LRA/22/2003

LANDS TRIBUNAL ACT 1949

LEASHOLD ENFRANCHISEMENT – collective enfranchisement – price payable – parties' valuers preparing a statement of agreed facts which contained incorrect information – correct information particularly within the Respondent's knowledge – whether Appellants bound by what was agreed in the statement – price payable amended on appeal to reflect correct information.

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE SOUTHERN RENT ASSESSMENT PANEL

BETWEEN **(1) BETTY AUDREY CAWTHORNE** **Appellants**
(2) SIMON JAMES MAURICE
(3) NICOLA ANN MAURICE
(4) GUITY SAADAT
(5) M & P PROPERTIES LIMITED

and

MICHA'AL HAMDAN **Respondent**

Re: 6 Palmeira Square
Hove
East Sussex

Before: His Honour Judge Huskinson
A J Trott FRICS

Sitting at: Procession House, 110 New Bridge Street, London EC4V 6JL
on 1 May 2008

Stan Gallagher instructed by Osler Donegan Taylor on behalf of the Appellants.
The Respondent appeared in person.

Case referred to in this decision:

Robin Ellis Limited v Malwright Limited (TCC) (1 February 1999 – unreported

FURTHER DECISION

Introduction

1. The background to this appeal is already recorded in the earlier decision of the Lands Tribunal dated 6 March 2006. We do not repeat the introductory matters there set out but we refer in particular to the first four paragraphs of that decision. In summary the matter raised by the Appellants was that the valuation of the leasehold valuation tribunal for the Southern Rent Assessment Panel ("the LVT") in its decision dated 22 July 2002 was incorrect in that, in assessing the price to be paid for the collective enfranchisement of 6 Palmeira Square, the LVT had proceeded on a factually incorrect basis when deciding upon the value to be attributed to the top floor flat (hereafter "the Top Flat"), which constituted the most substantial element in the valuation. Both valuers, namely Mr Geoffrey Philip Holden FRICS on behalf of the Appellants and Mr Robert Oliver John Paine MRICS on behalf of the Respondent, had proceeded on the agreed basis (as recorded in a document signed by them in May 2002 entitled Statement of Agreed Facts and Areas in Dispute) that the Top Flat was owned by the Respondent and let on an assured shorthold tenancy ("AST"). It was on this basis that the LVT had assessed the value of the Top Flat. However in truth the situation was that, as at the agreed valuation date namely 27 September 2001, the Top Flat was in fact subject to:

(1) a lease for five years from 17 April 1999 in favour of Mr Robin Lloyd at a fixed rent of £4,940 pa, and

(2) a Memorandum of Agreement dated 23 March 2000 as described in paragraph 3 of the Tribunal's decision of 6 March 2006.

2. The Appellants sought in the present appeal to challenge the LVT's decision as to the price to be paid by challenging one element within it, namely the proper amount to be attributed to the value of the Top Flat. Permission to appeal out of time to raise this matter was granted by order of the Registrar dated 13 August 2003.

3. This matter was set to come before the Lands Tribunal for hearing on 27 February 2006. However shortly before that hearing, namely on 22 February 2006, the Respondent, through his then instructed solicitors Withers LLP, served a notice requiring the grant of a leaseback of the Top Flat to the Respondent. The hearing on 27 February 2006 consequently became a hearing on a preliminary question as to the validity of this late leaseback notice (the validity being challenged by the Appellants). The Tribunal's decision of 6 March 2006 was to the effect that the leaseback notice was invalid. The decision gave certain directions as to the future conduct of the case, but those became suspended because the Respondent obtained permission to appeal to the Court of Appeal and pursued that appeal to a hearing. This resulted in a judgment given on 24 January 2007 dismissing the Respondent's appeal, see [2007] EWCA Civ 6. As a result the President of the Lands Tribunal gave further directions for the service by the Respondent of his reply to the Appellant's statement of case and also for the exchange of expert reports. In due course the Respondent did serve a reply dated 26 April 2007. By an order of the Registrar dated 23 May 2007 the parties were ordered to serve any expert reports or any witness statements on which they proposed to rely by 21 June 2007.

4. The Appellants served a witness statement from Mr Jeremy Donegan and also a supplementary report from Mr Holden on valuation matters dated February 2006. The Respondent served no expert report or witness statement. By letter of 12 July 2007 to the respective Solicitors to the parties the Tribunal noted that no witness statement or expert report had been served on behalf of the Respondent and that the Tribunal therefore assumed that no such evidence was proposed on his behalf such that there would merely be the two witnesses for the Appellants to give evidence at the hearing. At that stage, and at all times thereafter until 21 April 2008, the Respondent was represented by Blount Petre Kramer ("BPK"), solicitors, who participated in providing dates to avoid for the fixing of the present appeal hearing on 1 May 2008, which was a date notified to the parties by letter dated 14 November 2007. No objection was taken to that date.

Adjournment application

5. By two emails dated 29 April 2008 the Respondent applied for an adjournment of the hearing on 1 May. The Tribunal declined to take the matter out of the list, but when the case was called on on 1 May we invited the Respondent, who was present in person, to renew his application for an adjournment if he wished to do so and to give a full explanation to us of anything he wished to say in support of an adjournment. The Respondent did make such an application to which Mr Gallagher objected on behalf of the Appellants.

6. We retired to consider the application for an adjournment and on returning to court we gave our decision that the adjournment was refused. We gave detailed reasons, a transcript of which will be available if required, as to why the adjournment was refused and we do not set out our full reasoning in this decision. In summary the position was as follows.

7. The basis of the Respondent's application was that he was in person and considered himself disadvantaged for that reason. The reason he was in person was that there had been without prejudice negotiations continuing between the parties until recently and he had thought that they would lead to a settlement such that the present hearing would not need to take place. There had been some misunderstanding between himself and BPK as a result of which they had ceased to act. He had instructed new solicitors, namely Rippon Patel & French but they had not had sufficient time to prepare the case. Also his preferred barrister was unavailable. The Respondent confirmed that he was not seeking an adjournment for the purpose of obtaining and calling expert evidence – it has already been noted above that no such evidence was served in accordance with directions and it was never suggested the Respondent would seek to call such evidence at this hearing. The Respondent said he felt victimised. He contended that the Appellants' original notice claiming the right to enfranchise was invalid. He said that (to use his own words) he wanted to "re-open the whole can of worms from the beginning". He needed the assistance of a legal representative to do this. He had already spent £100,000 in fighting this case and would spend another £100,000 if necessary. If the outcome of the present case was unsatisfactory he would appeal and if necessary go to the European Court. He also stated that he was disadvantaged by reason of missing some documents which a solicitor who he said he had instructed in 2005, namely Paul Gromett & Co., had failed to transfer.

8. We refused the application for an adjournment for the following reasons:

(1) We had regard to the overriding objective of disposing of cases justly. We had in mind that dealing with a case justly includes, so far as is practicable, ensuring that the parties are on an equal footing and we noted that the Respondent did not have legal representatives. However we concluded that that was a matter which was the sole responsibility of the Respondent. He had experienced solicitors acting for him until very recently. There was no satisfactory explanation given to us as to why they were no longer instructed. The Respondent has by his own action deprived himself at the last moment of the benefit of these solicitors. It is neither practicable nor proportionate for the present case to be adjourned to give the Respondent a further opportunity to obtain legal representation. It appears that BPK were the fourth (or perhaps the fifth) firm of solicitors instructed by the Respondent in this matter.

(2) We noted that the amount of money which turns on the resolution of the issues before us is comparatively small. Thus the Appellants seek a reduction of £12,000 on the purchase price decided by the LVT. We consider it would be disproportionate for there to be an adjournment, with wasted Tribunal time and further costs, bearing in mind the amount of money involved, the fact that the Respondent did not propose to call any expert evidence, and the comparative simplicity of the issues before us.

(3) We also considered it was an inappropriate basis for seeking an adjournment for a litigant to say that he wished to obtain legal representation in order to "re-open the whole can of worms" which would involve seeking to take points which are not open to him bearing in mind the limited ambit of the present appeal. The Respondent's assertion that the original section 13 notice served by the Appellants was invalid must be considered in the light of his own counter-notice under section 21 which expressly stated that it was accepted that the Appellants were entitled to exercise the right to collective enfranchisement. In any event this allegation of the section 13 notice being invalid is not now open to the Respondent.

Issues

9. Originally the issues raised by the Appellants included not only the question of what effect the existence of the five-year lease in favour of Mr Lloyd had on the proper valuation of the Top Flat, but also the question of what if any further alteration in value the existence of the Memorandum of Agreement had. The terms of the Memorandum of Agreement were capable of giving rise to certain points of potential legal difficulty as recorded in the Tribunal's letter of 12 July 2007, which indicated various points on which the Tribunal would wish to be addressed in relation to this document. However prior to the hearing Mr Gallagher had prepared a skeleton argument which made clear that the Appellants were prepared to proceed on the basis that the Memorandum of Agreement should be disregarded, such that the only interest in the Top Flat the existence of which could adversely affect its value was the five year lease held by Mr Lloyd. Mr Gallagher explained (and we accepted) that this was a concession

in favour of the Respondent, in that any argument mounted on the basis of the Memorandum of Agreement would have been to the effect that the diminution in value of the Top Flat was greater than the diminution contended for by the Appellants solely on the basis of the existence of the five year lease.

10. Accordingly the issue became whether and to what extent the existence of a five-year lease in favour of Mr Lloyd at a fixed rent in respect of the Top Flat affected its value as determined by the LVT in its decision. This five-year lease was not itself available. However there is evidence from the Respondent himself, in his witness statements in County Court proceedings of 10 January 2003 and 23 January 2003 and 16 April 2003 (which exhibited a letter of 29 January 2003 from Mr Lloyd) to the effect that there did exist a five year lease of the Top Flat in favour of Mr Lloyd at an annual rent of £4,940, the five year period running from 17 April 1999.

The hearing

11. The matter proceeded before us with evidence called by the Appellants from Mr Geoffrey Holden and Mr Jeremy Donegan. Although no witness statement from the Respondent had been served (contrary to the directions previously given) Mr Gallagher quite rightly did not seek to object to our allowing the Respondent to give oral evidence, which he did.

12. Mr Holden gave evidence in accordance with his supplementary report of February 2006. He confirmed that as at the date of preparing the Statement of Agreed Facts and Areas in Dispute with Mr Paine and as at the hearing before the LVT he had no knowledge of any lease or Memorandum of Agreement in relation to the Top Flat. His understanding at all times until about October 2003 was that the Respondent owned the Top Flat and let it on an AST, which is the basis on which he valued it. The substance of his valuation evidence is dealt with in paragraph 23 et seq below.

13. Mr Donegan also confirmed that he was unaware of any lease in favour of Mr Lloyd or of the Memorandum of Agreement until 2003. The existence of a lease was disclosed in certain statements from the Respondent in County Court proceedings in January 2003. The existence of the Memorandum of Agreement was not revealed until May 2003. In answer to questions from the Respondent Mr Donegan said that none of his clients had informed him of a notice served by Messina Investments Ltd. dated 18 July 1999 under section 5 of the Landlord and Tenant Act 1987 on the Appellants which made reference to the existence of:

> "…a five year lease of Flat 5 to Mr Robin Lloyd at a rent of £4,940 per annum".

Mr Donegan accepted that in about March 2004 there had been negotiations between the Appellants and the Respondent which had nearly resulted in the exchange of contracts and completion on the same day of the purchase of the freehold of the premises at an agreed (reduced) price which, had it been completed, would have recognised the apparent rights under

the Memorandum of Agreement. However the parties were never contractually bound and the matter did not proceed.

14. The Respondent gave evidence before us. He was anxious to tell the Tribunal of various matters which were not relevant to the issue before us. The points in particular raised by the Respondent were as follows:

(1) He again repeated that he considered the original section 13 notice to have been invalid and that he was displeased with his then acting solicitors, Pemberton Greenish, that they had not taken this point but had instead allowed him to serve a counter-notice under section 21 which admitted the right to enfranchise. He wished to raise the point that some of the allegedly qualifying tenants were not in fact qualifying tenants and also the fact that a notice under Section 146 of the Law of Property Act 1925 had been served on Mrs Saadat on 19 January 1998.

(2) He wished to inform the Tribunal that he had had a valuation prepared on the Top Flat in 2005 for £275,000.

(3) He was displeased that the proposed compromise, which very nearly went through in March 2004, had in fact not proceeded. He told us that it was him who withdrew from the transaction. He said that even now he would be prepared to do a deal as contemplated in 2004.

(4) He drew attention to the failure of the original application to the LVT to mention the existence of a mortgage and he suggested that this might in some way invalidate matters.

15. In addition to the points made orally to us at the hearing, the Respondent's reply of 26 April 2007 must also be noted. In this document:

(1) The Respondent denies that any new evidence came to light since the LVT's decision of 22 July 2002 which would have a significant bearing on the value of the freehold of the premises.

(2) The Respondent referred to the Agreed Statement of Facts made between Mr Holden and Mr Paine and contended that this document comprised a contract between the Appellants and the Respondent, such that the Appellants were bound by the agreement (or estopped from denying) that the Top Flat was owned by the freeholder and let on an AST, i.e. without there being any question of a five year lease to Mr Lloyd.

(3) The Respondent in the reply also contended that the Appellants were already aware of the existence of the five-year lease since a date before the LVT's decision.

(4) The Respondent referred to some proceedings in the Brighton County Court which had resulted in an order dated 20 October 2004 declaring that a lease dated 19 November 2003 between the Respondent and Mr Lloyd of the Top Flat was void and not binding on the Appellants. This was a grant of a lease for fifteen years from 17 April 1999 with an option to extend for a further ten years. This document arose, of course, long after the valuation date and the date of the LVT's decision. However the Respondent contended in his reply that this court order in some way recognised that only an assured shorthold tenancy had ever existed in relation to the Top Flat and that any alleged five-year lease should be ignored. In consequence the Respondent contended that, in the ultimate result, the LVT came to the right decision on the right basis, namely that only an AST existed over the Top Flat.

(5) The reply further contended that the Appellants were out of time for appealing the LVT's decision.

Submissions

16. So far as concerns the Respondent's submissions these are already recorded as part of his evidence and as contained in the reply, see above.

17. On behalf of the Appellants Mr Gallagher advanced the following submissions:

(1) As regards the contention that the appeal was out of time, he pointed out that permission to appeal out of time had already been granted back in 2003. That point could not be re-opened.

(2) As regards the grant of the 15 year lease on 19 November 2003, which was found void by the County Court, he submitted that this was an event occurring after the valuation date and was of no relevance to the issue identified in paragraph 10 above.

(3) As regards the contention that the Appellants were contractually bound by (or estopped from denying the truth of) the statement contained in the Statement of Agreed Facts and Areas in Dispute as agreed between the respective surveyors, namely the statement that the Top Flat was let on an AST, Mr Gallagher drew attention to the Civil Procedure Rules Rule 35.12(5) and to the Lands Tribunal Practice Directions paragraph 16.2, which are in similar terms. The latter provides:

> "Where experts reach agreement on an issue during their discussions, the agreement will not bind the parties unless the parties expressly agree to be bound by the agreement."

He said that the principle contained in these rules was a re-statement of the existing law (i.e. prior to the relevant CPR) as is shown in *Robin Ellis Limited v Malwright Limited* (TCC) (1 February 1999 – unreported).

(4) On the question of whether any of the Appellants or their advisors knew or ought to have known of the existence of the five year lease prior to the LVT hearing, the only basis for arguing that any of them might have known is the notice served under section 5 of the 1987 Act dated 14 May 1999. This notice merely referred to a five-year lease of the Top Flat to Mr Robin Lloyd at a rent of £4,940 per annum. Nothing was said regarding the commencement date. There was no reason why the Appellants should remember this or why their solicitors or valuer should have found out. The evidence of Mr Donegan and Mr Holden is that they did not know of this lease. Mr Gallagher pointed out that if anyone knew of the existence of the lease it should have been the Respondent, because he had become entitled to the reversion on this lease, rather than the Appellants or their advisors who were merely aware of an occupant (who turned out to be a sub-tenant holding on an AST from Mr Lloyd). Thus if anyone was to blame for the misunderstanding as to the facts regarding the five year lease the fault lay with the Respondent and his agents in not drawing attention to this five year lease. However he submitted that the question of fault did not matter. What did matter was the fact that both valuers and the LVT had assessed the value of the Top Flat on a substantially wrong factual basis. The Lands Tribunal in this appeal should correct the error.

Conclusions apart from valuation

18. We accept that the only matter before us is the issue identified in paragraph 10 above. We accept that the Appellants already enjoy permission to appeal out of time so as to raise this point and it is not open to the Respondent to seek to contend they should not be allowed to do so.

19. Almost all of the points raised by the Respondent were, with respect, points which were not open to him. It is not open to him to seek to challenge the validity of the original notice claiming the right to enfranchise (especially bearing in mind his own counter-notice admitted the right to enfranchise). It is not open to him to challenge the validity of the proceedings before the LVT because of some alleged failure by the Appellants to complete certain information regarding the existence of a mortgagee. It is far too late for points such as these to be raised. It does not assist us in deciding the one issue before us to be informed of a valuation on the Top Flat prepared in 2005. It is not open to him to raise as some answer to this appeal the fact that the parties very nearly reached some compromise in 2004 but, disappointingly, something went wrong at the last minute which led the Respondent to withdraw from the transaction. It is not open to him to seek to lay before us details of recent without prejudice

negotiations (something the Respondent sought to do at the very close of the case but which we informed him we could not entertain).

20. As regards the allegation that the Appellants are bound by the Statement of Agreed Facts and Areas of Dispute or are estopped from denying it, we reject that argument. The whole point of this appeal is that the valuers both proceeded upon a fundamentally wrong understanding of the facts regarding the Top Flat. We consider that it was for the Respondent, who was the owner of the building and had become the lessor on Mr Lloyd's five-year lease, to instruct his valuer as to the existence of this lease rather than for the Appellants to find out about it. Insofar as it is necessary to apportion blame for the misunderstanding regarding the facts the blame lies with the Respondent. However we do not see that the matter turns on the question of blame. The Appellants did not become bound by Mr Holden signing the document which stated that there was an AST over the Top Flat. Plainly the parties were not contracting that they would be bound by this document even if the valuers had been misinformed of the facts by the Respondent or his solicitors (being the persons who ought to know the state of tenure of the Top Flat). The Appellants did not "expressly agree to be bound by the agreement" within Lands Tribunal Practice Direction paragraph 16.2 nor within the principles in the CPR Rule 35.12(5). A similar approach must be applicable by parity of reasoning to proceedings before an LVT. It was clearly not the intention of the Appellants to bind themselves to this basis of valuation of the Top Flat if it turned out that their valuer, Mr Holden, had been misinformed of the facts relating to the Top Flat by the people who should know, namely the Respondent and his advisors.

21. We do not see how the grant of the fifteen year lease in November 2003 and the subsequent County Court order declaring it void can in any way alter the proper valuation of the Top Flat as at the agreed valuation date, namely 27 September 2001. As at the valuation date there existed a lease in favour of Mr Lloyd for five years from 17 April 1999 at £4,940 per annum. The effect of this lease should have been taken into account in the valuation of the Top Flat and, hence, in the assessment of the enfranchisement price to be paid.

22. We now turn to the proper valuation taking into account the existence of the five-year lease.

Valuation

23. In his second supplementary report dated February 2006 Mr Holden valued the Top Flat in the sum of £149,500 (see Appendix 1). He disregarded the March 2000 Memorandum of Agreement and assumed that vacant possession would be obtained on the expiry of the five-year lease on 16 April 2004. He capitalised the rent receivable until that date at 7%, which was the rate used by the LVT to capitalise the long fixed ground rents of the other flats. He then valued the reversion by deferring the agreed capital value of £190,000 at 7%, which was also the deferment rate used by the LVT for the other flats. Finally, Mr Holden deducted 12.5% from the present value of the freehold interest in the Top Flat to reflect the cost of outstanding building repairs, the costs of re-sale and other risks. The LVT had made a 15% allowance to reflect not only the above risks but also the uncertainty of obtaining possession. Mr Holden considered, on the assumptions he had made, that such uncertainty had been removed. He

adjusted the LVT's allowance by 2.5% to reflect this, although Mr Holden acknowledged that this was essentially an arbitrary figure.

24. The LVT did not provide a breakdown of its 15% allowance and did not explain what was meant by "other risks". Mr Holden accepted that there was no reason why the LVT should have made a deduction for the costs of re-sale. He said that he had not made such a deduction in his evidence to the LVT (although in paragraph 5(iii) of its decision the LVT recorded Mr Holden as having argued for a 25% allowance which included the costs of re-sale). Mr Paine made an adjustment for the costs of re-sale in his expert report to the LVT dated 28 February 2002 where he said:

> "We have also discounted the open market value by a further 0.9% for the costs involved in terms of agency and legal costs to re-sell the flats onto the open market."

In paragraph 7(iii) of its decision the LVT stated that Mr Paine had conceded in cross-examination that this allowance was on the low side:

> "On consideration he thought the figure would be say £1,600 plus Stamp Duty on the purchase rather than a fixed percentage of the price."

It appears that the LVT accepted this approach in principle although it did not state in terms that it had adopted Mr Paine's allowance of 0.9% or his increased figure of £1,600 plus Stamp Duty.

25. Section 32 and paragraph 3(1) of Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 states that the value of the freeholder's interest in the specified premises is:

> " … the amount which … that interest might be expected to realise if sold on the market by a willing seller …"

The statutory requirement is to arrive at the price to be paid. The parties agreed that, as at the valuation date, the vacant possession value of the Top Flat was £190,000. We understand the adjustments made to that figure by the LVT to allow for disrepair and the uncertainty of obtaining possession but in our opinion the costs of a hypothetical subsequent re-sale are not relevant to the assessment of the price and should not be allowed.

26. The LVT said that Mr Paine revised his opinion about costs during cross-examination and that he thought the figure should be "£1,600 plus Stamp Duty on the purchase". Stamp Duty has nothing to do with the costs of re-sale in any event. It is a purchaser's cost and there is no justification to deduct such costs from the value of the freeholder's interest.

27. Mr Gallagher submitted that although it was correct as a matter of valuation not to deduct the costs of re-sale, this was not something that the Tribunal was entitled to take into account. The LVT had proceeded on an erroneous assumption regarding the AST but its adjustment of the value of the freeholder's interest to allow for the costs of re-sale was not affected by the realisation that the freehold was in fact subject to a five-year lease. Mr Gallagher argued that it was implicit from the Appellants' statement of case that the appeal was limited to adjusting the LVT's valuation only as required by its erroneous assumption about the tenure of the Top Flat, such that it was not open to this Tribunal to adjust the 15% allowance any more than was necessary merely to reflect the increased certainty regarding obtaining possession on the true facts (ie on the assumption that the Top Flat was subject to the five-year lease) as compared with the facts assumed by the LVT (ie that the Top Flat was subject to an AST). He relied upon Mr Holden's evidence which was to the effect that the substitution of a 12.5% allowance in place of the 15% allowance was sufficient to achieve this.

28. We conclude that the LVT was wrong in its assessment of the value to be attributed to the Top Flat as part of the price to be paid by the Appellants on enfranchisement. This is no criticism of the LVT, which was misinformed as to the facts in circumstances where the fault for this misinformation was the Respondent's. However we reject Mr Gallagher's argument that we should only disturb the LVT's 15% allowance to the extent of substituting 12.5% in place of 15%. The value attributed by the LVT to the Top Flat as part of the enfranchisement price was made up of two elements namely a vacant possession value (£190,000) and an allowance (15%). The Appellants have persuaded us that the vacant possession value of £190,000 must be adjusted downwards to reflect the fact that the Respondent did not enjoy vacant possession (or vacant possession subject only to an AST) but instead his freehold interest was bound by the 5 year lease. However the Appellants have also persuaded us that the 15% allowance was wrong. It is not open to the Appellants to argue that, while the value attributed to the Top Flat as part of the enfranchisement price is wrong in two ways (value too high and allowance too high) only the former should be changed to the right figure with the allowance figure either remaining undisturbed at 15% (we did not understand Mr Gallagher to argue for this) or being changed to what we conclude would be the wrong figure of 12.5%. The allowance should also be changed to the right figure as described in the next paragraph.

29. On the evidence before us, and by Mr Holden's own concession, it is wrong to make an allowance for the costs of re-sale and we do not do so. The LVT did not state how large an allowance it had made for re-sale costs and Mr Paine appears to have changed his mind about it during cross-examination before the LVT. On balance we have decided to allow the 0.9% that Mr Paine included in his original expert report rather than the £1,600 plus Stamp Duty that he stated subsequently. For the reasons given above we are not satisfied that the latter figure was stated on the correct basis. The result of our decision is that we have deducted 11.6% rather than 12.5% from the value of the freeholder's interest.

30. Mr Holden used the rate of 7% that was determined by the LVT both to capitalise the term income and to defer the reversion to vacant possession value. That reversion is in just over two and a half years time. In the absence of any evidence that this rate was wrong we have adopted it for the purpose of our valuation.

Conclusion on valuation

31. We are satisfied from the evidence that the decision of the LVT fixing the value of the Top Flat at £161,500 was wrong. The appeal is therefore allowed. We determine the value of the freeholder's interest in the Top Flat to be £151,000 (see appendix 2). This figure must therefore be substituted for the figure of £161,500 in the LVT's valuation. The remainder of the LVT's determination remains undisturbed and the price to be paid by the nominee purchaser for the freehold is therefore £171,690.

32. The parties are now invited to make submissions on costs and a letter relating to this accompanies this decision, which will only become final when, but not until, the question of costs has been determined. Since the hearing on 1 May 2008 we have received from the Respondent a letter dated 6 May 2008 enclosing various documents including copies of fee notes and other bills of costs. We will treat this letter and enclosures as part of the Respondent's submissions on costs. For the avoidance of doubt we state that there is nothing contained in the letter or the enclosures which affects our conclusions upon the substance of this appeal.

Dated 21 May 2008

His Honour Judge Huskinson

A J Trott FRICS

Addendum on Costs

33. In paragraph 32 of our decision dated 21 May 2008 we invited the parties to make submissions on costs. We there recorded that we had already received from the Respondent a letter dated 6 May 2008 enclosing various documents including copies of fee notes and other bills of costs. The documents enclosed with the Respondent's letter included documents relating to costs incurred at earlier times and in respect of earlier aspects of the on going disputes between the Appellants and the Respondent. We are of course only concerned with the costs of the present appeal to the Lands Tribunal. Although his letter does not expressly say so, we take it that the Respondent is applying for an order that the Appellants pay these costs to the Respondent. The Respondent has not made any further submissions regarding costs beyond those contained in his letter of 6 May.

34. We have also received submissions from the Appellants' solicitors on costs dated 4 June 2008.

35. The present appeal was commenced by way of a notice of appeal dated 30 May 2003, prior to the introduction of section 175(6) of the Commonhold and Leasehold Reform Act 2002. The Tribunal accordingly has a full discretionary power to award costs.

36. The Appellants submit that costs should follow the event. The Respondent has not advanced any argument that we can understand as to why the Appellants, who have been successful on the present appeal, should pay the Respondent's costs.

37. We note that the Appellants originally sought a reduction in the price to be paid of £12,000 but that, by reason of a concession made by their expert witness at the hearing, the Tribunal ultimately concluded that the appropriate reduction was only £10,500. We do not however consider that this should lead us to view the Appellants as anything other than the successful party in these proceedings. We have already pointed out in our main decision that the reason that the LVT and the parties' respective valuers proceeded upon an erroneous understanding of the facts regarding the tenure of the Top Flat was the fault of the Respondent rather than the Appellants. Further, we are satisfied that even if the Appellants had sought merely a reduction of £10,500 rather than £12,000 the Respondent would not have agreed to such a reduction and the hearing of this substantive appeal before the Lands Tribunal would have been necessary. No additional costs have been caused by reason of the fact that originally a reduction of £12,000 was sought as compared with the ultimate reduction of £10,500. In short the need for the appeal to the Lands Tribunal arose by reason of the Respondent's actions. The Appellants have been successful. We see no reason why costs should not follow the event. We order that the Respondent pays to the Appellants the Appellants' costs of the appeal to be assessed on the standard basis if not agreed.

Dated 25July 2008

His Honour Judge Huskinson A J Trott FRICS

APPENDIX 1

VALUATION OF FREEHOLDER'S INTEREST IN THE TOP FLAT BY MR G.P. HOLDEN FRICS

Rental income	£4,940	
YP 2 yrs 7 mths @ 7%	2.290864	
		£11,316.87
Reversion to	£190,000	
PV £1 in 2 yrs 7 mths @ 7%	0.8396395	
		£159,531.50
Deduction 12.5%		(£21,356.05)
		£149,492.32
	Say (rounded)	£149,500.00

APPENDIX 2

VALUATION OF FREEHOLDER'S INTEREST IN THE TOP FLAT BY LANDS TRIBUNAL

Rental income	£4,940	
YP 2 yrs 7 mths @ 7%	2.291	
		£11,317.54
Reversion to	£190,000	
PV £1 in 2 yrs 7 mths @ 7%	0.840	
		£159,600.00
		£170,917.54
Deduction 11.6%		(£19,826.43)
		£151,091.11
	Say (rounded)	£151,000.00