

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Applicant: Joan Sylvia Neville

Respondent: Abbey View Estates Limited

**Property: Flat 17 Earlsmead Court, 15 Granville Road, Eastbourne,
East Sussex, BN20 7HE**

Hearing date: 1 March 2007

Appearances for Applicant:

**Mr S R Jones, BA (Hons), MRICS, of Messrs Stiles Harold Williams,
Chartered Surveyors**

Appearances for Respondent:

Mr E Price of Counsel

**Mr L A Nesbitt, BSc (Hons), FRICS, MCI Arb, of Nesbitt & Co,
Chartered Surveyors**

Members of the Leasehold Valuation Tribunal:

**Mrs J S L Goulden, JP, (Chairman)
Mr J C Avery, BSc, FRICS,
Mr A D Ring**

Date of Decision: 27 March 2007

REF: LON/NL/6043/06

PROPERTY: FLAT 17, EARLSMEAD COURT, 15 GRANVILLE ROAD, EASTBOURNE, EAST SUSSEX, BN20 7HE

BACKGROUND

1. The Tribunal was dealing with an application under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (hereinafter referred to as "the Act") to determine the price payable for an extended lease of the fourth floor flat, being Flat 17, Earlsmead Court, 15 Granville Road, Eastbourne, East Sussex, BN20 7HE (hereinafter referred to as "the property").
2. The property is held under a lease dated 31 January 1975 and made between Seavista Investments Ltd (1) and E Rennie (2) for a term expiring on 23 June 2072 at the rents and subject to the terms and conditions therein contained.
3. The Applicant tenant is Joan Sylvia Neville. The Respondent landlord is Abbey View Estates Ltd.

INSPECTION

4. The location and property were described in the Applicant's Surveyor proof of evidence as follows:-

"The subject property is located on the east side of Granville Road, between the junctions with Carlisle Road and Silverdale Road, southeast of Eastbourne town centre in the Lower Meads district. Properties in the immediate vicinity of the subject property, in this well established residential area, are a mixture of large detached Edwardian houses, most of which have been converted to flats, and multi-storey blocks of flats built at varying stages of the past 50 years ...

Earlsmead Court is a detached, purpose-built six-storey (ground to fifth floor) block of twenty flats of varying sizes, situated on a narrow site approximately 32 m (105 ft) wide and 60 m (197 ft) deep.

The block was built in the mid 1970s of a typical brick and concrete construction underneath a flat roof. Fenestration is provided by a mixture of timber-framed single-glazed windows and replacement uPVC double-glazed units.

The block is entered by a communal entrance door and lobby. There is a lift and basically decorated concrete staircase serving each of the upper floors. Each flat is entered via a close-carpeted corridor.

There is a communal garden to the front of the block, together with an entrance drive serving 19 car parking spaces (available to residents on a first come, first served basis) and 10 lock-up garages to the rear of the block. There is also a refuse bin store located on the ground floor which is served by a refuse chute off the communal stairwell."

5. In view of the nature of the issues requiring determination by the Tribunal, it was not considered that an inspection would be of assistance to the Tribunal.

HEARING

6. The hearing took place on 1 March 2007 in Eastbourne, before members of the London Rent Assessment Panel. This was due to a conflict of interest in that a member of the Southern Rent Assessment Panel is a partner in the firm of surveyors acting on behalf of the Applicant.
7. The Applicant tenant, Mrs J S Neville, attended the hearing accompanied by Mr J Fenwick (an observer on behalf of the Residents' Association). Mrs Neville was represented by Mr S R Jones BA (Hons) MRICS of Stiles Harold Williams. Mr Jones gave expert evidence.
8. The Respondent landlord, Abbey View Estates Ltd, was represented by Mr E Price of Counsel. Expert evidence was given by Mr L A Nesbitt BSc (Hons) FRICS MCI Arb of Nesbitt & Co.
9. The following matters were, either at the commencement or during the hearing, agreed between the parties:-
 - (a) **Apportionment of marriage value at 50%**
 - (b) **The valuation date is the date of the Applicant's Initial Notice, namely 10 April 2006**
 - (c) **The capitalisation rate is 7%**
 - (d) **Other loss is Nil**
 - (e) **The long lease/freehold value is £153,000 unimproved**
 - (f) **Terms of the lease**
 - (g) **Valuer's fees are £495 plus VAT**
10. The matters remaining in issue between the parties and therefore requiring a determination of the Tribunal relate to the deferment rate, relativity of short to long leasehold value, legal fees and the enfranchisement price.
11. The salient points of the evidence and the Tribunal's determination are set out under each head.

Deferment rate

12. Mr Jones, for the Applicant, contended for 6% which he accepted was a departure from the 5% as decided in the Sportelli case (details of which are paragraphs 13 and 14 below). He said that this was based on the risk of future management problems. The former property managers had ceased trading on 26 April 2006 and there had been management difficulties in the block for six months prior to the cessation of trading. In his view, since there had been actual management problems, an investor would consider that there was a definable risk and would therefore pay less for the property. In addition, Mr Jones said that the property was not in prime central London, but in a different local property market, being on the Sussex coastline and within one kilometre of the sea front. An investor would have to consider erosion,

the age of the building, the fact that it weathered more than an inland property and that the roof, and perhaps the lift, required replacement.

13. Mr Nesbitt, for the Respondent, contended for 5% as laid down in the Lands Tribunal decision in **Cadogan Estates v Sportelli (16 September 2006)**. He referred to three Leasehold Valuation Tribunal cases in which he had appeared, all of which had adopted 5%, two of which had been before the Southern Panel. In addition, he said that he had agreed "*innumerable*" claims for enfranchisement and new leases on the basis of a 5% discount rate.

14. Paragraph 123 of the Sportelli decision states:

"The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer on an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate."

15. The Tribunal considers that the risk of coastal erosion affecting this site is so remote that it would not feature in an investor's decision making. The Tribunal does not accept that any recent management problems are relevant to the value of the freehold in 66 years time.

16. In this case, therefore, the Tribunal has not been persuaded that **"there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate"**.

17. Accordingly, the Tribunal determines a deferment rate of 5%.

Relativity

18. Mr Jones contended for 92.5% and relied on the Beckett & Kay graph and in particular the LEASE analysis of Leasehold Valuation Tribunal decisions nationwide. With regard to the others in the graph, he said that these predominantly related to central London properties. As a general point, Mr Jones argued that there was an aged population in Eastbourne generally and Earlsmead Court in particular. Accordingly the length of lease and any consequent financing difficulty was not so important and therefore this would affect relativity in that there was a stronger market for short leasehold interest in this area and the result would be higher short lease values. Mr Jones also said that in Sussex it was common practice amongst valuers to deduct 0.5% per year for each year under 80 years.

19. Mr Nesbitt contended for 85%. He referred to four settlements in which he had been involved with relativities ranging from 82.5% to 86.5%. In respect of two of those settlements (relating to Flat 11, Chalvington House, 56 Ocklynge

Road, Eastbourne [valuation date: 5 May 2006]) and 9 Earlsmead Court, 15 Granville Road, Eastbourne [valuation date: 1 December 2006]) he said that relativity of 85% had been agreed specifically. He provided correspondence in support. Mr Nesbitt did not feel that the slight difference between the terms unexpired in these settlements and that at the valuation date would affect relativity. Mr Nesbitt said that his figure was within the range of all the graphs compared in the Beckett & Kay Graph and Mr Jones, in referring only to the LEASE analysis had been too selective.

20. Mr Jones had not taken into account either the fact that elderly lessees may be interested in equity release schemes or that ten out of the existing twenty tenants at Earlsmead Court were seeking to extend their leases as put to him by Counsel for the Respondent. In the view of the Tribunal, Mr Jones was too selective in choosing merely the LEASE analysis from the Becket and Kay graph.
21. Although Mr Nesbitt only referred to four settlements, which is considered rather a narrow selection, it is noted, from correspondence provided, that a relativity had been specifically agreed at 85% in two of those four settlements. In addition, his view of relativity had been supported by the graphs.

The Tribunal prefers Mr Nesbitt's approach and adopts a relativity of 85%.

Legal fees

22. Although, at the hearing, it was indicated that the parties were hopeful that legal fees could be agreed, this did not prove to be the case, and written submissions were received subsequently from both sides on this issue as directed by the Tribunal, together with copies of relevant correspondence.
23. In written submissions dated 12 March 2007, from solicitors acting on behalf of the Applicant tenant, it was stated, inter alia:-

"Our position in connection with this matter is relatively straightforward. Abbey View Estates Limited deal with matters in-house and therefore there can be no profit element in relation to the costs of their legal representatives in connection with the matter.

A Lease extension application of the nature of this application is not a difficult and time consuming issue to deal with. We attach a copy of the notice which we served on behalf of the Tenant and a copy of the counter notice. As you will see, the notice simply sought the standard form of Lease extension and quoted the premium payable. There was no request contained within the notice for any amendments to the Lease and therefore the only issue to be determined was the question of the price.

The counter notice from the Landlord admitted the rights of the Tenant to obtain the Lease extension and disputed the price and we would submit that the counter notice document is virtually a standard form of notice which took little or no time to draft in the context of this

application and certainly the consideration of the initial notice could not have taken any substantive time whatsoever given the limited content of the notice itself.

The investigation of the Leasehold title similarly cannot be an onerous or extensive task given that the Tenant has been registered as proprietor of the property since 1997 and we would point out that the costs of any investigation undertaken in relation to the Tenant's rights and the Tenant's title are only recoverable insofar as that investigation is reasonably undertaken. As a longstanding flat owner under a long Lease, the details of which were already known to the Landlord, we would suggest that investigation of title and service of the counter notice is a very simply matter warranting no more than £100 charges in circumstances where this was dealt with in-house rather than by the employment of external advisers.

This then brings us to the preparation of the Lease extension document. Again, in the context of a Lease extension document bringing into play the statutory provision on Lease extensions and without any need to amend the Lease in any other way, we would consider this to be a relatively simply exercise involving limited drafting skills and probably a format which, given the nature of the Landlord's property portfolio, the Landlord's in-house team has dealt with on numerous occasions. In our experience of determinations by the Southern Rent Assessment Panel, the panel quite rightly casts a critical eye over costs when requested to do so and limits these to realistic figures. In the case of Flat 4, 7 Grassington Road, Eastbourne (Case No: CHI/21UC/OLR/2005/0033) the Tribunal determined the reasonable level of the Landlord's legal costs in relation to the service of counter notice and the granting of a new Lease was £500 plus VAT. That related to a situation which was much more complex than is the current case in that the Tenant's notice requested numerous variations to be made to the Lease and the ultimate Lease extension document had to deal not only with the extension provisions but also variations to the original documentation. In that case, the Landlord was represented by external solicitors and therefore taking into account the fact that the documentation is much simpler in this case and the work has been carried out by in-house lawyers, it is submitted that £250 would be a reasonable reimbursement to the Landlord.

Accordingly, it is the Tenant's position that the Landlord should be awarded a sum of £350 in respect of legal costs rather than the £850 being demanded."

24. In written submissions dated 13 March 2007 from the Respondent landlord, it was stated, inter alia:-

"1. The legal aspects of this matter have been conducted by Alison Sandler, our senior solicitor. In view of her in-house status, Mrs Sandler does not have a charge-out rate although in view of her level of qualification the rate applied to a Grade A fee-earner

- is a useful comparison. Again, in view of Mrs Sandler's in-house status, time sheets are not completed. Instead, costs are calculated by reference to an estimation of the time expended.
2. Mrs Sandler is not employed by Abbey View Estates Limited. Instead, she acts a consultant to this company, and other companies and individuals within our group organisation, on an "as and when" basis. Mrs Sandler is paid on a time basis at a rate of £105 per hour.
 4. In addition to the sums paid to Mrs Sandler, it is our view that when making a charge to cover our in-house legal costs, one must take account of the overheads involved in dealing with matters of this type of an in-house basis. We would mention that the Tribunal have upheld this principle on a number of similar applications made in respect of legal costs claimed by companies and individuals within our group organisation. Solely with a view to providing in-house legal services, we employ supporting staff such as secretaries, filing clerks and general administrators. In addition, there is the not insignificant cost of providing computer equipment, stationery, legal resources, such as books and software, and basic electricity and heating.
 5. I would ask the Tribunal to consider that as an alternative to the provision of in-house legal services we would revert to the instruction of external solicitors, Glinert Davis, a firm based in the West End of London whose senior solicitors have an hourly charge out-rate of £300.
 6. The costs claimed in this matter are intended to cover the time expended by Mrs Sandler in:-
 - (a) considering the initial notice served
 - (b) investigating the leasehold title; and
 - (c) preparing, negotiating and completing the lease extension documentation once terms have been agreed or determined by the Tribunal.
 7. Please be aware that we are seeking payment of legal costs in the sum of £850, which you will appreciate equates to less than 5 hours' of Mrs Sandler's time.
 8. I would mention that the costs claimed in this matter are considerably less than the sum awarded by the Tribunal in respect of a similar application concerning legal costs claimed by me in my personal capacity; ref: CAM/00MD/OLR/2006/0020.
 9. We have received a copy of Messrs Mayo & Perkins' letter to you of 12th March and would make the following comments on the same:-
 - (i) As will be evident from our comments above, we are not seeking to recover a profit element on the costs claimed, although our understanding is that the Leasehold Valuation Tribunal has accepted that a Local Authority may charge a profit element in relation to work undertaken by its employed solicitors. Instead, it is our view that for the reasons outlined in numbered paragraph

5 above, our use of in-house solicitors results in a costs-saving for the leaseholders.

- (ii) *We do not accept Mayo & Perkins' assertions as to the speed and ease with which these matters can be dealt. It is our view that matters of this type should be dealt with by suitably qualified professionals using a proper degree of care and skill. We are sure that Mayo & Perkins and the Tribunal have come across very many instances, as have we, where the failure by legal advisers to act with a proper degree of care and skill in relation to applications made under the 1993 Act has led to dire consequences for their landlord or tenant client."*

25. With regard to the Applicant's submissions, the Tribunal considers that the level of fees suggested are unrealistically low for the work to be carried out. As to the Respondent's submissions, reference is made to the level of qualification of the consultant to the company, although the Tribunal has not been advised of what level of qualification has been obtained. Further, insufficient details of the case relied upon by the Respondent in support of the costs sought have been supplied. In any event, this Tribunal is not bound by the decisions of other Tribunals. Each case must be considered on its merits.
26. At the hearing, the Respondent was represented by counsel on the basis that there were other tenants in the same block who wished to extend their leases and therefore it was important for the Respondent to be legally represented on this, the first case within the block. Mr Jones, on behalf of the Applicant tenant, confirmed that other tenants were intending to extend their leases. This was therefore an agreed fact. Accordingly, the determination in relation to legal costs in this case will, no doubt, reflect the legal costs obtained in the other cases, which should, in the view of the Tribunal, produce economies of scale.
27. Accordingly, the Tribunal determines the legal costs under Section 60 of the Act at £550 plus VAT.

Enfranchisement price

28. The Applicant contends for £7,850 and the (revised) valuation is attached as Appendix B. The Respondent contends for £14,950 and the (revised) valuation is attached as Appendix C.
29. The Tribunal determines that the enfranchisement price for the property is £14,950 and its valuation is attached as Appendix A.

CHAIRMAN 

DATE 27 March 2007

JG

Date of valuation	10-Apr-06
Expiry of leases	23-Jun-72
Term unexpired at date of valuation	66.20
Appropriate yield for term	7.0%
Appropriate yield for reversion	5.0%
PV in 66.2 years	0.0396
PV in 156.2 years	0.00049
Lessor's share of marriage value	50%
Value of unimproved extended lease	£153,000
Relativity	85%
Value of existing lease	£130,050

Calculation

Value of unimproved extended lease £153,000

Lessee's interest

(a) Value of existing short leasehold interest £130,050

Freeholder's present interest

(b) Agreed value of term £973

Value of unimproved extended lease £153,000

PV in 66.2 years 5.0% 0.0396

(c) Value of reversion £6,059

(d) Value of freeholder's interest (b) + (c) £7,032

Freeholder's future interest:

Value of unimproved extended lease £153,000

PV in 156.2 year: 5.0% 0.00049

£75

(e) Diminution in freeholder's interest £6,957

Marriage value

Deduct total of (a) + (e) £137,007

Marriage value £15,993

Freeholder's share 50%

£7,997

Add diminution in freehold interest £6,957

Enfranchisement price £14,953

Say **£14,950**

APPENDIX B

PROPERTY: Flat 17, Earlemead Court, 15 Grenville Road, Eastbourne, BN20 7HE**Value of Landlord's current interest**

Diminution in value of landlord's interest in accordance with paras 2(a) & 3:

Term of existing lease

1	Loss of rental income				44		
	YP	0.2 yrs @	7 %		0.18	7	
	plus						
	1st Review				86		
	YP	33.0 yrs @	7 %	12.75			
	PV £1 in	0.2 yrs @	7 %	0.99	12.61	832	
	plus						
	2nd Review				89		
	YP	33.0 yrs @	7 %	12.75			
	PV £1 in	33.2 yrs @	7 %	0.11	1.35	134	
	plus						
	3rd Review				0		
	YP	0.0 yrs @	7 %	0.00			
	PV £1 in	86.2 yrs @	7 %	0.01	0.00	0	
	plus						
	4th Review				0		
	YP	0.0 yrs @	7 %	0.00			
	PV £1 in	86.2 yrs @	7 %	0.01	0.00	0	
	plus						
	5th Review				0		
	YP	0.0 yrs @	7 %	0.00			
	PV £1 in	86.2 yrs @	7 %	0.01	0.00	0	
	plus						
2	Reversion to Extended leasehold value disregarding Leaseholder's Improvements, say				153,000		
	PV £1 in	86.2 yrs @	8 %		0.0212	3,238	£4,211
3	less: Value of landlord's interest in flat once new lease is granted						
	Reversion to capital value disregarding Leaseholder's Improvements, say				153,000		
	PV £1 in	156.2 yrs @	8 %		0.0001		£17
							£4,194

Landlord's share of Marriage Value

Landlord's share of marriage value in accordance with paras 2(b) & 4:

Extended interests

Value of tenant's interest under extended lease disregarding Leaseholder's Improvements, at say	88 % of Freehold	153,000	
plus			
Value of landlord's interest in flat once new lease is granted		17	153,017

less

Existing interests

Value of tenant's interest under existing lease disregarding Leaseholder's Improvements, at say	83 % of Freehold	141,525	
plus			
Value of landlord's existing interest		4,194	145,719
	Difference (marriage value) =		7,298
	Landlord's share, @	50 % =	£3,649

Compensation payable to Landlord

Compensation payable to landlord under paras 2 (c) & 5:

£0

Valuation Summary

Diminution in value of landlord's interest in accordance with paras 2(a) & 3:	£4,194
Landlord's share of marriage value in accordance with paras 2(b) & 4:	£3,649
Compensation payable to landlord under paras 2 (c) & 5:	£0
	Premium =
	£7,843
	but say
	£7,880

THE LEASEHOLD REFORM, HOUSING URBAN AND DEVELOPMENT ACT 1993**APPENDIX C**

DATE: 25/04/2006

PROPERTY

17 Earlsmead Court, Granville Road, Eastbourne

Valuation Date

10/04/2006**LEASE DETAILS**

Commencement

31/01/1979

5.00%

Reversionary rate %

Term

99

7.00%

Capitalisation rate %

Expiry date

23/06/2072

Unexpired term

66.20

Rent receivable by landlord

£44.00

£66.00

£99.00

VALUES

FHVP

£153,000

Extended lease value

differential 100%

£153,000

LHVP

£130,050

85.00%

Differential

DIMINUTION IN VALUE OF FREEHOLDER'S INTEREST**TERM 1**

LOSS OF RENT

£44.00

x YP

0.20 years @

7.00%

0.1958

£9

TERM 2

LOSS OF RENT

£66.00

x YP

33.00 years @

7.00%

12.7538

x PV

0.20 years @

7.00%

0.9863

£830

TERM 3

LOSS OF RENT

£99.00

x YP

33.00 years @

7.00%

12.7538

x PV

33.20 years @

7.00%

0.1058

£134

REVERSION

FHVP

£153,000

x PV

66.20 years @

5.00%

0.040

£6,052

£7,024

Less Value of Freeholders proposed interest

£153,000

x PV

156.20 years @

5.00%

0.000

(Existing term plus 90 years)

£74.96

Lessor's Interest**£6,949****CALCULATION OF MARRIAGE VALUE**

Tenant's Extended Lease Value

£153,000

Landlords' Extended Lease Value

£75

Sum of Proposed Extended Lease Interests

£153,075

Less

Landlords' Present Interests

£7,024

Lessee's Present Interest

£130,050

£137,074

Marriage Value

£16,001

Take

50%

Marriage Value**£8,000****PREMIUM PAYABLE TO FREEHOLDER**

Total of

Diminution in Freehold Interest

£6,949

Plus

Freeholders Share of Marriage Value

£8,000

Total Price**£14,950**