

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



S.48 & Schedule 13  
Leasehold Reform, Housing & Urban Development Act 1993

**DECISION AND REASONS**

**Case Number:** CHI/21UH/OLR/2009/0029

**Property:** Flat 8, Brincliffe  
St Johns Road  
Crowborough  
Tunbridge Wells  
East Sussex  
TN6 1RW

**Applicants:** Mr D E Forster & Mr W Rose

**Represented by** C H W Richards BSc (Hons) MRICS, Richards & Co

**Respondent:** Sinclair Gardens Investments (Kensington) Ltd

**Represented by** G P Holden FRICS, Parsons Son & Basley

**Intermediate Landlord** Brincliffe Management Co Ltd

**In attendance:** Mr Buick (Flat 15), Director of Brincliffe Management Ltd and  
Mr Mark Williams (Observer)

**Date of Application:** 6 May 2009

**Date of Hearing:** 2 September 2009

**Date of Decision:** 20 October 2009

**Tribunal Members:** Mr B H R Simms FRICS MCI Arb (Chairman)  
Mr R A Wilkey FRICS FICPD (Valuer Member)

**DECISION**

1. The amount determined to be the premium payable for the extended lease is **£5,033**. Other matters in respect of the terms of the lease and the landlord's costs to be determined at a later date.

## **BACKGROUND**

2. This is an application to determine the premium payable for a new lease in respect of the property at Flat 8, Brincliffe in Crowborough. Directions for the conduct of the case were issued dated 26 May 2009. Both parties produced valuers' reports and the surveyors representing the parties appeared at the hearing.
3. The hearing was convened at The Camden Centre in Tunbridge Wells on 2 September 2009.

## **INSPECTION**

4. Prior to the hearing the Tribunal members together with one of the Applicants and Mr Holden inspected the property.
5. The property comprises a first floor flat with a self-contained ground floor entrance lobby and staircase. There are two bedrooms, a living room, kitchen, bathroom with WC. The second bedroom has a restricted floor area caused by the staircase bulkhead.

## **FACTS**

6. The parties have agreed that the price payable for the intermediate leasehold interest shall be £15 and have agreed the deferment rate at 5%.
7. The valuation date is agreed at 16 September 2008.
8. At the valuation date the lease had 76.8 years unexpired.

## **ISSUES**

9. There are two principal disputed issues. Firstly, the value of the unimproved long leasehold interest, which both parties have established by applying a relativity to the current leasehold value. The Applicant has the current leasehold interest valued at £95,000 and the Respondent £120,000. The Respondent adjusted the value to £114,000 having taken account of the Sch 13 3(2) disregards.

10. Secondly, the relativity is in dispute which the Applicant says is 95% and the Respondent 93.2%.
11. The result of these differences is that the Applicant calculates the premium to be paid at £3,700 and the Respondent at £5,677.

## EVIDENCE

12. Mr Holden, for the Respondent, submitted evidence as an Expert Witness. Mr Richards, for the Applicants, asked the tribunal to take his evidence as an Expert Witness but his written submission contained no statement of truth or any of the declarations required by the RICS Practice Statement.
13. The parties submitted several comparables in support of their opinion relating to the value of the current lease. There was no evidence available of sales of similar flats on longer leases. A summary of the evidence produced is set out in the following table:-

Party	Flat	Transaction	Price £	Bedrooms
R	1	Sale 22/01/03	107,000	1
R	2	Sale 02/02/07	120,000	1
R	3	Sale 30/08/05	120,000	2
R	4	Sale 16/04/04	115,000	2
R	4	Sale 11/06/01	67,500	2
A & R	5	Sale 94.06.09	95,000	1
R	5	Sale 31.08.00	69,950	1
R	6	Sale 22/02/02	81,000	1
A	7	Agreed ? 08/09	100,000	2
A & R	10	Sale 01/04/08	125,000	2
A	14	On Market	129,000	2
R	15	Sale 12/05/05	112,500	1

14. Mr Richards considered that Flats 5 (sale in June 2009) and 7 are the most helpful comparables. He adjusts the price of Flat 5 to take account of the different valuation date using the Nationwide house price calculator which, he says, would suggest that the flat would have been worth about £100,000

in September 2008. From this figure he makes a further deduction of £5,000 for tenant's improvements and a further deduction of £2,500 to reflect the fact that it is a ground floor flat. Finally, he adds £5,000 to reflect the likely cost of a lease extension (£3,700 plus costs) to produce an equivalent valuation figure for Flat 8 of £97,500 at the valuation date.

15. Mr Holden considers the sale of Flat 5 but does not agree with Mr Richardson's adjustments. He produces graphs in support of the fall in prices between the valuation date and June 2009 which, he says, indicates an approximate value of £120,000 for Flat 8.
16. Regarding Flat 7, Mr Richards accepts that the sale of the flat is not yet contracted but he believes that the fact that it is under offer at £100,000 is at least a useful guide. He makes similar, but less detailed adjustments to take account of the different dates and assesses the value at the valuation date at £104,000 [presumably on a current lease basis], to which he adds £5,000 to reflect the likely cost of a lease extension. This, he says, produces an equivalent value for Flat 8 of £109,000 at the valuation date.
17. Mr Richards accepts that his two comparables are in conflict but adopts £100,000 (rather than the mid-way figure of £103,500) as he agrees that the sale of Flat 7 is not yet contracted and the price may be re-negotiated.
18. Arriving at his figure of £100,000 for the long leasehold value Mr Richards appears to have added £5,000 to the short leasehold values by using an arbitrary figure of £3,700 (his current premium value), plus unidentified costs of £1,300. Mr Holden questioned this approach at length during the hearing.
19. Mr Holden relies heavily on the sales of two bedroom flats in the development and emphasises the sale of Flat 10 which was sold five months before the valuation date at £125,000. He makes an adjustment to this figure to reflect the likely fall in price between the sale date and the valuation date using a graph based upon the sales of other flats on the development. This, he says, produces an estimated value for the subject

premises at the valuation date of £120,000 as being the existing leasehold value.

20. Mr Richards dismisses the evidence of Flat 10 which he believes to have been sold at an inflated price in unusual circumstances. He says that the purchaser was an elderly gentleman who was in a good financial position and particularly wanted a first floor retirement flat in Crowborough close to his family. Mr Richards believes that this makes him a special purchaser and the price paid was distorted.
21. Mr Holden then makes a further adjustment to his assessment of £120,000 to take account of the disregards set out in Schedule 13. He deducts 5% which he says is commonly used by valuers to reflect these disregards. He does not consider that any adjustment can be made for improvements as the condition of the comparables at the time of sale is not known.

## RELATIVITY

22. Mr Richards relies on the relativity graph produced by the Leasehold Advisory Service and identifies the appropriate figure for a lease with 76.8 years unexpired at 95%.
23. He adds that the property is in a retirement development for persons aged 55 and over and he believes that occupiers are less likely to be concerned about shorter lease terms than in other developments. When questioned Mr Richards could not support this contention with any evidence.
24. Mr Holden introduced a Lands Tribunal appeal decision which he believes "...makes a fundamental change to the calculation of both the value of the freeholder's reversion and marriage value".
25. A copy of the decision in *Trustees of R G Drax AMR 1987 Settlement Trust and Kingsbere Court Management Company Limited LRA/5/2008 (Drax)* was produced in Mr Holden's written statement. Unfortunately the photocopy was incomplete and had omitted alternate pages. A full photocopy was obtained and Mr Richards was given time to consider the decision. He was

satisfied that he had had ample opportunity of considering the details of the case and on this basis Mr Richards did not request a formal adjournment.

26. *Drax* concerns the enfranchisement of flats, rather than the premium to be paid for a new lease, and is somewhat unusual. The Respondent to the appeal was not represented. The appellants submitted written evidence and the Lands Tribunal member accepted this evidence in full and in fact reproduced the appellant's submissions in full in the written decision.
27. The approach to the valuation promulgated in *Drax* confirms that the Schedule 13 disregards should be applied when considering the current lease value and also the reversionary value. However, because at the time of the reversion there would be no lease, any adjustments for the Schedule 13 disregards would have no material affect on the value at that time. If no long leasehold evidence is available then relativity should be calculated on the basis of an adjustment to the short leasehold value "in the real world", rather than the lower figure usually produced when the Schedule 13 disregards are taken into account.
28. In Mr Holden's valuation he has applied the decision in *Drax*. His reversion value is calculated using the "real world" short lease value of £120,000 and applying his relativity of 93.2%. When the existing lease value is used in his valuation, the lower figure of £114,000 is used as the Schedule 13 disregards will apply at that time and produce a lower figure.
29. Although Mr Richards confirms that he had had an opportunity of considering the alternative valuation approach adopted by Mr Holden he believes that the traditional calculation method should be maintained. The traditional method had been used, he believes, for all decisions other than in the quoted case.
30. Having introduced the new calculation approach Mr Holden then went on to consider the appropriate relativity. He produces a summary of recent decisions in which he has been personally involved. He believes that all these cases had been negotiated or determined on an incorrect basis. He

adds the result in *Drax* to the Schedule and also his assessment of the subject property using the new method. He produces a straight line graph with the *Drax* decision at one end and the graph of graphs relativity figure of 96% at 80 years unexpired at the other. This simple graph produces a relativity of about 93.2% for an unexpired term of 76 8 years at the subject property.

## CONSIDERATION

31. Both parties' representatives took time to compare and contrast the transactions put forward as comparables. Neither of them were involved directly with any of the transactions and any information obtained has been from the agents involved rather than from direct personal knowledge.
32. Attempts to adjust for the valuation date will necessarily be subjective unless direct evidence can be found at the relevant dates for an identical property. Mr Richards chose to use a published index but, on questioning from Mr Holden, his calculations were found to be flawed. Mr Holden on the other hand chose to use the actual sales of flats in the same development. The problem here is that because there are relatively few transactions available the graph produced is not smooth. It does however have greater relevance to the subject premises than a national index. There are no transactions to include in the graph after the date of the sale of Flat 10 so Mr Holden has estimated the likely trend. This adds an additional unverified variable. Mr Holden makes no further adjustments.
33. Mr Richards makes adjustments to his comparables for various matters but, in particular, he has added to his base prices of £92,500 for Flat 5 and £104,000 for Flat 7, an arbitrary figure of £5,000 which, he states, is for the premium payable for a lease extension. He states that this is calculated by adding £3,700 (his valuation of the subject premises) to an amount for unidentified costs. In effect he has converted his short leasehold value to a long leasehold/virtual freehold value. If this were the case then there would be no need for any relativity calculation. His relativity figure of 95% simply proves that when using a short leasehold value and adding 5% you get the

correct answer. He has therefore in effect not considered directly the value of the current short leasehold interest. The tribunal can only deduce from his narrative that he values Flat 5 at £92,500 and Flat 7 at £104,000. These figures do not support his short leasehold value of £95,000. He ignores the open market comparable of Flat 10.

34. Mr Holden's approach has greater merit and is based upon an open market transaction close to the valuation date. The tribunal therefore considers an appropriate current leasehold value is £120,000.
35. In the subject case there are a number of short leasehold transactions on which to base a valuation. The draughtsman of the Act allowed for the possibility that the Act would enhance short leasehold values to the detriment of landlords. The valuer is therefore charged with assessing what the short leasehold value might be without the benefit of the Act. This of course means that an adjustment has to be made for something that does not exist in the real world.
36. In the real world the sale prices of flats and houses are influenced by the fact that the purchaser can acquire an extended lease. The range of opinion of the influence of the Act varies but in this case Mr Holden believes that 5% is an appropriate figure. In the absence of anything more explicit and without any comment from Mr Richards the tribunal adopts the 5% deduction.
37. This produces an existing lease value in the "no Act world" having taken account of the disregards required in Schedule 13, to be £114,000 (£120,000 less 5%).
38. Turning now to the question of relativity. This term derives from transactions in London where evidence of short leasehold sales were in short supply. It therefore became usual for the long leasehold or freehold value of a given flat to be assessed more easily than the short leasehold value. A relativity was applied to the more easily established virtual freehold value in order to derive a short leasehold value. Because this term is in common use and



both valuers used this approach we continue to use it in this determination. The effect, however, is to increase the established short leasehold value in order to arrive at a long leasehold/virtual freehold value for the flat.

39. Mr Holden has arrived at a figure of 93.2% relativity based upon a straight line graph. His graph has only two points. The upper point is the 96% figure produced by the Beckett and Kay *Graph of Graphs* for an 80 years unexpired term and the lower point being the relativity derived from *Drax*.
40. If Mr Holden is convinced that *Drax* is of such importance it would have helped his graph if the other decisions he cited had been included, having adjusted them for the new method of calculation. As there are only two points on his graph there is little weight that can be given to any intermediate point on it.
41. Mr Richards relies on the graph of relativities derived from LVT determinations between 1994 and 2007. This is one of the lines used in the *graph of graphs* calculations. In the Lands Tribunal decision *Arrowdell* it was stated that LVT decisions on relativity are admissible but "...a mere percentage figure adopted in a particular case is of no evidential weight." Each Tribunal decision will be dependent upon the evidence before it. This tribunal follows that approach.
42. We also concluded that a similar criticism could be levelled at the *graph of graphs* in that it is made up of a large number of transactions from different property types and locations and in some cases uses data which are now out of date.
43. Although the LVT decisions graph is open for criticism the Beckett & Kay *Mortgage Dependent Graph* forming one of the data sources for the *graph of graphs* does run close to it at the unexpired term of 76.8 years. At this point on the graph the two lines meet at a relativity of 94% and this is the figure that we adopt in the calculation. The relativity of 94% related to an existing lease value of £114,000 produces a reversionary value of £121,276 for the subject premises. This is the equivalent of an uplift of 6.38%.

44. The tribunal spent some time considering the calculation approach in *Drax* but is not prepared to depart from the method that has been used in all previous LVT and Lands Tribunal decisions of premiums for new leases. It was a freehold enfranchisement case and no representations were received from the Respondent.

#### **DETERMINATION**

45. Having concluded that the value of the long leasehold interest is £121,276 the existing lease value is £114,000 and the relativity 94%, the Tribunal determines the premium payable at £5,033. The calculation is set out in the attached Appendix 1.
46. The tribunal was not asked to determine the terms of the transfer or the relevant costs and these matters may be agreed or determined at a later date.

Dated 20 October 2009

Signed  
Brandon H R Simms FRICS MCI Arb  
Chairman

## Appendix 1

**VALUATION OF THE LEASEHOLD VALUATION TRIBUNAL  
FLAT 8, BRINCLIFFE, ST JOHNS ROAD, CROWBOROUGH,  
TUNBRIDGE WELLS, EAST SUSSEX TN6 1RW  
PREMIUM PAYABLE IN RESPECT OF GRANT OF NEW LEASE  
VALUATION DATE 16 SEPTEMBER 2008**

Value of landlord's interest

Landord's reversion to new lease/virtual freehold				
Capital value of new lease/virtual freehold			121,276	
x Pv	5.00%	76.8 years	<u>0.0235864</u>	
		Value of landlord's existing interest lost		2,860
<b>Less</b> value of landlord's existing interest retained				
Capital value of new lease			121,276	
x Pv	5.00%	166.8 years	<u>0.0002922</u>	<u>35</u>
				<b>£2,825</b>

Landlord's share of marriage value

	Capital value of new extended lease		121,276	
<b>Less</b>	Capital value of existing lease	114,000		
	Value of landlord's interest lost	<u>2,860</u>	<u>116,860</u>	
	Marriage value		<u>4,416</u>	
	Landlord's share of marriage value at 50%			£2,208
	Compensation Sch 13 2c			<u>nil</u>
	<b>Price payable</b>			<b><u>£5,033</u></b>

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



S.60 - costs  
Leasehold Reform, Housing & Urban Development Act 1993

**DECISION AND REASONS**

**Case Number:** CHI/21UH/OLR/2009/0029

**Property:** Flat 8, Brincliffe  
St Johns Road  
Crowborough  
Tunbridge Wells  
East Sussex  
TN6 1RW

**Applicants:** Mr D E Forster & Exors of Mr W Rose

**Represented by** C H W Richards BSc (Hons) MRICS, Richards & Co

**Respondent:** Sinclair Gardens Investments (Kensington) Ltd

**Represented by** Paul Chevalier, P Chevalier & Co

**Intermediate Landlord** Brincliffe Management Co Ltd

**Date of Application:** 6 May 2009

**Date of Original Hearing:** 2 September 2009

**Date of Costs Hearing:** 23 April 2010

**Date of this Decision** 10 May 2010

**Tribunal Members:** Mr B H R Simms FRICS MCI Arb (Chairman)  
Mr R A Wilkey FRICS FICPD (Valuer Member)

**DECISION**

1. The reasonable costs incurred in connection with the new lease to be paid by the Applicant tenant are determined at solicitor's costs of £1,970.00 plus VAT, solicitor's conveyancing costs in the order of £747.50 plus VAT, subject to the production of invoices, and the Valuer's fee of £575.00 including VAT.

## **BACKGROUND**

2. This is an application for the determination of costs pursuant to S.60 Leasehold Reform, Housing and Urban Development Act 1993 (The Act).
3. On 20 October 2009 this Tribunal Determined the premium payable for the new extended lease to be £5,033. Other matters in respect of the terms of the lease and landlord's costs were to be determined at a later date.
4. The terms of the lease have been agreed. The Applicant now seeks a further Determination, namely that the solicitor's costs and valuer's fee incurred by the Respondent are reasonable and payable.

## **PROCEDURE**

5. The Tribunal decided that this was a case which could be determined on consideration of the papers without an oral hearing. Directions and a Notice to this effect were issued on 21 January 2010. An opportunity was given for either party to object to this procedure and no such objection was received.
6. The Tribunal also directed that both parties should file statements and statements of response and these were duly made and received.

## **THE LAW**

7. Where the procedure for the granting of an extension of a lease is carried out then the provisions of S.60 of The Act apply so that the tenant shall be liable for the reasonable costs of and incidental to any of the following matters, namely:
  - a) *Any investigation reasonably undertaken of the tenant's right to a new lease.*
  - b) *Any valuation of the tenant's flat obtained for the purpose of fixing the premium....in connection with the grant of a new lease under S.56.*
  - c) *The grant of a new lease under that section.*
8. Sub-section (2) further defines the costs in that they "...shall only be regarded as reasonable if and to the extent that costs in respect of such

*services might reasonably be expected to have been incurred by [the landlord] if the circumstances had been such that he was personally liable for all such costs.*

## **THE RESPONDENT'S CLAIM**

9. The Respondent's solicitors are Chevalier & Co and the fee earner is Mr P Chevalier who is a senior solicitor and the only fee earner. He is experienced in this type of work and sets out in his statement his relationship with the Respondent and provides a client care letter. He claims at the rate of £230 per hour which rate has been specifically agreed by his client.
10. The costs actually claimed are £1,479.67 plus VAT in respect of the first Notice of Claim and £490.67 plus VAT in respect of the Second Notice of Claim.
11. In addition Mr Chevalier estimates 2.75 hours are to be allowed for the completion of the conveyancing of the lease but as this work is not yet completed this can only be an estimate. The amount claimed at 2.75 hours is £747.50 plus VAT.
12. An invoice from Messrs. Parsons Son & Basley dated 30 December 2009 is submitted in respect of the valuer's fee of £500 plus VAT @ 15%, a total of £575.
13. Mr Chevalier sets out in his statement detailed time costings for the work on which he has been engaged. He indicates that the time charged to the client is less than the actual time spent as it is rounded down to the nearest 15 minute period and ignores time spent which is not considered reasonable to charge to the client. He uses a manual system from notes made on the file.
14. In further support of his case Mr Chevalier included numerous cases decided by other Tribunals, emphasising the "reasonable expectation test". The landlord is not required to find the cheapest or even cheaper solicitors

but only, in effect, to give such instructions as he would ordinarily give if he were going to be bearing the cost himself.

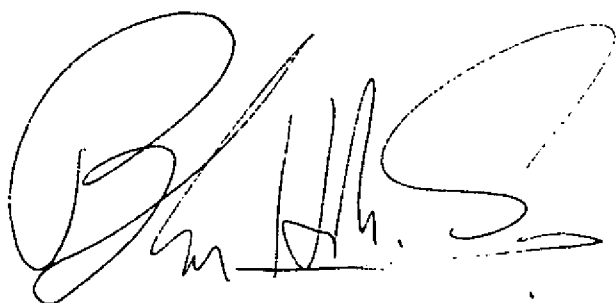
### **THE APPLICANT'S CASE**

15. Mr Richards represents the Applicant and introduces statements by Messrs Elgee Pinks solicitors on behalf of the Applicant.
16. The initial Notice was defective and the Applicant argues that costs in respect of this Notice should not be allowed as there was not in fact a Notice under S.42 and therefore no costs are payable.
17. Without prejudice to that claim the Applicant argues that the costs for the first Notice should otherwise be £565.66 plus VAT, for the second Notice £164.64 plus VAT, and for the preparation of the new lease £400 plus VAT.
18. The reductions proposed are in effect related to an hourly rate of £200 per hour rather than the £230 claimed, on the basis that a reasonable landlord would negotiate a lower rate. Also, the time spent for the relevant items in each general case might be excessive although some are agreed.

### **CONSIDERATION**

19. This is a claim under the indemnity principle and doubts are generally resolved in the receiving party's favour. The defective first Notice no doubt gave rise to work by the Respondent's solicitor and this is clearly incidental to the overall process. The Respondent would not have been put to the trouble of dealing with this Notice if the process had not commenced and he is entitled to any costs he incurred. There is clearly some duplication of work in respect of the second Notice but no evidence has been provided to show that additional work would not have been required.
20. The Applicant has not produced any detailed evidence from another firm of solicitors setting out the time that they would have spent in this case. The only evidence put forward is that of the Applicant's solicitor's opinion of what he might have charged in similar circumstances and what he charged in other cases.

21. The letter from the other firm, Donaldson West, is of no assistance to the Tribunal.
22. The Respondent produces a detailed letter from his client confirming that the rate of charging is agreed and although no invoices for the work have been presented to the Tribunal the costs will only be ordered if such invoices are produced.
23. No evidence was put to the Tribunal to suggest that the landlord would not have employed the same firm of solicitors on the same terms on its own behalf. Accordingly the Tribunal is not prepared to determine that the costs in issue have been unreasonably incurred having regard to the strict terms of S.60 and they will therefore be additionally payable by the Applicant tenant.
24. The Tribunal has seen evidence of the charge made by the valuer in preparing a valuation to fix the premium for the new lease.
25. The Tribunal has allowed the addition of VAT on the understanding that the Applicant is not registered for VAT and is unable to recover this cost.

A handwritten signature in black ink, appearing to read 'Brandon H R Simms', written in a cursive style.

**Brandon H R Simms FRICS MCI Arb  
Chairman**

**Dated 11 May 2010**