LRA/111/2007

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT – lease extensions – price – deferment rate – LVT adopting 6.5% because of location outside PCL and other factors – whether factors justified departure from* Sportelli *– held they did not – appeal allowed

IN THE MATTER of an APPEAL against a DECISION of the LEASEHOLD VALUATION TRIBUNAL of the LONDON RENT ASSESSMENT COMMITTEE

BETWEEN **LIPPE CIK** **Appellant**

and

(1) KIRITKUMAR BHANJIBHAI CHAVDA
HASABEN KIRITKUMAR CHAVDA
SUNIL KIRIT CHAVDA
(2) PAUL FREDERICK BOSWOOD
(3) SUKWINDER SINGH PANESAR
(4) FUAD HOSSAIN **Respondents**

Re: Flats 1, 2, 5 & 8 Noel Court, Bath Road, Hounslow TW4 7DD

Before: The President and P R Francis FRICS

Sitting at: Procession House, 110 New Bridge Street, London EC4V 6JL
on
23 July 2008

Andrew Kasriel, instructed by Clarke Mairs, solicitors of Newcastle upon Tyne, for the appellant
Paul Boswood, appellant in person, for himself and, with permission of the Tribunal, the other appellants

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The following cases are referred to in this decision:
Cadogan v Sportelli [2006] RVR 382; [2008] All ER 220
Hildron Finance Ltd v Greenhill Hampstead Ltd (LRA/120/2006, 2 February 2008) [2008] 04 EG 168 (CS)
Daejan Investments Ltd v The Holt (Freehold) Ltd (LRA/133/2006, 2 May 2008, unreported)

DECISION

1. This is an appeal by Lippe Cik, the landlord, from a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel dated 9 March 2007 relating to four applications under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act), by the tenants of flats 1, 2, 5 and 8 Noel Court, Bath Road, Hounslow, Middlesex. The applications were for the determination of the prices to be paid by the tenants for extensions to their leases. The LVT determined the prices to be paid at £2,150 (flat 1), and £2,075 for each of flats 2, 5 and 8 and in doing so determined the deferment rate at 6.5%. Permission to appeal was granted by the President of the Lands Tribunal on 23 August 2007 on the question of the deferment rate only. He directed that the appeal should be by way of re-hearing. At the hearing we heard valuation evidence on behalf of the appellant and evidence from the respondent Mr Boswood, who also appeared for himself and the other respondents. Following the hearing we carried out a site inspection of the outside of Noel Court and the immediately surrounding area.

2. Noel Court is located on the south side of the main A3006 Bath Road in Hounslow, close to its junction with Wellington Road North, and on the corner of a service road leading to a small industrial estate known as National Works. It is within about 5 minutes walk from Hounslow West Piccadilly line station, and local shopping facilities are also nearby. It comprises two blocks of purpose built flats constructed in the 1930s on ground and first floors of rendered brickwork under conventional pitched, tiled roofs. There are 8 flats within the front block which faces north over a communal garden area enclosed by a hedge and containing lawns and flower-beds to the main Bath Road beyond. All four of the appellants' flats are in this block. There is a separate block of 10 flats to the rear, of identical construction and similar appearance, separated from the front block by further, lawned, communal areas. The rear block, the ground floor flats of which have individual small private rear gardens, backs onto the industrial estate. First floor flats in both blocks have access over external staircases and balconies, which are finished with asphalt coverings.

3. All of the flats contain hall, living room, two bedrooms and a bathroom/wc and the existing leasehold values of the 4 appeal flats (allowing £5,000 for improvements) was determined by the LVT at £175,000 each (at March 2006. The appeal flats are held under the terms of similar leases, flat 1 being for a term of 99 years from 25 March 1987 at £50 pa for the first 33 years, rising to £100 pa and £150 pa at the following 33 year intervals. The section 42 notice was dated 12 March 2006. The leases of flats 2, 5 and 8 are from 25 March 1988 and are in otherwise identical terms to flat 1, and the section 42 notices were dated 11, 10 and 9 March 2006 respectively.

4. On the question of the deferment rate, the LVT said:

> "19 As to the deferment rates, the tribunal was not persuaded by Mr Boswood that it would be appropriate to disregard the guidance in *Sportelli* because the Lands Tribunal decision post-dated the valuation date(s). That guidance related to the approach the Leasehold Valuation Tribunals should have taken in determining valuations under the 1993 Act and the present tribunal is undertaking this exercise after the guidance was

given. Nevertheless, the tribunal does not consider that it could possibly equate to the value of this investment with the *Sportelli* figure of 5% in the light of its outer London location as well as the following factors:

- Continuing history of litigation between landlord and tenants about services and charges;
- 50:50 owner/occupiers: tenants; very poor tenants evident from looking at the state of the block at the rear;
- Poor external condition of the premises;
- Noise from A3006 Bath Road and overhead flight path;
- Flanked by access road to industrial estate at rear.

20 The appropriate deferment rate would, in the tribunal's judgment, have been 6.75% but the tribunal accepted the argument made for the respondent that there is redevelopment potential in the site and this is worth a built-in figure of 0.25%. Therefore, the tribunal has adopted the rate of 6.5%."

5. In granting permission to appeal the President said:

"The factors taken into account by the LVT in adopting a deferment rate of 6.5% (paragraphs 19 and 20) appear to go beyond those that were the subject of evidence before it (see paragraph 15), and the LVT does not address the question whether those factors were not already reflected in the vacant possession value. It is appropriate, therefore, to grant permission for an appeal which can be heard in the light of the forthcoming decision of the Court of Appeal in *Cadogan v Sportelli*."

The Court of Appeal decision in *Sportelli* was handed down on 25 October 2007.

6. In his statement of case, the appellant contended that the LVT had been wrong in law to apply a deferment rate of 6.5%, having failed to adhere to the authoritative guidance in *Sportelli*, which supported a generic deferment rate of 5% for flats. None of the factors referred to by them constituted "exceptional circumstances" that should lead to adjustments being made to the generic deferment rate and, further, the LVT appeared to have taken account of factors that were either not relevant or not referred to in evidence. It was the respondents' case that the LVT decision was correct and should be upheld. Ian Asbury MRICS of Chesterton gave evidence for the appellant. Mr Asbury is a chartered surveyor and a director of Chesterton Global Ltd, surveyors, valuers and estate agents, based at their office in Swiss Cottage NW6. He said that he specialises in leasehold enfranchisement under the 1967 and 1993 Acts, has negotiated settlements in several hundred cases and has previously appeared before this Tribunal and LVTs. He explained that the appellant's original expert witness report had been prepared by his colleague, Eric Shapiro BSc (Est Man) FRICS IRRV FCIArb, but due to unavoidable commitments it had not been possible for him to appear before us. That report in was adopted in its entirety by Mr Asbury, who also produced a supplemental report dealing specifically with two relevant post *Sportelli* cases: *Hildron Finance Ltd v Greenhill*

Hampstead Ltd (LRA/120/2006, 2 February 2008) [2008] 04 EG 168 (CS) and *Daejan Investments Ltd v The Holt (Freehold) Ltd* (LRA/133/2006, 2 May 2008, unreported).

7. Firstly, in connection with the points that were considered by the LVT to support a departure from the generic deferment rate, Mr Asbury said that it was unfair to have described the flats as in poor overall condition. Noel Court was an unremarkable 1930s development, typical of its age and type and which appeared to have been generally well maintained and was best described as in fair condition. He said that there appeared to be a contradiction in the LVT decision as, in its paragraph 11, it said: "...generally, the premises were found to be in a fair, not good state of repair and maintenance." The fact that the property was rendered tended to lead to higher maintenance requirements, as any cracking to the finishes would need to be cut out and filled, and redecorated. Such works had been undertaken as recently as 2002, along with complete renewal of the asphalt coverings to the external staircases and balconies, and it was acknowledged that repairs to cracking had not been well done and that further attention was needed. It was notable, Mr Asbury said, that Michael Donaldson, FRICS MCIArb MAE of Marquis & Co, in the initial valuation he prepared for the appellants prior to Chesterton's involvement, had not found it necessary to make any reference to the alleged poor condition of the buildings, and concerns raised by Mr Boswood relating to chimneys, drains and footpaths had been dealt with in a letter from a Mr David King in a report from the Building Surveying Consultancy.

8. In Mr Asbury's opinion, none of the apparent defects that had been referred to were irremediable, and were no more than was to be expected with a property of this age. It was a fact, he said, that the covenants within the lease enabled full recovery of the cost of maintenance, redecoration and repairs, so that such cost would not place any additional financial burden upon the investor landlord. The burden of collecting the service charges, and dealing with tenant disputes was no more than would be the case in any similar investment, and there was nothing to support a departure from the generic deferment rate in regard to the question of maintenance and repair or, as had been suggested, for the risks of obsolescence. There was nothing in the design, layout or construction of the block that distinguished it from thousands of other such buildings all over the country. He said that the deferment rate for flats, as determined in *Sportelli*, was 0.25% higher than that for houses specifically to allow for the very aspects of management for which the LVT appeared to be making a further adjustment in this instance. In response to Mr Boswood's evidence in relation to ongoing disputes between the tenants and the landlord about the fact that the asphalt surfaces were apparently still leaking, the circa £56,000 costs that had been incurred for maintenance and repairs and the reductions that had been made following a section 27A application, Mr Asbury insisted that these were not unusual occurrences and reiterated that such matters would not justify a further adjustment to the deferment rate. Occasional spats with tenants were, he said, part and parcel of a freehold investor's life, and there was nothing exceptional in respect of the situation at Noel Court. It was a fact that if there were ongoing disputes affecting individual units, or the block as a whole, this would have to be pointed out to the purchaser on a sale, and in view of this any effect be fully reflected in the vacant possession value. As to Mr Boswood's suggestion that the LVT's reference to the building being poor could have partly been the result of its inspection of the state of the private gardens behind the rear block, Mr Asbury acknowledged that those gardens were in a poor state, but he said that the communal gardens were tidy and well maintained.

9. In terms of location, Mr Asbury accepted that there was noise from the main Bath Road, which the property faced, and that there was considerable disturbance from aircraft noise due to the fact that Noel Court lies between the two principal flight paths from the runways at Heathrow airport, which is only 2 to 3 miles to the west. However, these, he said, were factors that were common to every other residential property in the vicinity and would be fully reflected in the vacant possession value. Mr Asbury said that any effect upon the flats caused by the road leading to the industrial estate at the rear was again a factor that, if indeed there were any detriment, would go solely to the vacant possession value. However, it was to be noted that the LVT had not suggested a lower value for any of the flats that were immediately adjacent to the road, and it was likely that, if there was any effect, it would be the flats in the rear block that suffered, rather than those on the front that were more affected by noise from the main road.

10. Turning to the LVT's expressed concern that there was an apparent 50/50 split between owner/occupiers (long-lessees) and tenants, and that the latter were "poor", Mr Asbury suggested that that could mean either financially or in terms of the way they behave or maintain their units. Either way, that was not something that would affect the reversionary value, or the risks associated with holding the investment. There had been an explosion in the buy-to-let market in recent years, the tenants were presumably wealthy enough to pay their rent and even if they were not, and were social housing tenants, it would be paid by the relevant Department. Payment of service charges did not come into that equation, as that was the lessor's responsibility. The fact that some of the private gardens might be unkempt was not a significant problem as the lessor could take remedial steps if necessary, and in any event any effects would again go solely to vacant possession value. It was to be noted that the communal gardens were all well maintained and tidy. Mr Asbury said that the only possible effect upon the reversionary value would be the fact that it is derived from the vacant possession value, rather than from an adjustment to the deferment rate.

11. Addressing himself to the growth in property prices, Mr Asbury produced schedules compiled by HM Land Registry from sales data collected from residential housing transactions, showing monthly indices for London boroughs for the period April 2000 to October 2007. They showed, Mr Asbury said, that up to March 2006 houses and flats in the London Borough of Hounslow out-performed Prime Central London (PCL) areas such as the Royal Borough of Kensington and Chelsea and the City of Westminster. Any presumption of lower growth than in PCL districts was therefore wrong, as the statistical information disproved the myth that PCL will necessarily show a greater rate of growth than non-central locations. That the schedules were derived from an analysis of all types of residential property, as pointed out in cross-examination, did not matter and it would be virtually impossible to provide a narrower breakdown from the information available.

12. As to the 0.25% further adjustment made by the LVT because it felt that the site was under-developed, Mr Asbury said that the prospects were far too remote to make any difference. It would be another 80 years before vacant possession could be obtained, and the only opportunity to buy out the existing long lessees would be if the site were much more valuable for redevelopment than the vacant possession values of all 18 units, and there was a chance to tempt the owners with a share of marriage value. This was a most unlikely scenario.

13. Mr Asbury referred at length to the Tribunal's decision, and the subsequent Court of Appeal judgment, in *Sportelli*, together with the subsequent Lands Tribunal decisions in *Greenhill* and *The Holt.* He said that, having considered all the factors that were likely to be relevant in determining whether there should be a divergence from the generic deferment rate decided in Sportelli, he could not think of a single thing in this case that justified this. Indeed, it was instructive to note that there had been a significant number of post-*Sportelli* LVT decisions that supported 5% and he produced a schedule of 81 cases out of which 70 had been determined at 5%. Of the remainder, where higher rates had been determined, reasons for such higher rates included a lease with less than 20 years to run (so that *Sportelli* was irrelevant), major structural defects, an unrepresented landlord, and more serious noise and management difficulties (in a block adjacent to Hammersmith Flyover). However, it was notable, he said, that since the date of the Court of Appeal judgment, the 5% rate appeared to have been universally applied.

14. In the present case, Mr Asbury said, there was no justification for departing from the 5% rate. It was submitted that the guidelines set out by the Lands Tribunal in *Sportelli,* and the recommendation that they should be followed by LVTs unless there was clear evidence warranting a departure from them, as approved by the Court of Appeal, were clear. Outside PCL, the same generic deferment rate should apply unless there was clear evidence suggesting otherwise, and in this case, no such evidence was forthcoming. The Tribunal was thus requested to overturn the LVT's decision, determine the deferment rate at 5% and the enfranchisement price for the four flats at:

Flat 1:	£4,536
Flat 2:	£4,348
Flat 5:	£4,348
Flat 8:	£4,347

15. On behalf of himself and the other respondents Mr Boswood had produced what he described as a valuation report, although at the commencement of his evidence he accepted that he was not an expert and that his report could thus not be treated as an expert witness report. He had also produced a skeleton argument, and was invited to make an oral statement and any additional comments that were appropriate. He said that it was the respondents' case that the LVT had not, as was being suggested by the appellant, gone beyond those factors that were the subject of evidence before it, and had clearly considered whether the factors referred to were, or should be, reflected in the vacant possession value.

16. He said that the LVT conducted a thorough hearing to determine the lease extension premiums payable and the landlord's associated allowable legal costs. In addition to hearing oral evidence (which was tested in cross-examination) they had the benefit of written evidence in the form of valuation reports, comparables and previous LVT decisions presented in substantial bundles. They also conducted a site visit. The lessees' report dealt directly with the issues that affect the reversionary investment, including the property's outer London location and proximity to Heathrow Airport, the post *Sportelli* decisions that were relied upon in evidence, the buildings' condition and risk of obsolescence, outstanding repair issues and management disputes, together with the effects of subletting. It was, Mr Boswood said, clear

from the LVT decision that they had had regard for the weight of evidence, and had not considered irrelevant evidence. They fully recited the main issues that had been raised in evidence and argument, the decision turned only on the facts, and it explained the reasoning for departing from the 5% deferment rate.

17. Mr Boswood went on to outline the continuing management and repair issues, several of which had taken over 4 years to resolve, with others, like leaking to the asphalt balcony coverings, still outstanding. Such matters, he said, had a direct affect on the reversionary value and adjustments should be made to the risk-rate accordingly. In his view, Noel Court was in poor, rather than fair, repair and the landlord had been selective about what repairs to effect. The history of management disputes, including the fact that the landlord had served section 146 notices under the Law of Property Act 1925 on the respondents for alleged breaches of the service charge covenants, would affect the attractiveness of the property to an investor, and he would accordingly require a higher return. The fact that the disputes could be expected to continue, and that repairs would not be undertaken as quickly as they should be, would also have an affect upon the likelihood of future obsolescence.

18. In terms of occupation, Mr Boswood said that the trend towards a higher proportion of council placements residing in the flats would not be fully reflected in the vacant possession value, and a higher risk premium or lower real growth rate (as contributory elements of the deferment rate) should be applied. The proximity to Heathrow, and the fact that the property sits between the two major flight paths would, in addition to affecting vacant possession values, have an effect upon the deferment rate because the future growth and usage of this major hub could not be accurately predicted, and the long-term affect upon the reversion must be in question. The industrial estate to the rear, and the access road leading to it were factors that were not common to all blocks of flats, and its effects were not wholly reflected in the vacant possession values of the flats.

19. As to growth rates, whilst it was accepted that, at the relevant valuation date, Hounslow was outperforming a number of the PCL boroughs, a close inspection of the 7.5 year period that the appellant had produced showed the situation to have been subsequently reversed, and Hounslow is now much lower down the growth league table. It was not right, he said, just to look at one specific point in history and, as had been pointed out in *Sportelli*, it was necessary to consider trends over a very long period.

20. There was ample evidence, Mr Boswood said, to show that a departure should be made from the generic deferment rate determined in *Sportelli*, and the LVT had been right to make the adjustments that it did. The Tribunal was thus invited to dismiss the appeal, affirm the deferment rate at 6.5% and confirm the enfranchisement prices as set out in the LVTs decision.

21. In *Sportelli* [2006] RVR 382 this Tribunal concluded that a deferment rate of 5% for flats and 4.75% for houses was generally applicable in leasehold enfranchisement valuations. It said (at paragraph 123) that this generic rate would need to be considered in relation to the facts of each case but that, before applying a rate that was different, a valuer or LVT should be satisfied that there were particular features falling outside those reflected in the vacant

possession value of the house or flat or in the deferment rate itself and showing that a departure from the generic rate was justified.

22. The Court of Appeal noted that this conclusion was expressed in general terms. At paragraph 102 Carnwath LJ said this:

> "The Tribunal's later comments on the significance of their guidance do not distinguish in terms between the PCL area and other parts of London or the country. However, there must in my view be an implicit distinction. The issues within the PCL were fully examined in a fully contested dispute between directly interested parties. The same cannot be said in respect of other areas. The judgement that the same deferment rate should apply outside the PCL area was made, and could only be made, on the evidence then available. That must leave the way open to the possibility of further evidence being called by other parties in other cases directly concerned with different areas. The deferment rate adopted by the Tribunal will no doubt be the starting point; and their conclusions on the methodology, including the limitations of market evidence, are likely to remain valid. However, it is possible to envisage other evidence being called, for example, on issues relevant to the risk premium for residential property in different areas. That will be a matter for those advising future parties, and for the tribunals, to consider as such issues arise."

23. Since the Court of Appeal decision in *Sportelli* the Tribunal has had to consider what deferment rate was appropriate in two cases concerning property outside the PCL area. The first of these, *Hildron Finance Ltd v Greenhill Hampstead Ltd* (Judge Reid QC and N J Rose FRICS,) concerned a collective enfranchisement of a block of flats in Hampstead. The Tribunal approached the question of the deferment rate by considering whether the evidence had demonstrated that a departure from the *Sportelli* rate of 5% was justified (see paragraph 34 of the decision). It was contended on behalf of the nominee purchaser that a higher rate should be taken to reflect the degree of obsolescence of the property, potential difficulties in obtaining possession when the existing leases expired, management problems and location.

24. In relation to obsolescence the Tribunal said

> "35. Mr Maunder Taylor considered that the degree of obsolescence of the appeal property was unusually high, since it would be at least 130 years old when the existing leases expired. We do not think that age on its own can be the appropriate test; the question is whether obsolescence and condition are not fully reflected in the vacant procession value and the risk premium. To the extent that the flats are, as Mr. Maunder-Taylor suggested, deficient in design, layout, services, facilities, fittings and finishes, these factors would presumably be reflected in their present vacant possession value. In our judgment the only factor mentioned by Mr. Maunder Taylor which might have a greater effect on the value at the end of the lease than it does now is the mainly timber construction of the top floors. We have borne this consideration in mind, but we have concluded that a purchaser would not feel it to be sufficiently significant to justify an increase in the deferment rate to be applied."

25. At paragraph 36 the Tribunal concluded that no adjustment to the *Sportelli* starting point should be made to reflect the possibility that difficulties might arise in obtaining possession of

the appeal property when the existing leases expired since it was not satisfied that the relevant circumstances were any different from those in *Sportelli*. On management problems the Tribunal noted at paragraph 37 that in *Sportelli* the Tribunal had left open the possibility that there could be a case for an additional allowance where exceptional management difficulties were in prospect, but it did not think that, at the valuation date, a purchaser would have anticipated such difficulties occurring over the long term.

26. The Tribunal made no adjustment for location. On comparative growth rates it noted that, in an effort to show that the long-term growth rate of flats in north London was comparable to that in the PCL area, the landlord's valuer had produced a graph showing the movement in values in both areas over a 13 year period. The Tribunal said about this (at paragraph 39):

> "We do not consider that such a short period – which coincided with a general upward movement in values – is adequate for the purpose for which it was intended. In order to provide a reliable indication of the long term movement in residential values so as to justify a departure from the *Sportelli* starting point, we consider that a period in the region of 50 years should be looked at, and that a series of statistics with different starting dates should be considered in order to ensure that an unrepresentative period is not relied upon."

27. The second case, *Daejan Investments Ltd v The Holt (Freehold) Ltd* (Judge Huskinson and A J Trott FRICS) concerned a collective enfranchisement of a block of flats in the London Borough of Merton. The unexpired term was 69 years. The LVT had applied a deferment rate of 7.5%. The Lands Tribunal said (at paragraph 77) that the starting point for the consideration of the deferment rate was the decision of the Tribunal and the judgment of the Court of Appeal in *Sportelli* and (at paragraph 78) that the question for determination, therefore, was whether, on the evidence called before the Lands Tribunal, a departure from the 5% deferment rate determined in *Sportelli* was justified. The nominee landlord argued that a higher deferment rate than that for flats in the PCL was justified because prime properties in a prime area showed the best relative increase in value over the long term. The Tribunal (at paragraph 79) said that the evidence did not support that conclusion. An analysis produced on behalf of the nominee landlord of the change in the value of flats in The Holt compared with the value of older residential property in London generally from 1977 to 2006 showed that The Holt had outperformed by 20%. The Tribunal said that it found the analysis useful and it gave weight to it. Other evidence designed to show that the postal district of Morden (in which The Holt was situated) performed less well than the London Borough of Merton over the period 1992 to 2007 was undermined by errors in the arithmetical calculations, and when the figures were expressed on the same basis, it was seen that Morden had performed slightly better than the borough as a whole (paragraph 80).

28. It was also contended on behalf of the nominee purchaser in *The Holt* that property of this nature was more at risk from obsolescence and deterioration than property in the PCL area so that a higher deferment rate was justified on account of this. The Tribunal rejected this contention. It said:

> "85. We are not persuaded that the age, physical condition, design and construction of The Holt are such as to constitute an exception to the Tribunal's comment that these are factors that will be fully reflected in the vacant possession value and the (generic) risk

premium. We accept, following a site visit, that the property is tired and shabby and is not built to modern standards. However, those are factors that are already accounted for in the price and it seems to us that this is not a building that is specifically prone to the risk of deterioration and obsolescence."

29. The Tribunal also rejected the contention that the hypothetical investor in the reversion would be investing for the long term and would take a different view from the purchaser of the freehold with vacant possession about future obsolescence. It said that was not the behaviour of the hypothetical investor as described by the Tribunal in *Sportelli*, and it quoted from paragraph 76 in that decision:

"... We do not, however, accept that in the market that we have to envisage there would be any significant number of investors who would be looking to hold these very long term assets throughout their lives. The attraction of the investment would be its relative security, the prospect of growth and the opportunity for long term retention and earlier sale. Tradability would, we think, be important as one of its components, and it is this that will make the volatility of the housing market and the relative illiquidity of the investment significant factors in the mind of a purchaser."

30. In the present case, as in all others in which the deferment rate in relation to flats is in issue, the starting point is the 5% deferment rate determined in *Sportelli*. That rate comprises three elements: a risk free rate of 2.25%, from which a rate of real growth of 2% is deducted and to which a risk premium of 4.75% is added. The question is whether, on the evidence, any of those elements require adjustment. In its decision (see paragraph 4 above) the LVT identified six factors which it thought justified a higher deferment rate than in *Sportelli* and a seventh factor, redevelopment potential, which it considered to have the opposite effect. It did no more than identify the factors. It did not give any explanation as to why they were thought to justify a deferment rate different from the *Sportelli* 5%.

31. The first factor was the property's outer London location. The mere fact of location, however, does not self-evidently affect the deferment rate. The vacant possession freehold value of each flat is £175,000, a mere fraction of the value of a flat situated in the PCL area. The question is whether, notwithstanding that location is so strongly reflected in the vacant possession freehold value, the notional purchaser of the reversion would make an additional allowance for it in determining what he would pay. If there was evidence that the prices of flats in outer London, or this part of outer London, appreciate more slowly over the long term than those of flats in the PCL area, there would be the basis for deducting a lesser growth rate than 2% from the risk free premium. If there was evidence to show that such prices were significantly more volatile than the prices of PCL flats, this could justify an adjustment to the risk premium. There is, however, no evidence that growth rates are slower or prices more volatile in this outer London location. There was no evidence at all on behalf of the tenants, while the Land Registry schedules for the period April 2000 to October 2007 produced by Mr Asbury show that for part of the time prices in Hounslow outperformed those in Kensington and Chelsea (up to March 2003, for instance, the increase in Hounslow was 43% compared with 26% in Kensington and Chelsea); up to September/October 2006 the increases were the same; while Kensington and Chelsea substantially outperformed Hounslow in the year between October 2006 and October 2007. These, however, are mere snapshots, and no

conclusion can be drawn from them other than that they do not suggest that the long term growth rate is lower in this location than in the PCL area. We agree with the Tribunal in *Hildron Finance* that to establish such differential growth rates it would be necessary to look at a long period and that a series of statistics with different starting dates would need to be considered in order to ensure that an unrepresentative period was not relied upon.

32. Further factors were identified by the LVT in five bulleted points. They were: the continuing history of litigation between landlord and tenants about services and charges; the "very poor tenants" that made up half the occupancy of the flats; the poor external condition of the premises; noise from the A3006 Bath Road and the overhead flight path; and the flanking road to the industrial estate to the rear. In the light of *Sportelli* the correct approach when considering matters of this sort is to ask whether or not they are fully reflected in the vacant possession value. If the evidence shows that they are not fully reflected – if they would be of greater concern to the purchaser of the reversion than to the purchaser of the freehold with vacant possession – an adjustment to the risk premium might be justified. We cannot in principle see why such adverse factors as these are not fully reflected in the freehold vacant possession value, and there is nothing in the evidence to suggest that they are not. All of them seem to us to be pre-eminently matters in respect of which a purchaser of the freehold with vacant possession, who proposed either to occupy or to let the flat and expected at some time in the future to sell it, would be concerned to make appropriate allowance in determining how much he was prepared to pay. We can see no reason why the notional purchaser of the reversion, basing himself on this vacant possession value, would make an addition to the deferment rate because of these factors. (We would add parenthetically – although this does not affect the conclusion we have just expressed – that the description of the external condition of the property as "poor" was not borne out by our site inspection.)

33. The LVT identified one factor that it said should operate so as to reduce the deferment rate. This was the redevelopment potential of the site, for which, it said, 0.25% should be deducted. It seems to us, however, as was accepted, indeed asserted, on behalf of the landlord, that the prospect of redevelopment is so remote that it would not be a factor that would influence the notional purchaser of the reversion in the price that he would pay for the flat. The evidence is insufficient to show that redevelopment might be a profitable venture, and in any event before it could be carried out it would be necessary for agreement to be reached with all those who at the time in question had an interest in any of the 18 flats.

34. In our judgment, therefore, there is no justification for departing from a deferment rate of 5%. The appeal must accordingly be allowed. We determine the prices payable in respect of each flat as follows:

Flat 1:	£4,536
Flat 2:	£4,348
Flat 5:	£4,348
Flat 8:	£4,347

Dated 7 August 2008

George Bartlett QC, President

P R Francis FRICS