

64 The Tribunal heard from the Applicant's expert Mr Maunder-Taylor. In his calculation of marriage value Mr Maunder-Taylor relied solely on graphs of relativity. He was asked why he had not made reference to the historic sales of Flat 53 in his report. He accepted that when addressing the issue of relativity, sales of flats in the Premises and indeed in other blocks at Salterns Point might well be useful. However in this case he said that he was aware that there had historically been major management problems. His view was these would have had an adverse effect upon figures achieved on the sale of flats in the Premises and that accordingly evidence of such sales was he said unreliable.

65 Mr Maunder-Taylor said that the problem with management at the block had been sufficiently significant that estate agents' particulars at the time had in some cases made reference to it. He was not able to produce any details or copies of such particulars. That it was because of those historic management

problems that he did not feel it safe to place any reliance on the sale of Flat 53 in April 2011 at the price of £233,000.

66 Mr Maunder-Taylor did not give any detail or explanation as to the management problems although he understood that they related to a controlling shareholder in the freehold company. He said that if there had not been a problem, then no doubt the two lessees who had originally consulted him would not have felt the need to do so.

67 Mr Maunder-Taylor explained that he had looked at historic sale figures for Flat 54. There had been 5 sales between March 1999 and September 2008. He did not feel that those sales showed a progression that was in line with changes in the house prices index or consistent with changes in the market over the same period, taking into account the declining balance of the lease terms.

68 Flat 54 had sold in September 2008 for £250,000. Mr Maunder-Taylor's valuation as at the Relevant Date was £260,400. It was suggested to Mr Maunder-Taylor by Miss Gibbons that his valuation was out of kilter. Mr Maunder-Taylor accepted that between September 2008 and December 2011 there had been a small fall in the market. He accepted that he would expect values to reduce over the same period. He accepted that the reduction in the outstanding term of the lease of Flat 54 for the same period would have an adverse effect upon value. He accepted that in his valuation he had made a deduction in relation to improvements. Also a deduction to reflect the 'no Act world'. However he said he believed that the sale in 2008 reflected the management issues at the time. In Mr Maunder-Taylor's opinion the sales figures for Flat 54 were unreliable. They could not be reconciled with changes in the market over the same period.

69 Miss Gibbons referred Mr Maunder-Taylor to the sale of Flat 53 in April 2011 for £233,000. He accepted that if that were the market value, then for the purpose of calculating marriage value it would be necessary to make further

adjustments for any improvements and the 'no Act world'. That such adjustments would produce a lower figure. However he did not rely upon the sale of Flat 53 in April 2011 as evidence of market value. The valuation in his report on the same basis on the Relevant Date was £288,300. He said he had not ignored transactional evidence of sales but had considered it and formed a professional judgment that unusually in this case the market evidence in relation to the sales of both Flats 53 and 54 should be ignored and reliance should be placed instead on graphs of relativity.

- 70 In answer to questions from the Tribunal, Mr Maunder-Taylor said that he had restricted his search for evidence of comparable sales to the 3 blocks at Salterns Point. That he had spoken to a local firm of estate agents (Mr Maunder-Taylor being based in London), a firm called Key Drummond. That he had been told by Key Drummond that Salterns were unusual blocks. That as such the only safe way to seek evidence for comparable sales was to restrict his search to sales within Salterns Point.
- 71 Attached to Mr Maunder-Taylor's report of 14 November 2012 was a copy of an RICS research report entitled '*Leasehold Reform – Graphs of Relativity*' dated October 2009 upon which he relied. He accepted upon being questioned by Miss Gibbons that the graphs were not up to date. That they covered different and larger areas. He did not know if there was a graph that specifically covered the Poole and Bournemouth conurbation.
- 72 Mr Maunder-Taylor agreed that transactional evidence was usually to be preferred to graphs of relativity. However, in this case there was he said inadequate transactional evidence. That such evidence as there was, was unreliable. That was why he relied solely on graphs of relativity.
- 73 Mr Upton accepted that no evidence had been led on the detail of the management issue, but he said such detail was irrelevant. That the parties were before the Tribunal because management issues had existed which had

been sufficiently serious for the lessees to seek advice from Mr Maunder-Taylor and subsequently to seek to enfranchise. It was therefore safe he said for the Tribunal to infer that there had been an issue. Such transactional evidence as there was Mr Upton said was a small sample which for the reasons given, was not he said valid. In such circumstances he submitted it was entirely appropriate for regard to be had solely to graphs of relativity. That it was striking that the Third and Fourth Respondents' expert Mr Weatherall appeared to have had no regard to the graphs of relativity whatsoever despite what appeared to be a significant disparity between the transactional evidence and the graphs. Mr Upton accepted that it was not an all or nothing approach for the Tribunal to take. It was for the Tribunal he said to consider what weight should be given to the graphs of relativity and to make as it felt fit appropriate adjustments. Subject thereto, it was Mr Upton said a matter of whether the Tribunal preferred the transactional evidence such as it was or the graphs of relativity approach.

74 The Third and Fourth Respondents' Case

75 The Tribunal heard from the Third and Fourth Respondents' expert Mr Colin Weatherall. Mr Weatherall in his calculation of marriage value relied solely on transactional evidence of sales of flats in the Premises. Mr Weatherall was he said very familiar with the Salterns Point development having observed block A being built in the early 1970s, block B in the late 1970s and C subsequent thereto.

76 Further Mr Weatherall said that he had advised in respect of the enfranchisement of block A in 2004 and block B in 2005. He had been appointed in respect of block C as a Building Surveyor in 2008. He had advised in respect of general external refurbishment in 2009/2010.

77 Mr Weatherall said that block A was a much more up-market block than block B which in turn was better than block C. That notwithstanding that the footprint for

blocks B and C were the same. Block B has better views than block C. That the value of the flats in block C were not helped by the proximity of the Salterns Point Hotel to it.

- 78 When asked about comparable transactional evidence and whether he had sought evidence from outside of Salterns Point, Mr Weatherall said he had not. He felt it was sufficient to rely upon transactional evidence in respect of the sale of comparable properties at Salterns Point. That if a conclusion was reached that such evidence was sufficient, then there was no need to look further. That was he said the case here. It was a matter of looking at the transactions in block C, adjusting for the salient factors and reaching a sensible conclusion.
- 79 When questioned about historic management problems, he said there was always "*chit chat*" about management in most blocks of flats. In his view the only time that might have a bearing on value was when the management was undertaken by what he described as an absentee firm of agents out of town. He said he had never seen estate agents' particulars which made reference to management problems.
- 80 The graphs of relativity Mr Weatherall said were a last resort. That regard should be had to them only if there was no transactional evidence. That in this case there was prima facie evidence of transactions in block C upon which it was sufficient to rely. Mr Maunder-Taylor he said had it "*the wrong way round*". That it was a matter of looking at evidence of what people actually pay. That only in the absence of such evidence would it be necessary to look at graphs of relativity.
- 81 Mr Upton suggested to him that the correct approach was to do the best one could by reference to both transactional evidence and graphs of relativity. Mr Weatherall did not accept that. In his view, if there was sufficient transactional evidence then that could be relied on by itself.

- 82 Mr Weatherall referred to the sale of Flat 53. He described that as a “*beacon*”. It had he said been marketed for a long period of time. The parties involved he understood had been properly represented. That it had sold in its existing unimproved condition and it represented he said prima facie evidence of value.
- 83 Mr Weatherall said he had looked at the sale of Flat 54 but at first glance had felt there were irregularities with the sale of Flat 53. He had spoken to the estate agents, Savills, who had sold Flat 54 in 2007. He had established that that sale had been part of a part exchange transaction and not he felt a proper market transaction. That was why the figures for the sale of Flat 54 in 2007 were as he put it “*awry*”.
- 84 He was questioned about the graphs of relativity relied upon by Mr Maunder-Taylor. They had he said been prepared in 2009. That they were based upon work carried out by an RICS working party in 2007-08. That they were based upon transactional data over a number of years. That relativity could vary depending upon market conditions. That a poor market reduced relativity because there were less buyers for flats with relatively short terms remaining. He said that the market in December 2011 at the Relevant Date had been difficult. That was why he felt that the transactions at the Premises were not consistent with the graphs.
- 85 He said that the graphs had been compiled in the main against a rising stable market between 1995 and 2007. That the market was very different now. That the volume of sales has reduced. There are less buyers. That had a significant effect in his view on relativity.
- 86 The sale of Flat 53 he said was the most useful evidence. The sale of Flat 54 was less useful.
- 87 Mr Upton asked him about Flat 48 and his valuation of that flat which appeared at paragraph 3.18 of his report of 19 November 2012 of £225,000. He was asked if he had had regard to the graphs of relativity in producing that

valuation. He said not. He had looked at Flat 53 and Flat 54 as comparables. That having regard to the views enjoyed by all three flats, he felt that Flat 48 fell somewhere between 53 and 54. He said in carrying out his valuations he did not need to look at the graphs of relativity.

88 Mr Weatherall did not accept that the application to enfranchise arose due to management problems. He said there could have been any number of reasons. That in his opinion it would have been more cost-effective for the lessees if there had been management problems to apply to appoint their own manager. He did not know of any management problems. He said there were no issues apparent to him in 2010 when he was supervising the external refurbishment. He felt that if had there been management problems, he would have heard about them. He accepted it was possible that management problems could impact on value.

89 Mr Upton referred him to the sale of Flat 54 in 2008 for £250,000. Mr Weatherall said he felt this was unreliable evidence. It was some time before the Relevant Date. That between 2008 and the Relevant Date, there had been a significant change in economic circumstances; a change in the market. That its value as at the relevant date was bound to be less than £250,000. He accepted that the reduction of 5%, at paragraph 3.8 of his report of 19 November 2012 to reflect the decrease in the remaining term between the sale in September 2008 and the Relevant Date, was possibly on the high side. That 2.5 or 3% might be more realistic but that was not he said the point. That subsequently everything as he put it had "*gone against that price*". The term had reduced, the market had declined, improvements had to be taken into account. That as such, Mr Maunder-Taylor's figure of £260,400 could not he said be right. That the evidence of the figure achieved upon sale in 2008 for Flat 54 when adjusted tied in with the transactional evidence in relation to the sale of Flat 53. Mr Upton asked Mr Weatherall whether he could explain why,

as Mr Weatherall's research showed, a sale had been agreed for Flat 54 in July 2008 in the sum of £270,000 but was then reduced to £250,000 by the time it completed on 1 September 2008. Mr Weatherall said he did not know the reason why; it was possibly because it may have been a sale to a developer. Mr Upton asked him if it was possible to infer that £270,000 was a better indication of value. Mr Weatherall said not. The value of the flat was in his opinion the value it sold for at the time that it sold. That was £250,000. That the figure of £270,000 was not evidence of value, it was merely a figure that had been agreed subject to contract.

90 He was asked about the adjustment he had made at paragraph 3.11 of his report of 19 November 2012 for improvements of £15,000. What was the basis for that adjustment? Mr Weatherall said he had seen a number of flats in block C over the years. He was familiar with its original condition and what improvements had been carried out. That Flat 54 presented he said in a nice modern condition. That to achieve £15,000 he had simply applied his knowledge of the cost of building works. That indeed the figure could be higher.

91 Upon being questioned by Mr Upton he said he did not accept that there were dangers in relying upon just one or two transactions. He said graphs of relativity were only of merit when there was no other evidence. In this case there was no need to make reference to them as there was sufficient transactional evidence.

92 In answer to questions put to him by the Tribunal with reference to the sale of Flat 53 in April 2011 for £233,000 and why the price appeared to have been renegotiated down following offers originally made in the region of £250,000 in December 2010, he said that he understood that the buyers had sought advice on the cost to extend the lease and that had led to the reduction.

93 Upon further questions from the Tribunal, Mr Weatherall said that there were occasions when he would make reference to graphs of relativity when there was an absence of adequate transactional evidence but then preferably to up

to date graphs. He agreed that at first glance the relativity figure that was achieved on his figures, which were based primarily on the sale of Flat 53, of around 25% appeared low.

94 Miss Gibbons urged the Tribunal to prefer the transactional evidence relied upon by Mr Weatherall to the graphs of relativity. Transactional evidence she contended should only be disregarded when there were severe problems with it. That the Applicant's argument that the transactional evidence relied upon by Mr Weatherall, the sale of Flats 53 and 54, was too small a sample was she said "*ludicrous*". That in line with the RICS guidance as to market value, there was nothing to suggest that Flats 53 and 54 had not sold at arm's length, that they had been properly marketed with all parties properly advised. The prices achieved for both flats were by definition market value. There was no reason to doubt that transactional evidence. That although the transactional evidence was small, it was good quality. Indeed that it was hard to imagine better.

95 Miss Gibbons submitted that Mr Maunder-Taylor's argument that the historical transactional evidence for Flat 54 should not be relied upon because it was inconsistent with the overall market trend was wrong. That if one stripped out the 2007 sale of that property, then the evidence was entirely in line with market trends.

96 That graphs of relativity did no more than show average figures; general trends.

97 As to the alleged management issues upon which she said Mr Maunder-Taylor made great play, there was no evidence to support that. The current management agents had been in place for some 12 months by the Relevant Date. That it was unlikely that historic management issues, if they existed, would have an impact on price. They would not in practice be known to the market. That no estate agents' particulars had been produced which made reference to management problems. That Mr Weatherall had not been aware of any management problems notwithstanding his historic involvement with the

Premises. That there was no reason why the transactional evidence should not be relied upon. That although Mr Maunder-Taylor had made reference to flat 54, he had completely ignored Flat 53 which gave rise to serious concerns as to his approach.

98 The graphs of relativity Miss Gibbons said did not relate to transactional evidence in the last 18 months. It was noteworthy she said that Mr Weatherall's evidence was that relativity has been affected by reason of market conditions. That of the graphs in the RICS report relied upon by Mr Maunder-Taylor, only one was based solely on transactional evidence. None related in particular to the Bournemouth & Poole conurbation area. Miss Gibbons referred the Tribunal to the introduction to the RICS report which states "*Relativity may vary according to local markets, mortgage dependency and other factors. For example relativity in prime Central London differs from that applicable in other locations; different relativities may apply to houses as opposed to flats in some markets*".

99 The starting point in such matters Miss Gibbons said with reference to **Nairile Ltd v Earl Cadogan & Others** (2008) WL5485756 and **Arrowdell Ltd v Coniston Court (North) Hove Ltd** (2007) RVR39 must be transactional evidence. That even though such transactions took place in the real world as opposed to the 'no Act world'.

100 **The Tribunal's Decision**

101 The difference between the experts might be put simply as, on the Applicant's part that it is sufficient to rely solely on graphs of relativity, on the Third and Fourth Respondents' part that it is sufficient to rely solely on such transactional evidence as there is.

102 The correct approach in the view of the Tribunal is to have regard to both and to give such weight to each as the Tribunal can in all the circumstances of the

case. In **Arrowdell Ltd v Coniston Court (North) Hove Ltd** (2007) RVR 39 it was put as follows:

“... it is necessary for the Tribunal to do the best it can with any evidence or transactions that can usefully be applied, even though such transactions take place in the real world rather than the no Act world. Regard can also be had to graphs of relativity ...”

That was endorsed in **Nairile Ltd v Earl Cadogan & Others** (2008) WL 5485756 and summarised at paragraph 229(S) as follows:

“Relativity is best established by doing the best one can with such transactional evidence as may be available and graphs of relativity”.

- 103 The transactional evidence put before the Tribunal was limited. Mr Maunder-Taylor on behalf of the Applicant says that the evidence of transactional sales at the Premises is unreliable. That having spoken to a local firm of estate agents he restricted his search for comparable evidence to sales within Salterns Point. That he was told that Salterns Point was *“unusual”*. That was why he looked no further.
- 104 Mr Weatherall looked at the transactional evidence of sales in the Premises and took the view that that was sufficient. He did not look for comparable transactional evidence away from Salterns Point.
- 105 As an expert Tribunal, the Tribunal finds it surprising that neither expert felt that it might be appropriate or useful to look for comparable transactional evidence away from Salterns Point.
- 106 Accordingly the only transactional evidence before the Tribunal was minimal, albeit evidence of transactions within the Premises.
- 107 Mr Weatherall relies primarily upon the sale of Flat 53 in April 2011 for £233,000. He has examined the Land Registry house price index for Dorset and in the circumstances taken the view that the value of Flat 53 as at the Relevant Date can be no greater than £233,000. He then makes a small

deduction of £500 to reflect the 'no Act world'. His view is that the transactional evidence of the sale of Flat 54 in September 2008 is not so reliable. It was over 3 years before the Relevant Date. He adjusted the price to reflect changes in the Land Registry house prices index between September 2008 and the Relevant Date. He then makes a further adjustment to reflect the reduction in the term remaining over that period in his report of 5% but in evidence before the Tribunal, said that perhaps 2.5% or 3% might be more realistic. Finally, he makes a reduction in respect of improvements which he puts at £15,000. He says that less reliance should be placed upon Flat 54.

108 Mr Maunder-Taylor says that the transactional evidence in relation to Flats 53 and 54 is unreliable. That because of historic management problems. That historic sales of Flat 54 were not consistent with changes in the house prices index or the market over the same period of time. That overall the transactional evidence was minimal, limited and unreliable. That he is left to rely solely on graphs of relativity.

109 The Tribunal does not accept that Mr Maunder-Taylor is right to simply dismiss the transactional evidence in relation to Flats 53 and 54. It does not accept his contention that that evidence is tarnished by historic management problems. Mr Maunder-Taylor was not able to explain the nature of the alleged management problems nor how and to what extent such problems impinged upon the value of flats in the premises. He did not explain why he took the view that Salterns Point was "*unusual*". He was unable to explain why he felt that alone was sufficient reason not to look for transactional evidence away from Salterns Point. The Tribunal does not find his explanation as to why he believes that the transactional evidence in relation to Flats 53 and 54 is unreliable to be persuasive.

110 Nor is the Tribunal impressed by Mr Weatherall's approach which is to rely solely upon very limited transactional evidence. That notwithstanding, in the

view of the Tribunal, the best albeit limited transactional evidence before it is the evidence in relation to Flat 53. That is evidence of a sale of one of the flats which are the subject of these proceedings some 8 months prior to the relevant date and in the view of the Tribunal, there is nothing to suggest that it was other than a sale at arm's length at a market value.

- 111 The sale of Flat 53 in the sum of £233,000 was made in the 'real world' as opposed to the 'no Act world'. Mr Weatherall adjusted the sale price of £233,000 at paragraph 3.16 of his report of 19 November 2012. As he put it "*It is appropriate to make a small deduction for the removal of rights to enfranchise*". He made an adjustment accordingly of £500.
- 112 Mr Maunder-Taylor did not in evidence nor in his reports express an opinion as to the deduction that might be made to transactional evidence to reflect the '*no Act world*'. He was not relying upon transactional evidence and therefore there was no need for him to do so.
- 113 The Tribunal has considered the limited transactional evidence, in particular that relating to Flat 53, in light of the graphs of relativity. On the face of it, that transactional evidence is not in line with the relativity figures produced by the graphs contained in the 2009 RICS report. However there may be reasons for that. The graphs contained in the RICS report are based upon transactional evidence over a very wide geographical area. The report is 3 years old and some of the graphs older than that. It may be the case that current market conditions are having an adverse effect on relativity when compared to that contained in the RICS report. It may be the case that the extended lease/freehold values agreed by Mr Maunder-Taylor and Mr Weatherall are too high.
- 114 In all the circumstances, on the basis of the limited assistance given to it by both experts, the best the Tribunal can do is to accept the evidence in relation to the sale of Flat 53 but adjusted to reflect the 'no Act world'. Mr Weatherall's

adjustment is to reduce the sale price by £500, there is no evidence on behalf of the Applicants to counter that and therefore the Tribunal accepts Mr Weatherall's adjustment.

115 Accordingly the Tribunal accepts Mr Weatherall's valuation of Flat 53 in its unimproved condition in the 'no Act world' of £232,500.

116 The Tribunal accepts that the transactional evidence in relation to Flat 54 is not as strong as that in relation to Flat 53. The last transactional evidence for Flat 54 was a sale which took place over three years prior to the Relevant Date. Significant improvements have been carried out to the flat upon which Mr Weatherall placed a figure of £15,000. He was not able to explain how he achieved that figure save to say that it was a matter of experience. In the circumstances, The Tribunal agrees with Mr Weatherall that much less reliance should be placed upon the transactional evidence of Flat 54.

117 The Tribunal is unimpressed with the approach of both Mr Maunder-Taylor and Mr Weatherall, particularly as regards their failure to look for further transactional evidence, but on balance prefers the approach of Mr Weatherall. That the transactional evidence in particular in relation to Flat 53 cannot be ignored. It does not accept Mr Maunder-Taylor's view as to why it should be. Further, that the transactional evidence in relation to Flat 53 should be preferred to that of Flat 54.

118 The Tribunal therefore accepts the figures contended for by Mr Weatherall in his report of 19 November 2012 in relation to Flat 53. That is a 'no Act world' figure for that flat of £232,500.

119 The best the Tribunal can then do is to calculate the figures for Flats 48 and 54 in the same ratio as the agreed freehold/extended lease values. That produces figures for Flat 48 of £225,000 and Flat 54 of £210,000 as per Mr Weatherall's report.

120 The Tribunal's assessment of marriage value in respect of the intermediate leasehold interest in each flat is therefore as follows:

Flat 48

Intermediate leasehold interest

Capitalised ground rent and deferred value as agreed £11,051

Marriage Value:

Value of flat unimproved with a 999 year lease as agreed £300,000

Less:

Value of existing interests:		
Intermediate Leasehold interest		£11,051
Leaseholder (adjusted)	<u>£225,000</u>	<u>£236,051</u>
		£63,949

Marriage value at 50% £31,975

Flat 53

Intermediate leasehold interest

Capitalised ground rent and deferred value as agreed £11,360

Marriage Value:

Value of flat unimproved with a 999 year lease as agreed £310,000

Less:

Value of existing interests:		
Intermediate Leasehold interest		£11,360
Leaseholder (adjusted)	<u>£232,500</u>	<u>£243,860</u>
		£66,140

Marriage value at 50% £33,070

Flat 54

Intermediate leasehold interest

Capitalised ground rent and deferred value as agreed £10,431

Marriage Value:

Value of flat unimproved with a 999 year lease as agreed £280,000

Less:

Value of existing interests:		
Intermediate leasehold interest		£10,431
Leaseholder (adjusted)	<u>£210,000</u>	<u>£220,431</u>
		£59,569

Marriage value at 50% £29,785

121 Summary of Tribunal's Decision

- i. The Tribunal does have a jurisdiction to determine the amount of marriage value payable in respect of the intermediate leasehold interests of the Third and Fourth Respondents.
- ii. The Tribunal determines the amount of marriage value in respect of the intermediate leasehold interests of the Third and Fourth Respondents to be the following sums:

Flat 48: £31,975.00

Flat 53: £33,070.00

Flat 54: £29,785.00.

Dated this 21st day of December 2012

Signed

N P Jutton BSc

Chairman

A member of the Tribunal appointed by the Lord Chancellor