

**NORTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

MAN/00BQ/OAF/2006/0032

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 21 LEASEHOLD REFORM ACT 1967.**

Applicant: Miss V Holt and Mr R Whittaker
Respondent: Freehold Managers plc
Property: 8 Bealbank Close, Newhey, Rochdale OL16 4LF
Date of Application: 24 September 2006

Members of the Leasehold Valuation Tribunal:

Mr M Davey (Chairman)
Mr M Hope
Mr L Bottomley

Date of Tribunal's Decision: 8 March 2007

1. This document records the reasons for decision of the Leasehold Valuation Tribunal in respect of an application by Miss V Holt and Mr R Whittaker ("the applicants") under section 21 of the Leasehold Reform Act 1967 for determination of the price payable for the freehold of the above property.
2. The applicants hold under a lease originally granted on 10 April 1997 for a term of 999 years from 1 July 1996 between W&C Hill Construction (Rochdale) Limited and Anthony David Sutcliffe and Christopher Colin Campbell. The applicants became registered proprietors of that leasehold estate on 21 August 2003. The respondent freeholder is now Freehold Managers plc PO Box 2098 London SE1 1WY.
3. The rent payable under clause 4 of the lease is a yearly rent of £75.00 increasing by £75.00 every 30 years up to a maximum yearly rent of £300 payable by equal yearly payments on 24 June each year.
4. In April 2006, the freeholder indicated to the lessees that it would be prepared to sell the freehold to them for £2,190 not including legal costs or a trustee fee. By a letter dated 5 May 2006, the lessees offered a sum of £1,200 not including costs. By a letter dated 10 May 2006 the freeholder responded with a counter offer of £1,971 plus legal costs of £175 plus VAT, a land registry fee of £40.00 and a Trustee fee of £30.00. By a letter dated 24 May 2006 the lessees made a final counter offer of £1,400 net of legal fees etc. By a letter dated 26 May 2006 the freeholder rejected the latest counter offer from the lessees and reiterated the terms of its offer of 10 May 2006.
5. By a notice in due form dated 19 June 2006 the applicants gave notice to the respondent under section 5 of the Leasehold Reform Act 1967 of their desire to have the freehold of the above house and premises. By a letter dated 7 August 2006 the respondent's solicitors, Hatchers, 25 Castle Street, Shrewsbury SY1 1DA gave notice in reply to the applicants admitting the right and stating that the lessee will be responsible for the lessor's surveyor's fees and all legal costs including the issue of the counter notice.
6. By an application dated 14 August 2006 together with a covering letter dated 18 September 2006, which were received by the Tribunal on 24 September 2006, the lessees made the present application. Directions were issued to the parties by the Tribunal Chairman on 15 January 2007 and a hearing date of 7 March 2007 was set, the hearing to be held in the Tribunal's offices at 26 York Street Manchester M1 4JB.

7. On 7 March 2007 the Tribunal inspected the property in the presence of Miss Holt. The property is the middle house of a block of three modern terraced houses on an estate of similar properties. There are gardens to front and rear. The ground floor comprises a hall, through lounge/dining room with patio doors to the garden, and a modern fitted kitchen. On the first floor there are two bedrooms, a small boxroom/dressing room and a bathroom/w.c. There is full gas central heating and a gas fire in the lounge. The property is pleasantly located on the outskirts of Rochdale with open views to nearby countryside.
8. Miss Holt attended the hearing. The landlord was not present or represented. At the hearing Miss Holt provided the Tribunal with copies of correspondence between herself and Mr Eric Shapiro of Moss Kaye Pembertons Ltd., Station House, 9-13 Swiss Terrace, Finchley Road, Swiss Cottage, LONDON NW6 4RR. Mr Shapiro wrote to the lessees on 9 February 2007 stating that he had been instructed in this matter by the respondent. He pointed out in his letter that the lessees' offer of £1,400 to buy out the ground rent was predicated on a capitalisation rate of 8.46% which was too high because no Building Society would pay this interest rate (equivalent to 6.96% after basic rate tax). Thus a settlement at this figure would be a significant saving for the lessees. However, whilst he considered that the respondent's latest offer was a fair one Mr Shapiro said that he would like to offer a compromise of £1,750 (which reflects a capitalisation rate of 5.92%) to avoid the need for the tribunal hearing. By a later letter dated 27 February 2007 Mr Shapiro confirmed that the offer was exclusive of legal and surveyor's fees in accordance with the Act and stated that he believed that the fees would be modest. By a letter dated 2 March 2007 the lessees rejected this offer.
9. At the hearing Miss Holt produced a copy of the reasons for decision document relating to an earlier Tribunal decision in respect of a similar property in the locality owned by the same freeholder (LV/116 heard on 17 April 2003: 15 Townhouse Road, Littleborough, Rochdale, OL15 9BG). She was aware of this because the lessee of that property was a friend of Miss Holt. That property was also built in 1997 and sold on a lease for 800 years on identical rental terms as the subject property. The Tribunal in that case determined that a fixed gross yield of 8.5% was appropriate and determined a purchase price of £1,020 exclusive of permitted costs. The Tribunal decided that it was appropriate to consider this evidence, although not submitted in accordance with the directions, because the freeholder must be taken to have been aware of decisions affecting other properties within its portfolio.
10. The respondent was not represented at the hearing on 7 March 2007. However, on 5 March 2007 Mr Shapiro faxed and posted some representations to the Tribunal Office. Those representations were sent to the Tribunal members by post the following day. Unfortunately they were not received until after the hearing. Despite the late submission the Tribunal decided to consider this evidence, which had not been

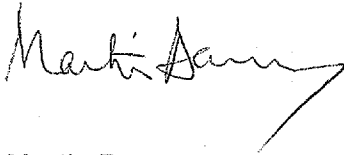
submitted in advance as required by directions, because its essential argument, as to the appropriate yield rate, had already been communicated to the lessees in the earlier correspondence. Mr Shapiro says that the applicants did not produce an agreed trial bundle as required by directions. However, it was tolerably clear that if an agreed bundle had not been provided, each party should provide its own evidence not later than 14 days before the hearing. It is slightly disingenuous of Mr Shapiro to suggest that the initiative in providing an agreed bundle lay with the lay applicants.

11. In his letter, Mr Shapiro, after confirming that he was a very experienced qualified valuer, stated that the sole issue was the appropriate capitalisation rate to be applied to the ground rent. He believed that this should be 6% giving a premium of £1,719. A valuation was attached.
12. Mr Shapiro referred to an enclosed decision of a leasehold valuation tribunal (LVT) of the Midlands Rent Assessment Panel on 1 January 2005, which had determined a rate of 7% in respect of a fixed ground rent. (24 Brookwillow Road, Haleowen, BIR/OOCR/OAF/2004/0138 and BIRJOOCN/OAF/2004/0009). This case involved a rent of £14 per annum without any review. By contrast, Mr Shapiro believed that 6% was appropriate in the present case to reflect the rising nature of the higher ground rent over the years. He further made reference to a decision of the Greater Manchester and Lancashire Rent Assessment Panel in 1996 where a leasehold valuation tribunal had determined a yield of 8.7% in respect of a fixed ground rent of £30 p.a. for the entire 999 year term of the lease. (54 Fernwood, Marple Bridge, Stockport Cheshire SK6 5BE). However, he says that case is also distinguishable as involving a fixed rent for the whole term where, as the Tribunal pointed out, there was no prospect of capital appreciation. Finally, Mr Shapiro stated that in determining the rate of interest regard must be had to the yields which are available to a landlord in alternative investment markets notwithstanding the factors which distinguish a property investment from any other investment.
13. In coming to its decision the Tribunal took its first function to be that of determining a price in accordance with section 9 of the Leasehold Reform Act 1967 viz: "the amount at which at the relevant time the house and premises, if sold in the open market by a willing seller (with the tenant and members of his family who reside in the house not buying or seeking to buy) might be expected to realise...."
14. The Tribunal agreed that in the present case the freehold reversion was so distant as to render the value of the reversionary interest irrelevant. (See e.g. *Janering v English Property Corporation Ltd and Nessdale Ltd* [1977] 242 EG 388). In practice the only issue was as to the capitalised value of the rent payable under the tenancy from the date of service of the notice of claim to the original term date. In turn the only difficulty in this exercise is the selection of the appropriate rate of return

for that purpose. The applicants propose, in effect, 8.5% whilst the respondent proposes 6%. The applicants rely on an earlier tribunal decision of this Panel where a rate of 8.5% was adopted for a similar property with an identical ground rent and also a very long term. The respondent relies on a decision from the Midlands Panel where 7% was adopted for a fixed ground rent of £14 p.a. It also relies on the significance of money market rates of return on an equivalent investment.

15. Given the paucity of evidence in the present case, the Tribunal has had due regard to that evidence but has also relied on its own experience and judgment. It has taken into account the size of the ground rent, the escalator clause providing for periodic increases up to a maximum of £300 p.a. together with the current low interest rate environment. Having done so it has determined that the appropriate gross yield should be 7.5%. This produces a purchase price of £1285.11; say £1285. The Tribunal is conscious that this departs from the decision of the Tribunal referred to in the applicant's evidence but is mindful that the decision of one Tribunal is not automatically binding on another as well as the fact that the Lands Tribunal has in recent decisions laid emphasis on the need to have regard to rates of return on alternative investments.
16. The Tribunal has accordingly determined a purchase price of £1285 for the freehold of the subject property. A valuation is annexed to this decision.
17. Under the Leasehold Reform Act 1967, section 9(4) the lessees are also responsible for the following costs: (a) the landlord's valuation costs. This includes costs incurred by the landlord in obtaining a valuation, but does not extend to the costs of obtaining a valuation carried out in connection with the application to the Tribunal; (b) the landlord's ordinary conveyancing costs; (c) the costs of, or incidental to, "any investigation by the landlord of [the applicants'] right to acquire the freehold." The Act does not require any person to bear the costs of another person in connection with an application to the leasehold valuation tribunal.
18. In his submission, Mr Shapiro asks the Tribunal to award his firm's bill of £250 plus VAT (a total of £293.75) as being the landlord's valuation fee. However, as noted above, it is tolerably clear that the valuation produced by Mr Shapiro was in connection with the application to the Tribunal. (His letter of 9 February 2007 to the lessees states that "My appointment arises by virtue of the fact that the Residential Property Tribunal has set down a hearing date of 7th March 2007 to determine the premium payable"). As such therefore it is not recoverable by the freeholder from the lessees.

19. In so far as the freeholder seeks to claim recoverable costs, as permitted by the Act, those costs must be reasonable and must be in respect of or incidental to the matters set out in paragraph 17 (a) to (c) above. Thus the landlord must show what costs have actually been incurred and in default of agreement between the parties the Tribunal has power, on application, to determine the amount of any costs payable.

A handwritten signature in black ink, appearing to read 'Martin Davey', with a long, sweeping underline that extends to the right.

Martin Davey
Chairman

28 March 2007

Annex

VALUATION USING A FIXED YIELD OF 7.5%

a)	Current ground rent		£75.00 p.a.	
	Years purchase for 19 years at 7.5%		9.959	£746.93
b)	Reversion to increased ground rent		£150.00 p.a.	
	Years purchase for 30 years at 7.5%	10.747		
	deferred 19 years at 7.5%			
	Present value of £1 in 19 years	0.253	2.988	£448.19
c)	Reversion to increased ground rent		£225.00 p.a.	
	Years purchase for 30 years at 7.5%	10.747		
	deferred 49 years at 7.5%			
	Present value of £1 in 49 years	0.0289	0.34	£76.79
d)	Reversion to increased ground rent		£300.00 p.a.	
	Years purchase in perpetuity at 7.5%	11.76471		
	deferred 79 years at 7.5%			
	Present Value of £1 in 79 years	0.044	0.0124235	£13.20
				£1,285.11

Say £1,285.00