

2852



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

**Case References** : CHI/45UF/OLR/2013/0257/0258/0274

**Property** : Flats 6, 31 & 36 Bishopric Court  
Horsham  
West Sussex  
RH12 1TU

**Applicant** : Mr S R Embrey & Mrs L S Grey (Flat 6)  
Mr T M Dezberg (Flat 31)  
Mr J D Dezberg & Ms K M Dezberg (Flat 36)

**Representative** : For the Applicant  
Mr Andrew Priddell FRICS acting as Advocate and as  
Expert Witness, Andrew Priddell Associates Ltd

**Respondent** : Brickfield Properties Ltd

**Representative** : Mr Martin Dray of Counsel &  
Mr Robin Sharp BSc FRICS (Expert Witness)

**Type of Application** : Determination of premium or other terms of  
acquisition S.48(1) Leasehold Reform Housing &  
Urban Development Act 1993.

**Tribunal Members** : Mr B H R Simms FRICS (Chairman)  
Mr N I Robinson FRICS (Valuer Member)

**Date and venue of  
Hearing** : 7 February 2014

**Date of Decision** : 04 April 2014

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**DECISION**

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## DECISION

- 1 The price to be paid for the new lease in each case shall be Flat 6 £13,496 (thirteen thousand four hundred and ninety six pounds), Flat 31 £13,457 (thirteen thousand four hundred and fifty seven pounds), Flat 36 £11,703 (eleven thousand seven hundred and three pounds).
- 2 The terms of the leases are confirmed to be in accordance with the agreement reached between the parties.

## REASONS

### BACKGROUND

- 3 Applications dated 21 October 2013 in respect of Flats 31 and 36 Bishopric Court were the subject of directions dated 6 November 2013. A further application dated 15 November 2013 in respect of Flat 6 was the subject of directions dated 20 November 2013.
- 4 Further revised directions were issued on 9 January 2014 varying the timetable in respect of the submission of representations and valuers' reports and it was determined that the three cases would be heard together.
- 5 An agreed Statement of Facts was prepared by both Experts dated 13 January 2014.
- 6 Mr Priddell produced an Expert's report dated 13 January 2014 and a supplemental report dated 28 January 2014 following receipt of Mr Sharp's report dated 16 January 2014.
- 7 The Tribunal agreed to admit Mr Priddell's supplemental report and the Respondent agreed to the submission of this document at the hearing.
- 8 The freehold of Bishopric Court, a development of 54 flats, is owned by City & Country Properties Ltd. The Respondent is the competent landlord for the purpose of these applications. The Respondent holds six leases granted on 28 June 2013 each of which is for 999 years and demise a number of flats at Bishopric Court. One such lease includes Flat 6 another Flat 31 and another Flat 36.
- 9 There is an intermediate landlord Fencott Ltd whose lease is dated 15 March 1988 and is for the whole of the building at Bishopric Court. This lease is for a term of 99 years plus one day from 25 March 1977.
- 10 The individual flats are held on an underlease for a term of 99 years from 25 March 1977, the lease of Flat 6 being granted on 18 April 1980, Flat 31 on 17 July 1978 and Flat 36 on 7 August 1978. The remaining flats at Bishopric Court, except for five which have been the subject of previous lease extensions, are held on equivalent length occupational underleases.

- 11 The form of the new leases has been agreed between the parties and was exhibited to the Tribunal.
- 12 S.42 initial notices were given at various dates in late May 2013 but for convenience the parties have adopted and agreed a common valuation date of 28 May 2013 in all three cases. Therefore, at the valuation date each underlease had 62.82 years unexpired.
- 13 In terms of the valuation various matters have been agreed.
- 14 The capitalisation of the rents payable under the underleases has been agreed.
- 15 It is agreed that the subject flats do not have any relevant improvement which bear upon the value or the premium to be paid.
- 16 It is agreed that no compensation is payable to the Respondent under Schedule 13 paragraph 5 of the Act.
- 17 The four issues remaining in dispute, giving rise to the disputed amount of premium to be paid in each case are:
- 1 Long leasehold value.
  - 2 The "freehold" value.
  - 3 The deferment rate.
  - 4 The short lease value and relativity.
- 18 These were dealt with in turn at the hearing.
- 19 The Applicant speaks to premium values of:
- |         |         |
|---------|---------|
| Flat 6  | £11,105 |
| Flat 31 | £10,961 |
| Flat 36 | £9,625  |
- 20 The Respondent speaks to premium values:
- |         |  |
|---------|--|
| Flat 6  | £30,352 (duly apportioned by the Respondent and Fencott) |
| Flat 31 | £30,759  |
| Flat 36 | £26,584  |
- 21 Both representatives submitted detailed skeleton arguments and the Expert Witnesses gave oral evidence.

## **INSPECTION**

- 22 Immediately before the hearing members of the Tribunal carried out both an internal and external inspection of the property and the individual premises and its surroundings. They were accompanied by Messrs Dezberg and Embrey and Mr Priddell.
- 23 Bishopric Court is a four storey purpose built block of 54 flats, probably constructed in the 1930s. Although the block is not far from the centre of the town it is poorly sited at the rear of a parade of shops with flats above. There is a detached block of 22 garages and there is some casual car parking in the area in front of the main building.
- 24 The building is of out of date design and is very tired in appearance. There are basic 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 overdue for redecoration. There is one small passenger lift.
- 25 The block has substantial evidence of a lack of maintenance with peeling paintwork and there is no sign of upgrading or improvement. The elevations are of plain brick under a part tiled and part flat roof. The windows are principally of metal crittall type in timber sub frames.
- 26 We inspected all three flats internally. Flats 6 & 31 have two bedrooms and Flat 36 a single bedroom, each flat has a living room, kitchen, and bathroom with WC. The internal standard varies from flat to flat. Radiators are provided in each flat and the building has a communal central heating system providing the supply to the radiators and hot water from a communal oil fired boiler.

## **THE HEARING AND EVIDENCE**

- 27 At the hearing each party presented its full case and cross examination of Experts and questions from the Tribunal took place.
- 28 For convenience each disputed item is dealt with in full in these reasons.

### **Long Lease Value**

- 29 The Applicant contended for Flat 6 at £130,000, Flat 31 at £130,000 and Flat 36 at £115,000. Mr Priddell addressed the Tribunal in detail on his valuations referring to his skeleton argument and both his valuation reports. He attempted to update the information provided in the written documentation as he had made further enquiries of the estate agents involved with the various sales quoted. Mr Dray objected to this approach on the grounds that the Respondent had not had notice of this additional expert evidence and therefore had not had an opportunity to carry out further research or be ready in response. Mr Priddell agreed to limit his evidence to the information provided in writing prior to the hearing.

- 30 There is a general lack of popularity of Bishopric Court reflecting the style of its accommodation, the access to the flats, the high service charges and its semi-commercial location.
- 31 Mr Priddell had in mind the capital value that was agreed with Mr Sharp in another case relating to 25 Bishopric Court. This was an identical two bedroom flat on which the long leasehold value was agreed between valuers at £125,000 in November 2010. In addition he refers to similar flats for sale in the surrounding area and comes to the conclusion that he has. His opinions were tested under cross examination.
- 32 Mr Sharp contended for Flat 6 at £136,000, Flat 31 at £138,500 and Flat 36 at £120,000. He relied principally upon his valuation report and he relies on comparisons within a third of a mile of the property in purpose built non-retirement blocks as there are no sales of flats with extended leases in Bishopric Court. He identifies various properties and has analysed these, both from the point of view of size and accommodation, and date of sale. He has made detailed adjustments in each case to allow for differences in order to reach the conclusion that he has.

### **The “Freehold” Value**

- 33 Mr Priddell argues for no difference and Mr Sharp maintains that there is a 1% uplift.
- 34 Mr Priddell rejects this concept as there is no evidence to support the position from market transactions. The lessees are entitled to remain in occupation at the expiry of the lease and if the new hypothetical property would be a freehold flat it is his concept that this would be worth less in the market place than a flat held on a lease. He cites the case of Arrowdell Ltd and Coniston Court (North) Hove Limited LRA/72/2005 and the First-Tier Tribunal Decision of Toogood & Others and Arrowdell Ltd CHI/00NL/OLR/2012/0181 etc., where there was no 1% addition. Mr Priddell accepts that in the case relating to 25 Bishopric Court where the same Experts represented the parties a 1% freehold uplift was allowed but he points out that in that case Mr Sharp was arguing for a lower capital value than Mr Priddell even with the 1% uplift and so the 1% addition was not challenged.
- 35 Mr Sharp argues that the 1% addition is recognised and commonplace. Under cross examination he explained the philosophy behind the addition but was unable to produce any evidence to show that 1% was the correct amount or that there was market evidence to reflect this adjustment.

### **The Deferment Rate**

- 36 Mr Priddell’s starting point was the Court of Appeal decision which has become known as the Sportelli decision where 5% had been determined as the appropriate rate for reversionary deferment.

- 37 In the subsequent case at Kelton Court known as Zuckerman a higher rate was determined on appeal to the Lands Tribunal of 6%. This reflected the differences between the Sportelli case which was in prime central London and Kelton Court in the provinces. The variation was made on three bases.
- 1 Obsolescence – It was held that in terms of the cost of maintenance and repairs proportionately it was more costly to repair buildings in comparison with their capital value outside prime central London and 0.25% was added to reflect this.
  - 2 Capital Growth – In Zuckerman it was demonstrated that capital growth was significantly lower than in prime central London and a further addition of 0.5% was added.
  - 3 Increasing Management Difficulties – This reflected the introduction of more complex procedures under recent legislation for the management of flats and it was acknowledged that management had become more difficult and 0.25% addition was appropriate.
- 38 In the case of Flat 25 Bishopric Court the case was determined at the Lands Tribunal at a deferment rate of 5.5%.
- 39 Having reflected on the various cases Mr Priddell applied only a 0.25% addition for obsolescence.
- 40 Mr Sharp uses 5% in that this is the figure that is generally to be applied for flats. He argues that a 0.25% addition on the grounds of obsolescence is inappropriate. He considers that any obsolescence that there may be is reflected in the vacant possession value and his assessment of these values fully reflects the markets perception of the subject.
- 41 He lists several cases and contrasts these with Bishopric Court concluding that the vacant possession values fully reflect the markets perception of Bishopric Court. The subject property does not have the disabilities of the other specific properties where an addition for obsolescence was appropriate but not at Bishopric Court.

### **Short Lease Value & Relativity**

- 42 The Valuers are far apart, Mr Priddell contends for 87.5% and Mr Sharp for 60%. Mr Priddell's starting point is to examine relativities in other decided cases. He quotes *Arrowdell* on an unexpired term of 64 years at 88.5% and *Dependable Homes* 54 years at 83%. He also relies upon his own personal experience and the many cases he has dealt with in front of the LVT and the Upper Tribunal.
- 43 He refers also to his own firm's approach to relativity and his own firm's graph. In cases where relativity is disputed reference is made to the graph of graphs produced by Beckett and Kay where the average for 63 years is about 85%.

- 44 In his supplemental proof of evidence Mr Priddell deals with the question of mortgageability and Mr Sharp's assertion that when leases are less than 70 years then mortgage lenders become less willing to offer. In support of his contention that shorter leases were still mortgageable Mr Priddell produced a table showing minimum terms that lenders would consider acceptable. This table was challenged in detail under cross examination and was found to be flawed in its conclusion because of the terms of the enquiry made to the various lenders. Those lenders who would not lend on a short lease term were omitted from the table entirely. Few of the High Street branded banks and mortgage companies were shown in the table.
- 45 Mr Priddell challenged the evidence used by Mr Sharp in calculating the relativity. The 60% quoted is based upon prices paid for the flats by the Applicants when they purchased numbers 31 and 36. Mr Priddell did not call his clients to give evidence but he researched the transactions and he states that they were not in the open market. There were special circumstances regarding the prices paid on acquisition and Mr Priddell quotes his enquiry but did not produce any evidence in support of his assertion.
- 46 Mr Sharp relies heavily on the evidence available for the price paid at £60,000 for Flat 36 at about the valuation date and £93,000 for Flat 50 in October 2012.
- 47 He makes complicated calculations to show the value of unextended leases falls quickly as the unexpired term reduces and he removed the affect of "the no act world" using an adjustment of 10%.
- 48 Turning to the two bedroom flats he quotes a sale of £102,000 in August 2011 and £87,500 in January 2013.
- 49 Having concluded his calculation to produce a relativity of 56% he then compared this to the Beckett and Kay mortgage dependent graph showing 71% for the unexpired term in this case.

## **CONSIDERATION**

### **Long Leasehold Value**

- 50 There is a relatively slight difference of Expert opinion on this issue. The assessment of the value of a long leasehold flat in the market is not supported by any actual evidence of sales in the subject premises.
- 51 Reference to comparables away from the subject premises must, by their very nature, be the subject of adjustment, albeit Expert adjustment, based upon the opinions and assessments of the valuers having to rely upon sales evidence of similar but not identical properties obtained from estate agents. Neither expert had personal evidence to offer on sale prices and estate agents were not called to give evidence.

- 52 We could find no particular merit on one or other of the opinions expressed or the calculations used to arrive at an adjusted figure. Doing the best we can with the evidence in front of us we conclude that an average of the Expert's contentions would be a reasonable figure on which to base our conclusion.
- 53 We therefore determine the value of the unimproved extended leases of Flat 6 at £133,000, Flat 31 at £134,250 and Flat 36 at £117,500.

### **The Freehold Value**

- 54 This in effect was an assessment of whether the 1% addition was appropriate as there was no evidence produced of the hypothetical sale of freehold flats.
- 55 Mr Sharp defended his 1% addition on the basis that this is recognised and commonplace in the decision of Tribunals. This is clearly not the case as evidence was presented to us of as many cases where a 1% addition was made as there were where no 1% addition was made. It cannot therefore be regarded as recognised and commonplace although it may be in certain geographical areas perhaps in prime central London. For this reason it would seem to have become a usual addition in some regions but not in others.
- 56 Neither in Mr Sharp's valuation report or under cross examination was he able to produce any competent evidence in support of the adjustment itself or for the specific amount of 1% rather than some other amount.
- 57 Mr Priddell even went as far as to say that a freehold flat would be worth less than one sold on a lease and, as we say, neither party produced evidence of the sale of freehold flats. Presumably this is because there is no market for them or the entity does not exist in the market place.
- 58 On the evidence presented the Tribunal is not satisfied that a 1% addition to reflect this hypothetical freehold value would be appropriate.

### **The Deferment Rate**

- 59 There is no argument that the established starting point is to take the 5% rate for flats set in *Sportelli*. The 5% includes 0.25% as an increased management risk for flats and clearly this will apply in the subject case.
- 60 For us to depart from the 5% rate there must be compelling evidence to the contrary. The Lands Tribunal in *Sportelli* did not rule out the possibility of the need to adjust the deferment rate to take account of such matters as obsolescence and condition but this would only be exceptionally the case where such factors were not fully reflected in the vacant possession value and the risk premium already allowed for.
- 61 It is difficult for a Tribunal to reflect or consider adjustments made in other specific cases that were put to us. The circumstances in those cases will be different to the subject premises or the subject case.



- 62 It is Mr Sharp's case that there should be no adjustment as this has already been allowed for in the vacant possession value of the flats and it would be double counting to make a further addition for obsolescence.
- 63 He says that any perceived disabilities at Bishopric Court will be fully reflected in the market evidence. Any question of obsolescence is not high as the residential function will not become obsolete. It would be relatively inexpensive to upgrade the flat as time progressed thus removing the need for any obsolescence adjustment.
- 64 Mr Priddell relies heavily upon the decision in respect of Flat 25 Bishopric Court but the appeal was granted only in respect of lower capital values and increasing management difficulties to produce the 5.5% determined deferment rate.
- 65 There clearly needs to be the usual addition for management difficulties for flats but we find that there was no case made for an addition for obsolescence and therefore we do not depart from the 5% generic deferment rate.

### **The Short Lease Value & Relativity**

- 66 Whilst there was little reliable evidence regarding the price paid by the Applicants on the purchase of their flats produced by either Expert the Tribunal is satisfied that these transactions were not in the open market and therefore unreliable.
- 67 Mr Sharp has relied heavily upon these earlier transactions which Mr Priddell clearly identified as being out of step with the market. The Tribunal dismisses the use of these unreliable transactions when calculating the relativity in this case.
- 68 We prefer a relativity that falls closer to the figure produced by the numerous graphs and decisions available.
- 69 Mr Sharp has not tested the existing lease value he has produced using his low relativity with the evidence of sales of the flats.
- 70 Although Mr Priddell contends for 87.5% the Tribunal prefers a slightly lower figure at 85% which produces shorter lease values closer to those available in the market and produced as comparisons when considering the value of the extended lease.
- 71 The rounded short lease values are therefore set at Flat 6 £113,000, Flat 31 £114,100.00, Flat 36 £99,875.
- 72 Applying these various elements to the traditional valuation approach the Tribunal arrives at a price for the new lease in each case for Flat 6 at £13,496, Flat 31 at £13,457, Flat 36 at £11,703.
- 73 The terms of the lease were agreed between the parties and there are no further matters for us to determine.

74 Our valuation calculations are appended to this Decision.

Dated 04 April 2014

Brandon H R Simms FRICS  
Chairman

**CALCULATIONS****Flat 6 Bishopric Court****Facts used**

Value extended lease (unimproved)	£133,000
Freehold reversionary uplift	0%
Value of existing lease	£113,000
Relativity	85.00%
Deferment Rate	5.00%
Unexpired term at val date (28/05/13)	62.82
New lease term (plus 90 years)	152.82

**Diminution in value of landlord's present interests****Head Lessee**

Capitalised ground rents - agreed	£788
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**Freeholder****Current interest**

Reversion to "freehold" value	£133,000
x PV £1 @ 5% for 62.82 years	<u>0.0466539</u> £6,204.97

**LESS****Future interest**

Reversion to "freehold" value	£133,000
x PV £1 @ 5% for 152.82 years	<u>0.0005779</u> <u>£76.86</u> <u>£6,128</u>
	<u>£6,916</u>

**Plus Landlord's share of marriage value****Value of future interests**

Underlessee	£133,000
Head Lessee	£0
Freeholder	<u>£76.86</u> £133,077

**LESS****Value of current interests**

Underlessee	£113,000
Head Lessee	£0
Freeholder	<u>£6,916.11</u> <u>£119,916</u>
Total marriage value	£13,161

Landlord's share @ 50% £6,580

£13,496

**Premium** £13,496

**Flat 31 Bishopric Court****Facts used**

Value extended lease (unimproved)	£134,250
Freehold reversionary uplift	0%
Value of existing lease	£114,100
Relativity	85.00%
Deferment Rate	5.00%
Unexpired term at val date (28/05/13)	62.82
New lease term (plus 90 years)	152.82

**Diminution in value of landlord's present interests****Head Lessee**

Capitalised ground rents - agreed	£500
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**Freeholder****Current interest**

Reversion to "freehold" value	£134,250	
x PV £1 @ 5% for 62.82 years	<u>0.0466539</u>	£6,263

LESS

**Future interest**

Reversion to "freehold" value	£134,250	
x PV £1 @ 5% for 152.82 years	<u>0.0005779</u>	£78
		<u>£6,186</u>
		£6,686

**Plus Landlord's share of marriage value****Value of future interests**

Underlessee	£134,250	
Head Lessee	£0	
Freeholder	<u>£77.58</u>	£134,328

LESS

**Value of current interests**

Underlessee	£114,100	
Head Lessee	£0	
Freeholder	<u>£6,685.70</u>	<u>£120,786</u>
Total marriage value		£13,542
		Landlord's share @ 50%

£6,771£13,457**Premium £13,457**

**Flat 36 Bishopric Court****Facts used**

Value extended lease (unimproved)	£117,500
Freehold reversionary uplift	0%
Value of existing lease	£99,875
Relativity	85.00%
Deferment Rate	5.00%
Unexpired term at val date (28/05/13)	62.82
New lease term (plus 90 years)	152.82

**Diminution in value of landlord's present interests****Head Lessee**

Capitalised ground rents - agreed	£300
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**Freeholder****Current interest**

Reversion to "freehold" value	£117,500
x PV £1 @ 5% for 62.82 years	<u>0.0466539</u> £5,482

LESS

**Future interest**

Reversion to "freehold" value	£117,500
x PV £1 @ 5% for 152.82 years	<u>0.0005779</u> £68
	<u>£5,414</u>
	£5,714

**Plus Landlord's share of marriage value****Value of future interests**

Underlessee	£117,500
Head Lessee	£0
Freeholder	<u>£68</u> £117,568

LESS

**Value of current interests**

Underlessee	£99,875
Head Lessee	£0
Freeholder	<u>£5,714</u> <u>£105,589</u>
Total marriage value	£11,979

Landlord's share @ 50%

£5,989£11,703**Premium £11,703**

**PERMISSION TO APPEAL**

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