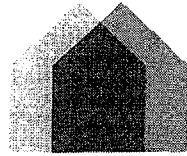


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**Residential
Property**
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/OOAN/OLR/2007/1431

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 48 LEASEHOLD REFORM HOUSING
AND URBAN DEVELOPMENT ACT 1993**

Applicant:s J T and S A Bennett

Respondent: Tops Shop Centres Ltd

Premises: 4 Bush Court, Shepherds Bush Green, London W12 8PJ

Dates of Determination 6 October 2008

**Leasehold Valuation Tribunal Mrs B. M. Hindley
Ms H. Carr
Mr C. Kane**

Date 6 October 2008

1. This was an application, dated 17 December 2007, under Sections 48, 56 and 57 of the Leasehold Reform Housing and Urban Development Act 1993, in respect of 4 Bush Court, Shepherds Bush Green, London W 12 8PJ.
2. The original lease was between the applicants and Hammersmith and Fulham. The latter was the head lessee and the freeholders are Tops Shop Centres Ltd.
3. The applicants' existing lease was made on 7 August 1989 between (1) The London Borough of Hammersmith and Fulham and (2) the applicants. That lease demised the subject premises for a term of 107 ½ years less 15 days, from 25 March 1961.
4. The above lease is virtually coterminous with the intermediate lease between Parway Estates Development Ltd and Hammersmith and Fulham (the Council).
5. The extension of the lease is, therefore, being sought from the freeholder.
6. By 6 October 2008 the only issue outstanding was the terms of Clause 4 of the proposed lease.
7. The respondents request that Clause 4 should include the following;

‘The landlord covenants with the tenant so as to bind itself and its successors in title the persons for the time being entitled to the reversion of the premises immediately expectant on this lease but not so as to incur any liability under the covenants or other provisions hereof EITHER while the concurrent lease(as described in paragraph (ii) of the First Schedule) subsists OR after the landlord shall have parted with such reversion or to incur further liability thereafter to observe and perform the obligations and provisions set out in the Sixth Schedule’.
8. The Applicant objects to the inclusion of the following words on the basis that they limit the liability of the landlord for the performance of his covenants:

‘ but not so as to incur any liability under the covenants or other provisions hereof EITHER while the concurrent lease(as described in paragraph (ii) of the First Schedule) subsists OR after the landlord shall have parted with such reversion’
9. The applicants' contention is that it requires a covenant on the part of the respondents that they will throughout the term observe and perform the obligations of the Sixth Schedule. They submit that in the absence of Hammersmith and Fulham being a party to the lease they will be unable to enforce the obligations or provisions of the Sixth Schedule.
10. The respondents claim that Schedule 11 paragraph 10(1) of the Leasehold Reform Housing and Urban Development Act 1993 provides for the new lease to take effect ‘as if there had been a surrender and re-grant of any subsisting intermediate lease.....; and the covenants and other provisions of that instrument shall be framed and take effect accordingly’.
11. The respondents submit that the purpose of this statutory device is to maintain the pre-existing scheme established by the existing lease and the intermediate lease, namely, that it is the Council as landlord under the intermediate lease that is liable for the

landlord's covenants contained in the existing lease unless and until the intermediate lease falls in.

12. The Tribunal accepts that the respondents' submission accurately reflects the law and, accordingly determines that their proposal in relation to Clause 4 should be inserted into the draft lease

Chairman *R. D. H. Adley*

Date *6/10/08*