

# All Sportellied-out?

■ Mick Barry, senior partner of Farrington Webb, updates *News on the Block* readers on enfranchisement.



**B**y now most people would have heard of the Sportelli decision that fixes the deferment rate for flats at 5%. The deferment rate is the rate at which the current unimproved value of a flat is discounted over the remaining term to reflect the fact that the landlord will no longer get the flat back at the end of the original term.

Previously, certainly outside of central London, valuers had been working on deferment rates of 7%-9% and the change means a huge increase in the price lessees must pay. Thus for example for a flat worth £250,000 with 80 years remaining the difference might mean this element of the valuation would increase from £529 @8% to £5,044 @5% per flat or with 60 years remaining from £2,469 @ 8% to £13,383 @ 5% per flat.

One effect of this decision in practice is that it becomes difficult to enfranchise large blocks of flats because the burden of buying out the non-participating flats becomes too great. The logistics of enfranchising a large block are substantial and I have nothing but admiration for the dedicated individual or small committee that often undertakes it. The burden of persuading 40 flat owners in a block of 60 flats to pay

**“There are remedies for most of these practices but why should flat owners face an ongoing running battle when they can place themselves in control?”**

up to an extra 50% over and above the cost of extending their own lease (which because of Sportelli has itself now increased dramatically) for the benefit of acquiring the freehold is considerable. The burden is lessened by the rule that there is no marriage value payable for non-participating flats.

Individual lease extensions carried out individually are not the answer because the professional costs of proceeding under the Act are such that the freeholder can pick off individual

lessees by offering a lease extension outside the 1993 Act back up to 99 years at a vastly increased ground rent (which will be paid by future lessees) at a figure slightly more attractive to a lessee who intends to sell than the result of an application under the 1993 Act.

The freeholder can actually sell a lease extension and scarcely diminish his own interest in the flat. Thus a lessee of a flat worth £250,000 with 80 years remaining and a current ground rent of £50 increasing every 33 years by £50 might pay £6,055 under the 1993 Act with the freeholder's interest after the extension worth nothing. But the same lessee paying £5,500 outside the Act for an extension back to 99 years at a ground rent of £200 doubling every 21 years would leave the freeholder with an asset worth £5,960.

In these circumstances there are several solutions. An investor or group of investors (whether external or internal) who will take an overriding lease of the non-participating flats is one. Another answer must be to combine simultaneous applications for individual lease extensions by a group of lessees with Right to Manage. Economies of scale on both sides' professional fees will be achieved and so will control of the building. At the same time the position is preserved for a later assault on obtaining the freehold.

Right to Manage remains a remedy. I continue to see rogue freeholders and managing agents who overcharge on insurance ("commissions" in excess of 60%), seek excessive administration fees for minor alterations to the layout of flats, as well as neglecting buildings for years and then as soon as the lessees look like enfranchising commence major works programs that they will never have to supervise but which generate fees in the meantime. There are remedies for most of these practices but why should flat owners face an ongoing running battle when they can place themselves in control? Stronger self-regulation from RICS and ARMA is also clearly needed. ■



BY MICK BARRY