

2.800



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

Case Reference: CHI/00HA/OLR/2012/0179
CHI/00HA/OLR/2013/0179

Property 1: 4 Mayfields, Keynsham, Bristol BS31 1BW

Property 2: 7 Mayfields, Keynsham, Bristol BS31 1 BW

Applicants 1: Gordon Barton Pitt & Jean Mary Pitt

Applicants 2: May Osborn Crofts & Roger Frank Lawrence

Representative: Philip Furze FRICS of Davies and Way, Chartered Surveyors and Estate Agents

Respondent: Kingley Properties Limited

Representative: Anthony Gold, solicitors

Type of Application: Determination of premiums to extend leases of flats under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (1993 Act).

Tribunal Members: Judge Tildesley OBE
Mr I Perry FRICS
Mr M Ayres FRICS

Date and venue of Hearing: 11 November 2013 at Grange Hotel, 42 Bath Road, Keynsham, Bristol BS31 1SN

Date of Decision 12 December 2013

DECISION

DECISION

Summary of Decision

5 1. The premiums to extend leases under section 48 of the 1993 Act are determined at

(1) 4 Mayfields: £12,250

(2) 7 Mayfields: £11,000

The Application

10 2. Applicants 1 served a notice on the Respondent claiming a new lease for 4 Mayfields. The notice was dated 17 October 2012 which was incorrect. The Respondent's counter notice dated 8 October 2012 admitted the Applicants' right to acquire a new lease as at the date of 17 October 2012. The Respondent's representative also confirmed in an e-mail dated 7 November 2012 that the Respondent was prepared to waive the defect in the Applicant's
15 notice.

3. Applicants 1 proposed a premium of £11,000 which was not accepted by the Respondent who countered with a premium of £28,500. The Respondent accepted the terms proposed by Applicants 1 for the new lease which were:

20 "A term expiring 90 years after the term date of the existing lease at a peppercorn ground rent on terms the same as those contained in the existing lease subject to any modification (as appropriate) as set out in section 57 of the 1993 Act".

25 4. On 12 December 2011 Applicants 2 served their notice claiming a new lease for 7 Mayfields. On 9 February 2012 the Respondent accepted the Applicants' right to acquire a new lease and the terms suggested for the new lease but disputed the amount of premium (£11,280) proposed, countering instead with a sum of £28,500.

30 5. The parties were unable to settle their differences with the result that applications were made to the Tribunal on 15 January 2013 and 17 July 2012 in respect of 4 and 7 Mayfields to determine the premiums payable for the new leases.

6. The sole issue in dispute was the amount of premium payable by the Applicants for the new leases at 4 and 7 Mayfields.

35 7. On 11 November 2013 the Tribunal first inspected the properties in the presence of the Applicants' representative and Mr Leon, and then held a hearing at the Grange Hotel in Keynsham.

The Properties and the Lease

8. The two properties were part of the Mayfields development which comprised 32 flats in eight blocks built in the 1950's to look like semi-detached houses. The buildings were of cavity construction with stone faced concrete blocks. They had timber framed pitched and tiled roofs. The dividing floors between the flats were of suspended timber joist construction. There were gardens to the front, rear and to the side of the blocks. The gardens were divided up between the flats for each block.

9. The overall appearance of the Mayfields development was uninspiring with several properties in poorly maintained condition. The development was within 250 metres of Keynsham High Street and adjacent to a public car park. Some of the flats had the benefit of garages located on a separate block on the development.

10. The property 4 Mayfields was a first floor flat with a gross internal floor area of 44.9 square metres. The property at the time of inspection had been modernised and consisted of a living room, kitchen, two bedrooms and a bathroom with a three piece suite. Its garden was at the front of the block. The property 7 Mayfields was on the ground floor of a different block to 4 Mayfields and had also been modernised. The gross internal area of 7 Mayfields was 48.95 square metres and had a similar layout to 4 Mayfields. Its garden was at the rear.

11. At the time the properties were built in 1957 they would have had single metal framed windows, a coal fire in the living room with a back boiler providing hot water, a kitchen with sink unit and one worktop, and a bathroom with a three piece suite and heated towel rail.

12. The Applicants held the properties under separate leases with identical clauses for terms of 99 years from 1 March 1957. The ground rent for both properties was £6.30 per annum which was fixed for the entire term. Under the leases the Applicants' repairing obligations were:

30 “..to well and substantially repair, renovate, maintain, support, paint, pave, distemper, paper, cleanse and keep the demised premises and fixtures therein and all cisterns, pipes, wires, ducts, walls, drains, paths, screen fences in good repair, condition and cultivation”.

35 13. The Respondent's repairing obligations as landlord under the lease included:

40 “substantially repair and maintain (including replacement whenever such shall be necessary) the roofs of the said property both pitched and flat including timbers, tiles, roofing, felt, flashings, soakers, rainwater gutters and down pipes and to main walls, chimney stacks and foundations”.

The Law

14. The statutory provisions dealing with the premium payable by the Applicants for the grant of a new lease are found in paragraph 2, part 11 of schedule 13 of the 1993 Act. The premium is the aggregate of

- 5 (1) The diminution in value of the landlord's interest in the tenant's flat.
- (2) The landlord's share of the marriage value.
- (3) Any amount of compensation payable to the landlord.

15. Paragraph 3(1) states that the diminution in value of the landlord's interest is the difference between:

- 10 (1) The value of the landlord's interest in the tenant's flat prior to the grant of the new lease: and
- (2) The value of his interest in the flat once the new lease is granted.

15 16. Paragraph 3(2) spells out the factors to be taken into account when valuing the landlord's interest. Essentially the valuation equates with the value of an open market sale by a willing seller of an estate in fee simple which ignores the right to acquire a new lease and disregards any value attributable to tenant's improvements. Also the valuation under paragraph 3 assumes two hypothetical sales of the landlord's interest.

20 17. Paragraph 4 of schedule 13 deals with marriage value which is calculated by aggregating the values of the landlord's and tenant's interests after the new lease had been granted, and deducting the corresponding values prior to the grant of the new lease. The landlord is entitled to a 50 per cent share of the marriage value.

25 18. Paragraph 5 of schedule 13 enables compensation to be paid to a landlord for any loss or damage arising out of the grant of a new lease. The question of loss or damage was not an issue in this Application.

19. Under an application for the grant of a new lease the Respondent is also entitled to the recovery of its reasonable legal costs and surveyor's fees. Again this was not an issue in this Application.

30 **Chronology**

20. On or around 17 July 2012 the Tribunal received the application for 7 Mayfields.

35 21. On 25 July 2012 the Tribunal directed that the proceedings in respect of 7 Mayfields be stayed until the Upper Tribunal had made its determination in connection with an appeal against another Tribunal's decision on the premiums payable for 23 and 32 Mayfields.

22. On 15 January 2013 the Tribunal received the application for 4 Mayfields. On 16 January 2013 the Tribunal issued provisional directions with a long step hearing date of 20 June 2013. The provisional directions were, however, held in abeyance pending the proceedings before the Upper Tribunal in relation to the other properties on the Mayfields development

23. On 4 February 2013 the Upper Tribunal refused the Respondent's permission to appeal the Tribunal's decision in relation to 23 and 32 Mayfields. Sir Keith Linblom, President of the Lands Chamber, ruled that

“I do not see a realistic prospect of success for an appeal on any of the grounds put forward. In reality those grounds do not go beyond a straightforward disagreement with the conclusions reached by the tribunal on the evidence before it. The tribunal was right to refuse permission to appeal for the reasons it gave. In my view its findings of fact are unimpeachable, the conclusions based on them are sound, and the reasons given for those conclusions are adequate and clear. And I do not accept that it arguably erred in law. As it said when it refused permission to appeal, and as is plain from its decision, the observations made about relativity graphs in *Coolface* were taken into account. The factors influencing the deferment rate were also properly addressed in the light of relevant case law, including *Sportelli*. I therefore refuse permission to appeal”.

24. On 26 March 2013 the Respondent requested leave of the High Court to review the Upper Tribunal's decision of 4 February 2013.

25. On 1 July 2013 the High Court refused the Respondent leave to apply for judicial review.

26. On 29 July 2013 the Tribunal issued fresh directions on the same terms for both applications. The Tribunal directed that the respective valuers shall meet by 17 September 2013 and provide a joint report to the Tribunal by 27 September 2013. Each party was required to provide the Tribunal with skeleton arguments by 18 October 2013. The target date for hearing was fixed for the 8 November 2013. The parties were required to notify the Tribunal by 27 August 2013 of any working days they wished to avoid within seven days of the target date.

27. On 31 July 2013 the Applicants' representative wrote to the Respondent's solicitor requesting contact details for the Respondent's valuer. The Respondent did not reply.

28. On 22 August 2013 the Applicants' representative supplied the Tribunal with his dates to avoid. The Respondent did not.

29. On 5 September 2013 the Applicants' representative supplied the Tribunal and the Respondent with his proof of evidence. The representative stated that he had received no report from the Respondent, and no valuer had been in contact to view the properties or attempt to negotiate.

30. On 16 September 2013 the Applicants' representative advised the Tribunal that the Respondent's valuer had not been in contact, and no request had been made to inspect the flats. As a result there had been no meeting of valuers.

5 31. On 20 September 2013 the Tribunal informed the parties of its intention to set the case down for hearing around 8 November 2013. The Tribunal requested the parties to advise on what matters had been agreed and which matters remained outstanding.

10 32. On 24 September 2013 the Applicant's representative advised the Tribunal that he had heard nothing from the Respondent: no valuer, no report and no attempt at negotiations. The representative also provided details of previous dealings with the Respondent in connection with applications for new leases in respect of properties on the Mayfields development which are set out below:

“Flats 6, 8, 10, 12, 13, 14, 21 and 24 Mayfields

15 The LVT hearing in respect of the Appeal on these properties was on 16 May 2011. The decision was issued on 7 June 2011. The Respondent delayed issuing new draft leases and then claimed the application had become time expired. The Applicants' solicitor failed to seek a court order within two
20 months and the Application lapsed with no extended leases.

Flats 23 and 32 Mayfields

25 Section 42 notices were served with premiums of £11,000 in line with the Tribunal's decision as above. The Respondent's section 45 notice quoted £35,000 for 23 and £33,600 for 32. The Tribunal decision released on 25 June 2012 was £11,200 for 23 and £11,000 for 32.

The decision was appealed to the Upper Tribunal which decided there were no grounds for appeal. It was then appealed to the High Court – leave to apply for judicial review was refused.

30 The Respondent despite repeated requests have failed to issue new leases. The applicants are now in the process of applying for a Court order.

Flats 6, 8, 10, 12, 13, 14, 21 and 24 Mayfields

35 Section 42 notices were served on 14 May 2013 with premiums of £11,000. The Respondent's section 45 notice requested a premium of £28,500.

Again there was no attempt to negotiate – I (*the representative*) am just about to complete an Appeal application for yet another hearing.

Flat 29 Mayfields

40 Section 42 and 45 Notices were served on the same dates and at the same figures for Flats 6, 8, 10, 12, 13, 14, 21 and 24 Mayfields.”

33. The Respondent did not reply to the Tribunal's letter of 20 September 2013.

34. On 15 October 2013 the Applicants' representative served his skeleton argument.

5 35. On 17 October 2013 the Applicant's representative requested a determination on the papers in view of the Respondent's failure in all respects to comply with directions.

10 36. The Tribunal decided that a hearing was necessary and notified the parties on 23 October 2013 that the Applications would be heard on the 11 November 2013.

15 37. On 25 October 2013 the Respondent's solicitors advised the Tribunal that they had written to the Applicant's solicitors requesting that these two applications be heard together with other Mayfields' lease extension cases. The solicitors also requested an adjournment of the hearing because their client could not attend the Tribunal on 8 November 2013. The Tribunal pointed out to the solicitors that the hearing was on the 11 not the 8 November 2013.

20 38. On 8 November 2013 the Respondent's solicitors informed the Tribunal that Michael Leon would be attending the hearing on the Respondent's behalf. The solicitors also enclosed Mr Leon's statement of evidence, which was unsigned, and the Respondent's statement of grounds for the judicial review proceedings in respect of 23 and 32 Mayfields.

Preliminary Matters

25 39. At the hearing the Tribunal considered together two preliminary matters before hearing the evidence. The first concerned the status of Mr Leon who turned up at the inspection to represent the Respondent. The second related to the Respondent's failure to comply with directions. The Applicants' representative maintained that it was manifestly unjust to permit the Respondent to introduce evidence and to take part in the proceedings in view
30 of its flagrant disregard of the Tribunal directions.

35 40. The Tribunal ascertained from Mr Leon that he was not from the Respondent's solicitors, and not the valuer appointed by the Respondent. According to Mr Leon, he had some 30 years experience in all aspects of the property business which gave him the necessary expertise to represent the Respondent in these proceedings. Mr Leon said he had a family connection with the Respondent upon which he was reluctant to elaborate when first questioned by the Tribunal. Also at this stage in the proceedings he was unable to produce the Respondent's written authorisation of his status as a representative.

41. Mr Leon apologised on behalf of the Respondent for its failure to comply with directions. Mr Leon said that the Respondent's non-compliance was inadvertent arising from confusion between the Respondent's two legal representatives. According to Mr Leon, Mr Vinall of Winkworth Sherwood solicitors who was representing the Respondent in the new proceedings concerning flats 6, 8, 10, 12, 13, 14, 21 and 24 Mayfields should have taken over these proceedings and arranged for all cases to be heard contemporaneously. Mr Leon, however, conceded that this did not happen, and apart from a brief reference in the solicitor's letter of 25 October 2013, Anthony Gold solicitors continued to represent the Respondent in these Applications.

42. Mr Leon also said that the Respondent had attempted to reach a negotiated settlement with the Applicants to avoid the necessity of a hearing. Mr Leon, however, was unable to substantiate his assertion with documentary evidence that the Respondent had made concerted efforts to effect a settlement of the dispute. The Tribunal only saw one e-mail dated 29 October 2013 from the Respondent's solicitors where they requested the Applicants' representative to ascertain what his respective clients would agree so as to avoid the necessity of a hearing. The Tribunal notes that this e-mail was sent just 12 days before the hearing, and after the notification of the hearing for the 11 November 2013.

43. The Tribunal concluded that it was not safe to permit Mr Leon to represent the Respondent. He was not an office holder for the Respondent company. The Respondent had not supplied the Tribunal and the Applicants with written notice of appointment in accordance with rule 14(2) of the Tribunal Procedure Rules 2013. Mr Leon's purported expertise in valuation matters did not inspire the Tribunal's confidence.

44. The Tribunal finds that there was no substance to the Respondent's explanation for its failure to comply with the directions dated 29 July 2013.

45. The Respondent adduced no evidence to substantiate Mr Leon's assertion that it was engaged in active and bona fide negotiations to settle with the Applicants the premiums payable for the new leases. The solicitor's e-mail of 29 October 2013 made no mention of previous negotiations with the Applicants about premiums. The e-mail did not state the Respondent's position; instead it merely requested the Applicants' bottom line settlement figures. Finally the timing of the e-mail just some 12 days before the hearing together with its contents led the Tribunal to the conclusion that the Respondent was simply going through the motions.

46. Likewise the Tribunal was not convinced with the Respondent's contention that its non-compliance was inadvertent due to confusion between the two solicitor's firms representing the Respondent in respect of different Applications in connection with Mayfields. Anthony Gold solicitors continued to correspond with the Tribunal over these Applications up and until the hearing date of 11 November 2013. The Respondent's other solicitors,

Winkworth Sherwood, did not communicate directly with the Tribunal about the Applications in relation to 4 and 7 Mayfields. Equally there was no formal application by the Respondent's solicitors to amalgamate the two separate sets of proceedings. Anthony Gold first referred to the possibility of consolidating the proceedings in its letter of 25 October 2013 to the Tribunal. That letter, however, made it clear that if the Applicants' representative did not agree to the proposal the Respondent's surveyor would finalise his valuation report. The truth of the matter is indicated by Mr Leon's statement that the Respondent had intended for Winkworth Sherwood to take over these two cases, which carried the implication that the Respondent for some unexplained reason had failed to issue the necessary instructions for this to happen.

47. The Tribunal considers there is compelling evidence that the Respondent's failure to comply with directions was deliberate with a view to hampering the progress of the Applications. The Tribunal's conclusion is supported by the Respondent's complete disengagement without explanation with the timetable set by the directions of 29 July 2013 until the Tribunal forced the issue by sending the hearing notice for 11 November on 23 October 2013. After that date the Respondent's solicitors sent a flurry of letters which demonstrated the Respondent had taken no steps to prepare for the proceedings prior to the issue of the hearing notice. The letter of 25 October 2013 stated that the surveyor had not finalised his valuation report. The e-mail of 7 November 2013 to the Applicants' representative indicated that Mr Leon had not completed his additional report and that the Respondent would be using the proof of evidence of Mr Armstrong, the surveyor used in the previous Tribunal in respect of the premiums for 23 and 32 Mayfields. The mention of relying on Mr Armstrong's existing evidence undermined the veracity of the statement in the 25 October 2013 letter about the surveyor finalising his report.

48. The Tribunal's finding of the deliberate nature of the Respondent's non-compliance was also supported by the wider context of the Respondent's conduct of the enfranchisement proceedings generally for the Mayfields properties. In having regard to the wider context the Tribunal draws no adverse inference from the delay occasioned by the Respondent in pursuit of its rights of appeal against the Tribunal's determination in respect of 23 and 32 Mayfields. The Respondent was entitled to pursue every avenue open to it to challenge the determination. The Tribunal, however, relies on the Applicants' representative account of the Respondent's unwillingness to negotiate in respect of the other proceedings and its reluctance to issue new leases which replicated the pattern demonstrated in these Applications of frustrating the tenants' right to claim new leases.

49. Where there has been a failure to comply with directions the Tribunal under the 2013 Procedures Rules has a range of options in dealing with non-compliance from waiving the requirement to barring the party from further participation in the proceedings (see rule 8(2)). Further rule 18(6)(b) enables

the Tribunal to exclude evidence that otherwise be admissible on failure to meet directions.

50. The directions dated 29 July 2013 advised the parties that non-compliance could result in serious detriment including the Tribunal's refusal to hear all or part of that party's case. The Tribunal also heard on 11 November 2013 the parties' representations on the potential outcomes arising from the Respondent's non-compliance.

51. The Tribunal's finding that the Respondent's failure was deliberate would as a rule exclude options favourable to the Respondent, such as waiver or adjournment. In the circumstances of this Application the Tribunal attaches weight to the Applicants' submission that it would be manifestly unjust to allow the Respondent to call evidence which had not been served on them. Having said that, the Tribunal recognises that the sanctions of barring and excluding evidence are draconian, and that even where the party's failure had been deliberate there are circumstances in accordance with the overriding objective which may justify a more lenient approach towards the defaulting party.

52. In this application the Tribunal is satisfied that the Respondent has put forward no mitigation for its non-compliance. The Tribunal also considers that the prejudice suffered by the Respondent by not being able to present its case was ameliorated by the fact that the evidence relied upon was effectively a repetition of that presented before the previous Tribunal and in the statement of grounds and facts for the judicial review application before the High Court. Thus the Respondent has had the opportunity of having its case heard by an independent judicial body. The Tribunal on 25 June 2012 found against the Respondent. The Upper Tribunal refused the Respondent permission to appeal the Tribunal decision. The High Court likewise refused the Respondent leave to review the Upper Tribunal's decision.

53. Having regard to the above findings the Tribunal ordered that the Respondent take no further part in the proceedings, and that the evidence in the form of Mr Leon's undated witness statement be excluded. The Tribunal considered the Respondent's *Statement of Grounds and Statement of Facts* for the High Court proceedings a matter of record which had been exhibited in the Applicants' bundle of documents. The Tribunal took the view that it could take judicial note of the Statement and the two previous Tribunal decisions.

54. The Tribunal announced its decision on the preliminary matters at the hearing giving brief reasons and reserving its right to amplify upon those reasons in its written decision. After announcing its decision Mr Leon produced a letter on plain notepaper dated 6 November 2013 addressed to *Whom it May Concern* from a Brenda Leon, director of Kingsley Properties Limited which said that "*we have asked Michael Leon to represent the Respondent, Kingsley Properties Limited at the above hearing*".

55. Mr Leon offered no plausible explanations for not producing this letter and the non-disclosure of his marriage to a director of the Respondent company (Brenda Leon) at the time the Tribunal conducted its enquiry into his status as a representative. The Tribunal considers Mr Leon's inexplicable behaviour affected his and the Respondent's credibility. The Tribunal advised Mr Leon that the recent revelations did not effect its decision to bar the Respondent for taking further part in the proceedings. The Tribunal then proceeded to hear the evidence on the substantive matter. Mr Leon remained in the hearing room throughout the remainder of the proceedings.

10 **The Evidence on the Premium Payable**

56. The Tribunal based its determination on the expert evidence of the Applicants' representative. Although the representative was not cross-examined by the Respondent, the Tribunal adopted an inquisitorial approach to his evidence having regard to its own expertise and the previous Tribunal decisions on the Mayfields development.

57. The representative was a Fellow of the Royal Institution of Chartered Surveyors with more than 30 years experience of valuing and surveying residential property. Throughout his career the representative had been based in Bath/Bristol and had in depth knowledge of the values of residential property in that area.

58. The representative declared that he had complied with the duties of the expert as set out in Part 35 of the Civil Procedure Rules, and that his fees were not dependent in any way on the outcome of the case. The representative disclosed that he was part owner of the long leasehold interest in 23 Mayfields.

59. The Respondent in the previous Tribunal proceedings of 25 June 2012 contended that the Representative's leasehold interest in 23 Mayfields compromised his independence as an expert witness. The Tribunal on 25 June 2012 noted the Representative's interest but did not appear to consider that it affected the independence of his expert testimony. This Tribunal observes that the Respondent's contention on the representative's apparent bias formed one of the grounds for judicial review for which the High Court refused to grant leave.

60. This Tribunal considers the representative's interest in 23 Mayfields had no direct connection with the Applications concerning 4 and 7 Mayfields, unlike the application before the Tribunal on 23 June 2012. The Tribunal is satisfied that the representative understood his duties as an expert witness, and that his evidence was not tainted by his interest in 23 Mayfields.

61. The Tribunal finds that specific aspects of the representative's testimony was uncontroversial, namely:

(1) The dates of valuation which were 17 October 2012 for 4 Mayfields and 12 December 2011 for 7 Mayfields.

(2) The unexpired terms were 43 years and 5 months and 44 years and 3 months for 4 and 7 Mayfields respectively.

5 (3) The ground rent for both properties was £6.30 per annum.

(4) The capitalisation rate of seven per cent for the ground rent was appropriate having regard to the fact that the ground rent was of a nominal amount and not subject to review under the lease.

(5) The respondent's share of the marriage value was 50 per cent.

10 (6) Flats 4 and 7 were equal in value, irrespective of level or layout.

(7) The flats were to be valued in their original state

62. The Applicants' representative relied on sales evidence of two properties on the Mayfields development for his proposals in respect of the values for the existing and extended leases. In this respect the representative referred to the
15 sale of 2 Mayfields with a 99 year lease of which 46 years remained unexpired for £90,000 on the 18 November 2010, and the sale of 15 Mayfields with a 149 year lease for £98,000 on 8 July 2011. The representative reported that there had been a number of other sales on the Mayfields development which he considered to be historic and irrelevant as they occurred in different market
20 conditions with distinctive value levels.

63. The representative pointed out that 15 Mayfields when sold had the benefit of double glazed windows, gas fired central heating, refitted kitchen and bathroom, new fireplace with coal effect gas fire and covings to the
25 ceilings. The representative valued these improvements at £5,000. The Tribunal on 25 June 2012, however, decided on a value of £2,000 for the improvements, noting that the sale particulars for 15 Mayfields stated that the property required some updating. The representative, albeit reluctantly, agreed with the previous Tribunal's determination of £2,000 which according
30 to him produced a figure of £96,000 for the value of the extended lease in respect of 4 and 7 Mayfields. This was the value applied by the Tribunal on 25 June 2012 for the extended lease for a flat without a garage. This Tribunal, however, notes that the Tribunal on 16 May 2011 adopted a sum of £100,000 for the extended lease value of the Mayfield flats without a garage.

64. The sales particulars for 2 Mayfields stated that the property was in need
35 of improvement but that it had a large garden with future development potential. The representative assumed that the property was effectively in its original condition when sold and that no allowance should be given for tenant's improvements. The Tribunal on 25 June 2012 arrived at the same conclusion finding that 2 Mayfields was in original or near original condition,
40 that is, in repair but unimproved for the purposes of the 1993 Act. The representative adopted the previous Tribunal's adjustments to the sale price for 2 Mayfields of £2,500 for the large garden and a further five per cent for the no Act world to produce a value of £83,125 for the existing lease.

5 65. The Tribunal notes that the previous Tribunal gave the £2,500 adjustment because it considered that the larger garden would attract a wider market than that for the subject flats. The previous Tribunal did not consider on the evidence that the garden had valuable development potential. The five per cent allowance for the no Act world acknowledged that the value attributable to the benefit of the 1993 Act extended beyond the fiscal benefit of the right to a new lease and the retention of part of the marriage value which meant that the price paid for an existing leasehold interest in the Act world was always higher than that in the no Act world.

10 66. The Applicants' representative said that he had considered the various relativity graphs published by RICS but had rejected them because in his view reliable transactional evidence took precedence.

15 67. The Applicants' representative's proposals of £83,125 for the existing lease value and £96,000 for the value of the extended lease produced a relativity of 86.59 per cent which contrasted with the relativity of 71 to 75 per cent for leases with 40 to 45 years unexpired as published by LEASE.

20 68. The Applicants' representative argued for a deferment rate of 5.5 per cent. The representative justified the 0.5 per cent uplift on the 5 per cent rate as determined by *Sportelli* on two grounds. First that the rate of capital growth was considerably lower in Keynsham than in Prime Central London. In this respect the representative produced copies of the Land Registry House Price Indexes for the City of Westminster and for Bath and North East Somerset for the period January 1995 to September 2011. The indexes showed a rise in index from 100 to 455.64 for the City of Westminster which contrasted with a rise from 100 to 332.38 for Bath and North East Somerset. The representative expressed his expert view that the index for Bath and North East Somerset was heavily influenced by strong growth in the City of Bath which would not have been replicated in Keynsham.

30 69. The second ground related to the greater risk of deterioration and obsolescence of the properties on Mayfields arising from the Respondent's poor management of the development, outdated structural aspects of the properties, and the slow growth in capital values. The Tribunal notes that the Respondent's surveyor at the 25 June 2012 Tribunal did not dispute the Respondent's lack of management.

35 70. Finally the Applicant's representative referred to the Tribunal's decision on the 25 June 2012 which had determined a 5.5 per cent deferment rate.

71. The Tribunal finds the following:

40 (1) The proposal of £96,000 for the extended lease value was derived from an open market sale of a like property on the Mayfields development (15 Mayfields). The previous Tribunal on 25 June 2012 had considered a range of sales evidence but concluded that the transaction for 15 Mayfields provided the most reliable evidence for the extended lease values of

properties on the Mayfields development. This Tribunal agrees, and prefers the value of £96,000 to the £100,000 advocated by the Tribunal on 16 May 2011. The latter appeared to place too much emphasis on 15 Mayfields being a probate sale.

5 (2) A figure of £96,000 for the value of the extended lease for 7 Mayfields with a valuation date of 12 December 2011.

(3) A figure of £98,000 for the value of the extended lease for 4 Mayfields with a valuation date of 7 October 2012. The increase of £2,000 reflected the evidence of the Applicants' representative that there had
10 been a slight upward movement of two to three per cent in houses prices in the Keynsham area from September 2011.

(4) The proposal of £83,125 for the existing lease value was derived from an open market sale of a like property on the Mayfields development (2 Mayfields). This Tribunal agrees with the finding of the previous Tribunal of 25 June 2012 that 2 Mayfields was a clear and reliable comparable. Similarly this Tribunal does not consider that the garden at the side of 2
15 Mayfields had a material development potential. This Tribunal agrees with the previous Tribunal's adjustments of five per cent for the no Act world and £2,500 for the large garden in the sense that it would expand
20 the pool of prospective purchasers.

(5) A figure of £83,125 for the value of the existing lease for 4 and 7 Mayfields. The Tribunal makes no adjustment in respect of increasing house prices for number 7 because any such increase would be counteracted by the decreasing effect of the shortening lease.

25 (6) The sales evidence for the determination of the existing and extended lease values was reliable which avoided the necessity of resorting to relativity graphs. The purported high relativity of around 86 per cent did not undermine the soundness of the sales evidence. In the Tribunal's view the high relativity was in all probability due to the state of disrepair
30 of the properties and the uninspiring nature of the development.

(7) A deferment rate of 5.5 per cent. The Tribunal is satisfied that the 0.5 per cent uplift from the *Sportelli* generic rate of 5 per cent was justified by the evidence of low capital growth and increased obsolescence. In this respect the Tribunal endorses the rationale of the previous Tribunal as set
35 out in paragraph 48 of its decision. The 0.5 per cent uplift included no additional element for the management problems associated with flats, and, therefore, did not run to the recent Upper Tribunal decision in *Voyvoda v Grosvenor West End Properties and one another* [2013] UKUT 0334 (LC).

40 **Decision**

72. In view of its findings above the Tribunal determines the premiums payable to extend leases under section 48 of the 1993 Act at

(1) 4 Mayfields: £12,250

(2) 7 Mayfields: £11,000

73. The Tribunal's calculations are set out in the schedules attached.

Judge Tildesley OBE

5

RIGHTS OF APPEAL

- 10 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.
- 15 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.
- 20 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.
- 25 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

4 Mayfields, Keynsham, BS31 1BW

Date of valuation 17/10/12

99 years from 1st March 1957

5	1. Diminution in Value of Landlord's Interest per s.3(1):		
	(a) Value before grant of new lease:		
10	<u>Term</u>		
	Ground Rent	£ 6.30	
	Years Purchase 43 years 5 months	13.53287	£85
	@ 7%		
15	<u>Reversion</u>		
	Long leasehold Flat Value (extended)	£98,000	
	Present Value £1 43 years 5 months		
	5.5%	0.09739	£9,544
20			£9,629
	Less		
	(b) Value when new Lease granted	£98,000	
	Present Value 133 years 5.5%	0.000765	£75
25	Diminution in Value		£9,554
30	2. Landlord's Share of Marriage Value per s.4(2):		
	(i) Value of Tenant's interest with extended lease	£98,000	
	(ii) Value of Landlord's interest after new Lease	£75	£98,075
35	Less		
	(i) Value of Tenant's interest before new lease	£83,125	
	(ii) Value of Landlord's interest before new lease	£9,554	
40			£92,679
	Marriage Value	£5,396	
45	Landlord's share 50%		£2,698
	Compensation Payable to Landlord		£12,252
		SAY	£12,250

7 Mayfields, Keynsham, BS31 1BW

Date of valuation 12/12/11

99 years from 1st March 1957

5

1. Diminution in Value of Landlord's Interest per s.3(1):

(c) Value before grant of new lease:

10

Term

Ground Rent

£ 6.30

Years Purchase 44 years 3 months

@ 7%

13.57012

£85

Reversion

15

Long leasehold Flat Value (extended)

£96,000

Present Value £1 44 years 3 months

5.5%

0.09356

£8982

£9067

20

Less

(d) Value when new Lease granted

£96,000

Present Value 134 years 5.5%

0.000765

£73

Diminution in Value

£8,994

25

2. Landlord's Share of Marriage Value per s.4(2):

30

(iii) Value of Tenant's interest with extended lease

£96,000

(iv) Value of Landlord's interest after new Lease

£73

£96,073

35

Less

(iii) Value of Tenant's interest before new lease

£83,125

(iv) Value of Landlord's interest before new lease

£8,994

40

£92,119

Marriage value

£3,954

45

Landlord's share 50%

£1,977

Compensation Payable to Landlord

SAY

£10,971

£11,000