

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL AND
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HN/OLR/2006/0047

THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 48 TO DETERMINE THE PREMIUM TO BE
PAID FOR AN EXTENSION OF THE EXISTING LEASE**

Applicants: Stuart Davey and Annette Davey

Respondent: R.M.B. Trading Limited

Property: Flat 8 Carlton Grange, 28 Braidley Road, Bournemouth, Dorset,
BH2 6JX

Directions: 24th May 2006
9th February 2007
8th March 2007

Inspection: Initial inspection and Hearing 8th March 2007
Final inspection (of entire premises) and hearing 11th July 2007

Date of
Determination: 11th July 2007

Evidence: Valuation evidence on behalf of Applicants from
S A Higley, BSc, FRICS
Slades Chartered Surveyors,
7 Castle Street, Christchurch, Dorset, BH23 1DP

Valuation evidence on behalf of Respondents from
C L Beamish, MBA, FRICS, MIRPM
BMA Chartered Surveyors
46 Leigh Road, Eastleigh, Hampshire, SO50 9DT

DETERMINATION

Date of Determination: – 11th July 2007

Members of the Leasehold Valuation Tribunal
Mr Andrew Duncan McCallum Gregg, Chairman
Mr J F McAllister, FRICS
Mr P D Turner-Powell, FRICS

BACKGROUND

1. This is an application made by the tenants ("the Applicants") of Flat 8 Carlton Grange, 28 Braidley Road, Bournemouth, BH2 6JX, under Section 48 of the Leasehold Reform, Housing & Urban Development Act 1993 (as amended) ("the Act") for a determination of the premium to be paid for a new lease of Flat 8 Carlton Grange, 28 Braidley Road, Bournemouth, BH2 6JX.
2. The subject flat is the remaining and outstanding application, the original of which related to a total of 15 applications at Carlton Grange, Braidley Road, Bournemouth, Dorset.
3. This is a freehold property out of which a head lease dated the 28th of August 1992 was granted for a term of 99 years from the 24th of June 1987 at a ground rent subject to review every 21 years geared to a sum representing 1 per cent of the then open market capital value of the flat as defined within the head lease.
4. The ground rent for the period commencing the 24th day of June 1989 until the 24th of June 2010 was fixed at £150 per annum.
5. The rent is subject to a review on the 24th of June 2010 and every 21 years thereafter.
6. The first schedule of the lease defines how the ground rent is to be reviewed.
7. The new rent is to be 1% of the open market value at the review date.
8. The open market value is defined in the lease as the amount which the flat might reasonably be expected to fetch on the open market on the assumption that the demised premises are available to let by a willing landlord and a willing tenant with vacant possession for a term of 99 years at a rent of £1 per annum.

THE ISSUES

9. The Applicants, through their representatives D T W Solicitors lodged an application to determine:
 - (a) the amount payable as the premium for a new lease.

(b) the terms of the new lease.

Pursuant to the provisions contained in the Leasehold Reform Housing and Urban Development Act 1993.

10. In their application the Applicants, through their surveyor, Mr Higley, maintained that the price they considered appropriate as the premium for a new lease would be £7,000. This figure was subsequently revised in his valuation of the 29th March 2007 to £14,000.
11. The Respondent has in a counter notice dated the 30th of January 2006
 - Admitted that the Applicants had on the relevant date the right to acquire a new lease of the flat.
 - Accepted that the terms which the Applicant proposed should be contained in the new lease.
12. The Respondent does however dispute the proposed premiums contained in the initial notice of claim of £7,000 and subsequent valuation of £14,000 and asserts that the proper figure for such a premium would be £24,250.
13. The only issue that the Tribunal has to determine is the premium payable in accordance with Schedule 13 of the Act. Under Part II of the Schedule the premium payable for the grant of a new lease is the aggregate of:
 - (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with Paragraph 3
 - (b) the landlord's share of the marriage value as determined in accordance with Paragraph 4
 - (c) any amount of compensation payable under Paragraph 5.
14. In general terms this will require a determination of the yield rate to be applied to the capitalised ground rent and the deferment of the freehold reversion.

INSPECTION

15. The Tribunal inspected the premises (external only, being unable to gain access to the premises internally) on the 8th day of March 2007.
16. However following the adjournment of the hearing on the 8th March 2007 (see Paragraph 24 later) a full inspection of the premises took place on the 11th July 2007.

HEARING

17. A hearing was requested by the Respondent and this was originally arranged for 11.00 a.m. on the 8th of March at the Conference Suite, Express by Holiday Inn, Walking Fields Lane, Poole, BH15 1TJ.
18. The Applicants' solicitors, Messrs DTW Solicitors of 4 Durley Chine Road, Bournemouth, BH2 5QT, had previously indicated that they had no instructions to attend the hearing and they would not be doing so.
19. The Respondent was represented at the hearing by Mr Christopher Lewis Beamish MBA, FRICS, MIRPM from DMA Chartered Surveyors.
20. In opening Mr Beamish advised the Tribunal that he had a supplemental Statement beginning with a further ten appendices that he wished the Tribunal to consider, this is notwithstanding the earlier directions that had been given on the 9th of February which required that both parties should, "within the next 14 days, send to each other and the Tribunal their original bundles of documents for use at the hearing. One bundle should be sent to the other party and each party should send four bundles to the Tribunal for their use at the hearing".
21. In the light of the late service of this evidence enquiries were immediately made of Messrs DTW Solicitors (the Applicants' Solicitors) to ascertain whether or not they had received this additional evidence, whether they had forwarded it to their clients and whether they had instructions or further representations to make in the light of this supplemental evidence.
22. Miss Oram from DTW Solicitors was eventually able to confirm that she had received this additional evidence within the last 48 hours but had no further instructions from her clients.

23. Miss Oram had previously submitted written representations in the form of correspondence from S A Higley, BSc, FRICS for and on behalf of Slades Chartered Surveyors of 7 Castle Street, Christchurch, Dorset, BH23 1DP, and in particular in a letter dated the 22nd day of February 2007.
24. In all the circumstances the Tribunal considered that it would not be in the interest of justice to proceed with the hearing and the hearing was accordingly adjourned.
25. The Tribunal did however make further directions with regard to the making of final representations within 21 days of the 8th of March and the service of the supplemental statement and appendices on the Applicants, Mr and Mrs Davey individually.
26. Furthermore the Tribunal indicated in its order that it proposed to deal with this Matter, in the absence of a written request for an oral hearing, at a later date on the basis of written representations only.
27. On the 26th of March the Respondent made a written request for an oral hearing (Document 63).
28. On the 29th March and in the light of the Respondents' bundle and submissions dated the 23rd of February 2007 and served on the 7th of March 2007 (see Paragraph 20 before), the Applicant's surveyors, Messrs. Slades, lodged submissions with the Tribunal in which they concluded that the premium payable for the lease extension should be £14,000.
29. On the 2nd of April 2007 the Applicant's solicitors wrote to the Tribunal confirming that they still had no instructions and confirming receipt of the Respondents' bundle dated the 23rd of February 2007 and the Applicant's bundle of the 29th March 2007 (Documents 65 and 66).

30. Following the request by the Respondents' solicitors for an oral hearing a full inspection of the entire premises (as opposed to external only on the 8th of March 2007) took place on the 11th July 2007 and this was followed by a hearing at the Salvation Army Hall, Boscombe Corps, 76 Palmerston Road, Boscombe, BH1 4HT.
31. At the hearing the Respondents were represented by Mr Beamish and there were no further representations on behalf of the Applicants.
32. Prior to the hearing the Tribunal had received and considered
- (a) The valuation and submissions on behalf of the Respondents received from Mr Beamish and dated the 23rd of February 2007;
 - (b) The valuation and submissions on behalf of the Applicant received from Mr Higley and dated 29th March 2007.
33. At the hearing the Tribunal received a revised Appendix 1 from Mr Beamish (following receipt of the submissions from Mr Higley) and this was admitted in evidence and given Identity No 26A of the Respondents' bundle. This document followed the pointing out and correction of an error in his original Appendix (Document 26) by Mr Higley.
34. It was agreed by both parties that the term of the ground rent calculation to be applied (deferment) is 3 years and 7 months.
35. Furthermore, the valuation date had been agreed as the 28th November 2005.
36. At the hearing it became clear that the main issue and differences between the parties were as set out in the schedule below:-

Issue and Differences	Mr Higley's Submission on Behalf of the Applicant	Mr Beamish's Submission on behalf of the Respondent
The capitalisation rate i.e. the figure to be applied to capitalise the ground rent payable until June 2010.	6.5%	4.5%

Issue and Differences	Mr Higley's Submission on Behalf of the Applicant	Mr Beamish's Submission on behalf of the Respondent
The capitalisation rate (yield) i.e. the figure to be applied to capitalise the ground rent from June 2010.	5.75%	4.5%
The deferment rate to be applied to the reversion, if any.	Nil	5% in accordance with the Sportelli decision.
Reversionary value.	Nil	£112,500
The estimated value of the flat on a hypothetical lease to establish the ground rent payable from June 2010 (open MV).	£90,000 to £100,000, say £95,000	£112,500
Open market value.	£95,000	£112,500
Premium.	£14,000	£24,250

37. In his evidence Mr Beamish pointed out that in considering the capitalisation rate and open market value as deferred under the terms of the lease, the Tribunal should ignore the onerous Rent Review Clause.

38. He further felt that in the open market this property would be a very attractive investment opportunity and that the ground rent market has been bullish for some time.

39. The Tribunal accepted these arguments.

40. Regarding the deferment rate the Tribunal is of the view that, as expressed in the Act, the landlord should be compensated for loss of the reversionary value.

41. Furthermore, regard has to be given to the judgement in the Sportelli case even though it is understood to be the subject of an appeal.

42. The Tribunal accepted that the reversionary value should in accordance with standard practice be the same as the open market value.

43. Having taken into account the arguments put forward by both sides the Tribunal is of the view that the valuation methodology propounded by Mr Beamish was correct and they concluded that the premium that should be paid for a new lease is **£21,752** (twenty one thousand, seven hundred and fifty two pounds) but say **£21,750** (twenty one thousand, seven hundred and fifty pounds) as calculated and set out in the appendix annexed hereto.

Dated this 23rd day of July 2007.



.....

Andrew Gregg, Chairman

**APPENDIX RELATING TO DETERMINATION
OF THE 11TH JULY 2007**

FLAT 8, CARLTON GRANGE, 28 BRAIDLEY ROAD, BOURNEMOUTH, BH2 6JX
DETERMINATION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL Premium
payable for the new lease Valuation date 28th. November 2005

Term		
Current Ground Rent	£150 p.a.	
Years Purchase for 3 years 7 months @4.5%	3.238	

		£486
Revised Ground Rent on review date 24th. June 2010 1% of Open Market Value i.e. 1% of £105,000	£1,050	
Years Purchase for 78 years @ 4.5%, deferred 4.5 years @ 4.5%	18.371	

		£19,288
Reversion:- to Open Market Value after 81 years 7 months Open Market Value	£105,000	
Present value of £1 after 81 years 7 months @ 5%	0.0188	

		£1,978

Premium for New Lease		£21,752 say £21.750