

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL FOR THE SOUTHERN  
RENT ASSESSMENT PANEL**



**Residential  
Property  
TRIBUNAL SERVICE**

**JURISDICTION**

**Section 48, Leasehold Reform, Housing and Urban Development Act 1993**

Case Number	<b>CHI/45UH/OLR/2007/0121</b>
Property	<b>Flat 21 Sunningdale Court, Jupps Lane, Worthing, West Sussex BN12 4TU</b>
Applicants (Tenants)	<b>David Mann and Margaret Mann.</b>
Respondent (Landlord)	<b>Dependable Homes Limited</b>
Applicant's Representative and witness at the Hearing	<b>Mr.C.Spratt BSc FRICS of Spratt &amp; Son</b>
Respondent's Representative and witness at the Hearing	<b>Mr.A.Pridell FRICS of Andrew Pridell Associates</b>
Date of Inspection	<b>6<sup>th</sup> February 2008</b>
Date of Hearing	<b>6<sup>th</sup> February 2008</b>
Date of Decision	<b>29<sup>th</sup> February 2008</b>
Tribunal Members	<b>Mr.C.H.Harrison (Chairman) Mr.B.Simms FRICS MCI Arb Mr.A.Mackay FRICS</b>

## **STATEMENT OF REASONS AND DECISION**

### **BACKGROUND**

1. The Applicants are the tenants of Flat 21 Sunningdale Court, Jupps Lane, Goring-by-Sea. West Sussex. Their lease of the Property is for a term of 99 years, calculated from 25<sup>th</sup> December 1962, held from the Respondent.
2. On 26<sup>th</sup> July 2007, the Applicants, through their solicitors, served the Respondent with a notice under Section 42, Leasehold Reform, Housing and Urban Development Act 1993 (the Act), claiming a new lease of the Property. The Respondent duly served a counter-notice on 17<sup>th</sup> September 2007.
3. On 19<sup>th</sup> November 2007, the Applicants applied to the Leasehold Valuation Tribunal under Section 48 of the Act to determine the premium to be paid on the grant of the new lease.
4. The Tribunal issued Directions on 28<sup>th</sup> November 2007. They culminated in a site inspection and a Hearing before the Tribunal, both on 6<sup>th</sup> February 2008.

### **INSPECTION**

5. The Tribunal's inspection of the Property was made during the morning of, and prior to, the Hearing. The Inspection was made in the presence of the Applicants and of the Respondent's representative, Mr Pridell and his assistant. By prior arrangement, Mr Spratt, the Applicant's representative, was not present at the inspection.
6. The Property comprises a self-contained, purpose built flat located on the first floor of a three storey block comprising six flats in all. The Sunningdale Court development as a whole comprises five separate blocks, surrounded by communal gardens, having a total of 48 flats.
7. The development is located in a predominantly residential area, some of which comprises social housing, close to the busy A259. The Goring Industrial Estate is located nearby.
8. The Property comprises two bedrooms, a sitting room (with a southern aspect towards the A259), a kitchen, bathroom and separate WC, each leading from an entrance hall. The Property has UPVC windows and a small concrete balcony with wrought iron railings, accessed from the sitting room.
9. The Property's space heating is provided by electric night storage heaters. An electric immersion heater provides hot water.

## AGREED FACTS

10. Mr Spratt and Mr Pridell had, before the Hearing, produced a statement of agreed facts comprising the matters specified in the left column below. Upon the Tribunal's invitation, they confirmed the matters actually so agreed between them are as expressed in the right column below:

Property description	As set out in Mr Spratt's proof
Property tenure	99 years from 25 <sup>th</sup> December 1962
Ground rent payable	£12.60
Unexpired term of the lease	54 years
Appropriate yield and valuation of the term	7%
Discount rate in respect of the reversion	5%

11. At the Hearing, two other matters were acknowledged by Mr Spratt and Mr Pridell to be agreed, although they were not referred to in their statement of agreed facts.

12. The first was the irrelevance to the Hearing of the fact that the Applicants' notice under Section 42 of the Act referred not only to the Property but also to a garage, held separately from the lease of the Property.

13. The second was that the valuation date for the purposes of the reference to the Tribunal was 26<sup>th</sup> July 2007. That date was, on the evidence, manifestly the date on which the undated Section 42 notice had been given to the Respondent. 26<sup>th</sup> July 2007 was, therefore, the relevant date for the purposes of Section 39(8) of the Act.

14. In passing, Mr Pridell expressed his concern at the late stage at which Mr Spratt's proof of evidence had been provided. He, nevertheless, declined the Tribunal's offer of an adjournment.

## THE LAW

15. The statutory valuation provisions are contained in Schedule 13 to the Act. In particular, paragraph 2 of Part II of Schedule 13 states:

*The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of:*

*(a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,*

*(b) the landlord's share of marriage value as determined in accordance with paragraph 4, and*

*(c) any amount of compensation payable to the landlord under paragraph 5.*

Paragraph 3 states, so far as material:

*3(1) The diminution in value of the landlord's interest is the difference between –*  
*(a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and*  
*(b) the value of his interest in the flat once the new lease is granted.*

*(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the [valuation] date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions ... [and there follows certain valuation assumptions dealing with tenure, title, and the valuation being made in a "no Act world" and] on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded.*

## **EVIDENCE**

16. Mr Spratt started his evidence, on behalf of the Applicants, by stressing what he described as some fundamentals which were:

- the Property is a fairly basic flat, in Goring terms;
- the block which includes the Property is relatively unattractive; and
- the Property is located to the north of the Goring Road, not far from a working mens club and an industrial estate which, he said, creates a traffic "rat-run".

17. Mr Spratt uses an uplift of 12.25% on his short leasehold value to arrive at a long leasehold value which can also be expressed as an equivalent 89% relativity. In support he quotes various LVT and Lands Tribunal decisions but in particular refers to the LVT decision at Anchor Court at relativity of 91.75% for leases of 59.65 years in a block of flats in a Worthing seafront location. Mr Spratt "honestly could not see any reason for a significant difference between Anchor Court and the Property".

18. In order to arrive at a short leasehold value Mr Spratt identified Sunningdale Court comparables, for long leases at £130,000 and £148,000, with a short lease at £139,000. Mr Spratt also gave evidence concerning his opinion about the sale of Flat 28, Sunningdale Court, at £167,500, on which Mr Pridell relies. Mr Spratt considers No. 28 was sold at a high figure, reflecting (as apparent from estate agents' particulars which Mr Spratt had put in evidence) significant improvements such as a re-fitted kitchen, re-fitted shower room and gas fired central heating, none of which are present in the unimproved

subject Property. On being pressed by Mr Pridell as to the equivalent comparison between the two flats, Mr Spratt pointed out that No. 28 is the only flat to have sold at that figure, “one swallow does not make a summer”, as he put it; and he reiterated that No. 28 appeared to have been significantly improved, whereas the Property is much more basic.

19. Mr Spratt’s short leasehold value comparable (56 years unexpired at flat 4, Sunningdale Court) was £139,000, achieved in August 2005. He did not accept Mr Pridell’s assertion that there would inevitably have been a significant increase in value between August 2005 and July 2007, according for example to the Nationwide House Prices Index, an increase of 16.71%. Although Mr Spratt accepted there might have been an uplift for that flat, he would not generalise and say, in all cases, it is always appropriate to apply an uplift to historic comparables to arrive at current values.
20. Mr Spratt concludes that the short leasehold value of the Property, in its condition and location, is £135,000 with an uplift of 12.25% (relativity 89%), producing a long leasehold value of £151,537. Mr Spratt defended his view on a relativity of 89% as being what he considered in the circumstances of this Property as a sensible approach.
21. Mr Pridell, for the Respondent, relied principally on the sale of 28 Sunningdale Court at £167,500. The sale had been completed in November 2007. This is a flat, held on a lease for 99 years from March 2001, which, according to the estate agent’s particulars that Mr Pridell provided (similar to the particulars evidenced by Mr Spratt, but from a different firm) has been extensively modernised and improved: see paragraph 18 above. Mr Pridell asserted that both flat 28 and the Property had been improved. He pointed out that, unlike the Property, flat 28 has external deck access. According to his evidence, the only material distinction is that flat 28 has gas fired central heating, whereas the Property has night storage heating.
22. Mr Pridell also refers to other flats being offered for sale where interest has been shown at £160,000 but no sales are recorded. He concludes that the long leasehold value for the subject flat should be £167,500.
23. In order to arrive at a short leasehold value Mr Pridell applies relativity of 84% supported by the “graph of graphs” and a decision in *Arrowdell* in which he was concerned (and to which this Decision will return).

24. In particular, Mr Pridell pointed out that the “graph of graphs” marked, at an unexpired term of 64 years (relevant in *Arrowdell*), the uplift of 13% (88.5% relativity) which had been determined by the Lands Tribunal as being appropriate in that case. In this case, with ten years less unexpired, Mr Pridell considers the Property is virtually unmortgageable and that a reduction in relativity from *Arrowdell* to 84% is more than fair. This relativity produces a short leasehold value of £140,700 in the subject case. He says that the subject property “does not qualify” for an adjustment to take account of improvements.
25. In criticising Mr Spratt’s comparable evidence on relativity (much of which was based on previous LVT decisions), Mr Pridell referred the Tribunal to paragraphs 35 and 40 of the Land’s Tribunal’s decision in *Arrowdell Limited and Coniston Court (North) Hove Limited LRA/72/2005*, in which (paragraph 35) a party to that case had referred to an earlier authority for the proposition that “*LVT decisions on questions of fact or opinion ... should be given little or no weight in other LVT proceedings and in proceedings in [the Lands Tribunal], even if they are admissible*”; and (paragraph 40) “*Since, for the reasons that we have given we are unable to place reliance on LVT decisions, we cannot accept the conclusions of [coincidentally] Mr Pridell, based as they were on these*”.
26. In evaluating the submissions made at the Hearing, the Tribunal is, indeed, conscious of, and abides by, the Land’s Tribunal’s summation of the references made by Mr Pridell to *Arrowdell*, namely at paragraph 37 of that decision, concerned with the relevance of LVT decisions on relativity, “*...It is not, we think, the case that Hollington v Hewthorn and Land Securities compel the conclusion that evidence of [LVT] decisions is inadmissible. In our judgement LVT decisions on relativity are not inadmissible, but the mere percentage figure adopted in a particular case is of no evidential value.*”.

## **DECISION**

27. It is clear to the Tribunal, from the evidence before it at the Hearing, that there is a need for significant adjustments to be made for improvements, both in the subject Property and in the comparables, which Mr Pridell has not fully addressed. In particular, the evidence of the sale particulars adduced in evidence for 28 Sunningdale Court show material improvements which, from the site inspection of the Property, would be lacking in the Property in its actual unimproved state. An adjustment must be made to give effect to the

disregard of tenant's improvements, as required by the Act. Mr Spratt makes a good comparison with the other long leasehold flats at below £150,000; but, having regard to the evidence from the Tribunal's inspection of the Property and its locality, to the evidence adduced at the Hearing and using the Tribunal's general expertise, knowledge and experience in evaluating that evidence, we consider that an unimproved long leasehold value, as at the valuation date, of £150,000 for the Property is a reasonable amount.

28. Mr Pridell relies heavily on the "graph of graphs" but, as pointed out by Mr Spratt, his chosen relativity of 84% falls outside the graph's range for 54 years unexpired. Mr Spratt's relativity of 89% also falls outside the graph's range.
29. The "graph of graphs" is an average of averages based on limited, undefined data from all areas outside central London. The Tribunal considers its evidential value to this case falls short of the Lands Tribunal's hope, expressed in *Arrowdell*, that there may be thoroughly researched and institutionally adopted and guided variable graphs for use in enfranchisement valuations, in the absence of other compelling evidence.
30. Mr Spratt gave the Tribunal evidence of market value comparables which, when adjusted for improvements and the "no Act world", support a lower value for the short lease than that put forward by Mr Pridell, even having allowed for adjustments for tenant's improvements. Although relativity is relevant in these cases for the reasons already promulgated, the "graph of graphs" has little relevance in this case. Both valuers chose to value outside its range. Comparables of actual sales of long leasehold flats, albeit requiring further adjustment for tenant's improvements, were put to the Tribunal in evidence.
31. From the Tribunal's assessment of that evidence and for the reasons stated above, the Tribunal's determination of the premium to be paid on the grant of the new lease of the Property is based on a short leasehold value of £135,000 and a long leasehold value of £150,000 (involving a relativity of 90%). All other variables have been agreed between the parties and this results in a premium to be paid of £12,968 (see attached calculations).

**Address 21 Sunningdale Court**

**Facts used**

Value of new very long lease (unimproved)	£150,000			
Value of existing lease (unimproved)	£135,000			
Valuation date	26/07/07			
ground rent yield	7.00%			
reversion yield	5.00%			
Unexpired term at valuation date	54	years		
Ground Rent	12.60	for	54	yrs
			£	£

Value of landlord's interest

Capitalise ground rent for current term

		Ground rent	£12.60	
YP	7.00%	54 years	<u>13.91573</u>	175.34

plus landlord's reversion to new lease

		Capital value of new lease	150,000	
x Pv	5.00%	54 years	<u>0.071743</u>	<u>10,761.41</u>

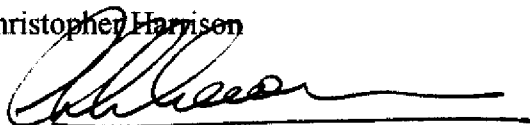
Value of landlord's existing interest lost 10,936.75

Landlord's share of marriage value

	Capital value of new extended lease	150,000	
	Value of landlord's interest after grant of new lease	<u>nil</u>	150,000
<b>Less</b>	Capital value of existing lease	135,000	
	Value of landlord's interest lost	<u>10,937</u>	<u>145,937</u>
	Marriage value		<u>4,063</u>

Landlord's share of marriage value at 50% 2,032  
Compensation nil  
Price payable **£ 12,968**

Chairman Christopher Harrison



Date 29<sup>th</sup> February 2008



**The Leasehold Valuation Tribunal's response**  
**to the Respondent's application for permission to appeal to the Lands Tribunal**

1. On 19<sup>th</sup> March 2008, within 21 days after the date when the Tribunal's Decision in this case was sent to the Respondent, the Respondent's solicitors applied for an extension of 14 days in which to apply for permission to appeal to the Lands Tribunal.
2. The Tribunal consents to the Respondent's application for an extension of time. The application for permission to appeal was made on 26<sup>th</sup> March 2008.
3. The Tribunal refuses permission to appeal to the Lands Tribunal for the following reasons which are specified respectively in relation to the Respondent's grounds of appeal set out in italic type below:
  - a) *the Decision shows that the LVT wrongly interpreted or wrongly applied the relevant law.*

*Particulars*

*The Tribunal failed to follow the Decision of the Lands Tribunal in Arrowdell Limited v. Coniston Court (North) Hove Limited<sup>1</sup>, in particular in relation to paragraph 39 of that Decision which states "regard can also be had to graphs of relativity".*

Reason for refusal: The suggestion that the Tribunal failed to follow the decision in Arrowdell and, in particular, failed to have regard to graphs of relativity is incorrect as can be seen from paragraphs 26 and 28 to 30 of the Decision. As stated in paragraph 30 of the Decision, both expert valuers used relativities outside the range of the graph of graphs. The Tribunal did the same.

*The Tribunal misinterpreted the Decision in Arrowdell who did rely upon the graph of graphs and stated that such graphs can be used in evidence. Notwithstanding the fact that the Lands Tribunal in Arrowdell expressed the hope that there may be thoroughly researched and institutionally adopted and guided variable graphs for use in enfranchisement valuations, it is clear from Arrowdell that the existing graph of graphs can be used.*

Reason for refusal: Paragraph 29 of the Tribunal's Decision states that the graph evidence adduced by the Respondent fell short, in this case, of the institutionally adopted guidance which could be obtained from variable graphs, referred to in paragraph 57 of the Lands Tribunal's decision in Arrowdell, as potential evidence in the absence of other compelling evidence. But that does

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<sup>1</sup> LRA/72/2005

not mean, and it is not apparent from the Tribunal's Decision, that the Tribunal disallowed the graph of graphs to be adduced in evidence on the Respondent's behalf or that the Tribunal did not have regard to it. The Tribunal did have regard to the graph of graphs adduced in evidence by Mr Pridell, as is clearly stated in the Decision.

*There was no "no Act world" evidence. The only other evidence was of a similar weight to the graph of graphs. The Tribunal gave no reason for disregarding the evidential value of the graph of graphs, which could have been a check against the other evidence.*

Reason for refusal: The Tribunal did not disregard the evidential value of the graph of graphs. The Tribunal determined that the graph was of little evidential value, as is explicit from its Decision, for the reason given in paragraph 28 and repeated in paragraph 30 of the Decision.

There was no "no Act world" evidence because, when considering market figures, the 1993 Act exists in the real marketplace. Both the Tribunal and the draftsman of the "graph of graphs" have to adjust actual sales figures to take account of, amongst other things, the "no Act world".

*The Tribunal was wrong in finding long leasehold value less than the evidence given by both highly experienced Valuers and although the Tribunal is entitled to use its own experience in situations where there is no evidence they should not substitute its own experience for the evidence given to the Tribunal .*

Reason for refusal: The Tribunal arrived at its long leasehold valuation by using, as it was entitled to do, its general expertise or knowledge and experience in evaluating the evidence of the parties. Both expert valuers adjusted the comparables for, amongst other things, improvements and the "no Act world". The Tribunal, in evaluating that evidence, came to its own conclusion.

Irrespective of the Tribunal's entitlement to determine its own opinion, on the evidence before it at the Hearing, of the correct long leasehold value (whether higher or lower than either party's valuation), its long leasehold valuation of £150,000 was not less than the valuation put in evidence at the Hearing by the Applicant. Mr Spratt stressed a number of fundamental matters in his oral evidence on behalf of the Applicants. The last such matter was his forcibly expressed conviction that (a) the condition of the Property was much more basic than the apparent condition of the principal comparable premises on which the Respondent relied and (b) that in his opinion (referring to the Property) the long lease value "of that flat, in that location in an unimproved state is £150,000". That evidence was in marginal conflict with Mr Spratt's proof of evidence which referred to a value of £151,537 but, despite equally

forcefully expressed evidence from Mr Pridell, the Tribunal agreed with Mr Spratt's oral evidence.

The Tribunal did not substitute its own experience for evidence adduced to it at the Hearing; and nor is it apparent from the Decision that it did so. As is clear from paragraphs 27 and 31 of its Decision, the Tribunal arrived at its determination by having regard to:

- (i) its inspection of the Property and its locality;
- (ii) the other evidence adduced by the parties at the Hearing (the Tribunal having expressly made clear at paragraph 26 of its Decision that it could ascribe no evidential value to the mere percentage figure adopted in previous LVT decisions on relativity); and
- (iii) the Tribunal's own general expertise, knowledge and experience in evaluating that evidence.

*The Tribunal was wrong in finding for a value less than the figure proposed by the Tenant in the Claim Notice.*

Reason for refusal: The application before the Tribunal was to determine the amount of the premium to be paid for the extension lease, pursuant to section 48(1) of the 1993 Act. The Tribunal's jurisdiction to determine the application is not circumscribed by the parameters of the valuations of the parties to the dispute<sup>2</sup>.

b) *the Decision showed that there was a substantial procedural defect.*

*Particulars*

*The Tribunal failed to put its own lower valuations of the short and long leasehold values to either Valuer and in particular to Mr Pridell.*

Reason for refusal: The Tribunal reached its decision on the basis of evidence that had been put by, and exposed to, the parties at the Hearing. In particular, the Tribunal did not make use of any specific knowledge or valuation methodology known only to its members. Consequently, it was not incumbent on the Tribunal to expose its valuations for comment prior to publishing its documented decision.

4. As stated by the above mentioned reasons for refusal, the Tribunal's Decision was based on the evidence before it at the Hearing. For the reasons which are

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<sup>2</sup> See the reference to the LVT's powers in paragraph 14 of the Lands Tribunal's decision in Arrowdell, *supra*, which was, nevertheless, decided on section 24 of the 1993 Act.

apparent from the Decision itself, the Tribunal gave no weight to the Applicant's evidence based on relativity percentages adopted in previous LVT decisions; and found the Respondent's evidence concerning the graph or graphs of little relevance. The Tribunal found, as much more compelling, the evidence of its inspection of the Property itself and its locality and the adjusted comparable evidence, all as evaluated by the Tribunal's general expertise.

Chairman Christopher Harrison

A handwritten signature in black ink, appearing to read 'C. Harrison', with a long horizontal flourish extending to the right. Below the signature is a solid horizontal line.

Date 5<sup>th</sup> April 2008

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**JURISDICTION**

**Regulation 20, Leasehold Valuation Tribunals (Procedure) (England)  
Regulations 2003**

**(Section 48, Leasehold Reform, Housing and Urban Development Act 1993)**

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