

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**Southern Rent Assessment Panel &  
Leasehold Valuation Tribunal**

**Decision and reasons on an application under section 24 of the Leasehold Reform,  
Housing and Urban Development Act 1993.**

Case No: Case Number CHI/OOMW/OCE/2008/0028

Property: Cliff House, Bonchurch Shute, Ventor, Isle of Wight PO38 1NU

Applicant: Cliff House, (Bonchurch) Management Company Limited.

Respondent: Cliff Investment Properties Limited

Directions: 23rd May 2008

Revised  
directions: 30th July 2008

Applicants  
Report 22nd July 2008

Joint report: 17th September 2008

Date of  
inspection: 4th November 2008

Hearing: 4th November 2008

Decision: 28th November 2008

Appearances: For the Applicant  
Gemma Fox of Glanvilles  
Tim Smart FRICS IRRV

For the Respondent  
Mr B J Acutt Director

Members of the Tribunal:  
Ms T Clark (Chairman)  
Mr D Nesbitt FRICS  
Mr D Lintott FRICS

## **Summary of Decision**

The Tribunal has determined that in relation to the capitalisation of the ground rent the appropriate figure is 7%.

The Tribunal determined that the deferment rate in this case should be 5%, there being no compelling evidence to depart from the guidance in the *Sportelli* appeals.

In relation to relativity the Tribunal agreed upon a figure of 93% as being appropriate for this property.

There was a dispute concerning the extent of the land subject to the application but this is now an issue that has been resolved between the parties. In addition it has been agreed by the parties that the cliff face adjacent to the building does not form part of the property subject to the application and is to be retained by the Respondent.

## **Introduction:**

1. This is an application by Cliff House (Bonchurch) Management Company Ltd whose members comprise the long leaseholders of the flats within the building. There are 9 flats in total with two non participating tenants (Flats 1 and 6). One of the non participating tenants is Mr Acutt, (Flat number 6) one of the directors of the Respondent Company. The Applicants claim for collective enfranchisement of the property under the Leasehold Reform, Housing and Urban Development Act 1993.
2. The original application was dated 27th September 2007. The price proposed was £35,000. The Counter-Notice is dated 28th November 2007 and accepts that the participating tenants were entitled to exercise the right of collective enfranchisement but makes the counter proposal of enfranchisement at a price of £112,000.
3. The original leases were all for a term of 99 years. Each had different commencement dates.

4. The ground rents are £30 per annum for the first 33 years rising to £60 p a for the next 33 years and then £120 p a for the remainder of the term of the lease.
5. The Tribunal was told that the leases provided that there was a right of access of all lessees over the car parking and pathway accesses and use of the aforesaid parking arrears for vehicles.

**6. Inspection:**

7. The Tribunal inspected the building and grounds accompanied by a representative of the managing agents BSC , Rebecca Blake BSc. Mr and Mrs Acutt for the Respondents elected not to be present, having met with the tribunal earlier at the property. The Tribunal met two of the leaseholders during the course of the inspection. The Tribunal inspected 3 of the flats in total, flats 4, 7 and 2 which were representative of the flats as a whole.
8. The building is a large property built in around 1840 of island stone and sits directly adjacent to and under the cliff face at Bonchurch. There are 3 floors and nine flats. There are attractive communal gardens and parking space for several cars. No parking allocation appeared to be in place. The views from the property across the communal gardens and beyond along the south of the Isle of Wight were very attractive.

**Hearing:**

9. The hearing took place on the 4th November 2008 at a meeting room at Ventnor Botanic Gardens. The Applicants were represented by Glanvilles solicitors and Mr Tim Smart FRICS IRRV, Chartered Surveyor. The Respondents were represented by Mr Acutt and his wife Mrs Acutt, although ultimately we only heard from Mr Acutt.
10. The Tribunal outlined the procedure to be adopted for the hearing. The Tribunal noted that Mr Acutt had elected to represent his own interests as a Director of the

Respondent company. He had also elected to give evidence directly of valuation and a joint report had been prepared by himself and Mr Smart in relation to valuation. This report is dated 17th September 2008. The earlier report of Mr Smart alone is dated 22nd July 2008.

11. Initial directions had been given on this matter on 23rd May 2008. Mr Acutt had written to the tribunal office pointing out that the original directions had not been complied with and requesting a re-timetabling of this application. We noted that this was done by way of further directions dated 30th July 2008.
12. The Tribunal noted that Mr Acutt sought to introduce very detailed written submissions at the hearing that had not previously been served on the tribunal nor the Applicants. Although we noted that the revised directions provided for skeleton arguments to have been supplied to the Tribunal no later than 17th October 2008 (and thereafter would have been served upon the Applicant by the tribunal office), and indeed a skeleton argument had been filed with the Tribunal by the Respondent which was dated 20th October 2008, the Tribunal determined that it was nevertheless appropriate to consider these further written submissions. The Tribunal therefore adjourned the hearing until after lunch to enable the Tribunal and Mr Smart to fully consider these submissions before any evidence was heard.
13. It was agreed at the commencement of the hearing that the date for the purposes of valuation was the date of the initial notice, that is the 27th September 2007. The Tribunal was also told that the valuation of all the flats was not in issue and was agreed. The Tribunal was also told that the plan attached to the counter-notice was agreed as showing the extent of the land which the Applicant is entitled to acquire under the Act.
14. The Tribunal first heard from Mr Smart on behalf of the Applicant.

15. In relation to the capitalisation of ground rent Mr Smart gave evidence justifying his expert opinion that 8% was the correct percentage. He did this by reference to another decision which he had researched in relation to a case concerning a property in 88 Nightingale Road in Southsea, and based on the difficulties which he outlined in relation to maintenance of the current property. He stated that his knowledge of the local market justified such a percentage. Mr Smart said that had the ground rent been fixed and not incremental he would have used 9% to capitalize the ground rent.
16. In relation to relativity Mr Smart referred to various graphs that had been produced by Mr Acutt in his written submissions. Mr Smart stated that he relied upon his local knowledge of the market on the Isle of Wight and that in his opinion there was no evidence to justify a reduction of 10% in market values, stating that in his view purchasers on the Isle of Wight did not pay a great deal of attention to the length of the lease unless it effected their ability to obtain a mortgage. In his view and in the light of a 70 + term of the lease left to run this was not the case here. He conceded on being questioned by the tribunal that 93% to 94% may be appropriate. Mr Smart stated that a fundamental issue in this case was poor management. He told the tribunal that in 2003 a manager had been appointed by a differently constituted tribunal and that some ground rents remained unpaid and there was a reluctance by some tenants to pay the maintenance charges. He concluded that problems with managing the property was still an issue and he foresaw no quick end to this problem. All this contributed to his decision on this point.
17. In relation to the deferment rate Mr Smart made the following points;
- that little money had been spent on the building in recent years,
  - the stonework was a problem in a marine environment
  - Flat 7 had achieved a price of £190,000 but that following a survey this offer had dropped to £100,000 only 2 months ago (the vendor had ultimately pulled out)

- there was known ground movement in Ventnor and that risk problems could arise during the remaining 70 years of the term of the lease.
- that the property was immediately adjacent to the cliff and may be subject to falls
- the poor management of the building
- that Ventnor is not a PCL (Prime Central London) area
- and that for all these reasons he sought to persuade the tribunal to depart from the decision in Sportelli .

18. The Tribunal then heard from Mr Acutt who primarily relied on his written submissions.

19. In addition to his written submissions and skeleton argument Mr Acutt referred to flat 7 and explained that the flat had been lived in by an elderly lessee since 1972 and needed a complete refurbishment. And that in fact it had gone to sealed bids. Flat 5 (which the Tribunal inspected) had been on the market at £245,000 and that a buyer had been found pretty quickly.

20. On capitalisation of ground rent Mr Acutt referred to a case heard by the Southern Tribunal concerning Ventnor Villa's, in Hove East Sussex , Case number HI/00ML/OCE/2007/0061 and invited the tribunal to find that if a 7% rate had been used with that property and that in the Ventnor Villa's case there was no stepped income (thus giving the current property a better income stream).

21. Mr Acutt stated that in relation to deferment Mr Smart had been unable to give him any substantive evidence in support of a figure of 6% and also that the majority of properties with land movement were in Ventnor.

22. In relation to relativity Mr Acutt again referred to the Ventnor Villa's case and invited the tribunal to find that 95% could not be read from the Beckett and Kay "graph of graphs" which he produced in his written submissions.

23. Finally, Mr Acutt stated that there was no evidence of landslip and there was no experts report on this point.

24. The Tribunal in reaching its decision took into account those matters specified in the Act in valuing the freehold interest for collective purchase. These include

- a. income from ground rents
- b. the reversionary value of the freehold
- c. the marriage value where appropriate
- d. the value of other interests
- e. compensation for other losses.

**25. Determination:**

Capitalisation:

26. Having heard and considered all the evidence including the incremental nature of the ground rents in this case the Tribunal concluded that the correct figure for capitalisation of ground rent is 7%

Deferment:

27. Having heard the evidence of Mr Smart the tribunal were not persuaded to move away from the decision in Sportelli, which the Tribunal had considered, and took particular account of paragraph 102 of that judgment that 5% for flats "should be a starting point" for rates outside the PCL area. It was for Mr Smart to justify a departure from this starting point and the Tribunal determined that the factors listed above at paragraph 17 were insufficient to justify such a departure.

Relativity:

28. The Tribunal was not persuaded by the evidence from Mr Smart that the "graph of graphs" could be read in the way suggested he had suggested. The Tribunal preferred the approach adopted by Mr Acutt. The Tribunal is entitled to use its collective knowledge and experience, and after a full review of the evidence determined that the correct percentage would be 93%

29. The Tribunal sets out its full valuation for the enfranchisement of the property in the attached Appendix, which forms part of this decision.

30. The Tribunal raised the matter of costs which have not yet been agreed between the parties. The Tribunal reminded the parties that in the event of a disagreement as to the reasonable costs of the Respondent payable by the Applicants that matter could be referred to the Tribunal as a separate application.

31. At the conclusion of the hearing the Tribunal suggested that the parties prepare a more detailed version of the Respondents plan annexed to his counter-notice and that it shows clearly that the Respondent intends to retain the legal interest, benefit and the burden of the cliff face.

(signed)

MISS T A CLARK (CHAIRMAN)



**Leasehold Reform & Urban Development Act 1993  
Section 24.**

**Determination of Freehold Enfranchisement Value**

**Cliff House, Bonchurch Shute  
Ventnor, Isle of Wight PO38 1NU**

**Agreed Facts:**

Valuation Date:	29 <sup>th</sup> September 2007	
Unexpired Lease Terms:	Flats 1,2,3,4,5,7,8 & 9; 71.25 years. Flat 6; 171.25 years.	
Participating Flats:	2,3,4,5,7,8 & 9	
Non Participating Flats:	1 & 6	
Ground Rents:	Flat 6;	£30 for first 33 yrs. £60 for second 33 yrs. £120 for remaining 133 yrs.
	All Other Flats;	£30 for first 33 yrs. £60 for second 33 yrs. £120 for remaining 33 yrs.

Existing Leasehold Values (Unimproved)

Flat 1	£228,000
Flat 2	£218,500
Flat 3	£142,500
Flat 4	£228,000
Flat 5	£228,000
Flat 6	£180,000
Flat 7	£228,000
Flat 8	£228,000
Flat 9	£161,500

**Matters for Determination:**

Capitalisation Rate	determined at	7.0%
Deferment Rate	determined at	5.0%
Relativity Rate	determined at	93%

**Valuation:**

Valuation of Freehold Interest. Participating Flats.

Ground rents:			
1 <sup>st</sup> Term	7 x £30	£210	
	YP 5.25 yrs @ 7%	<u>4.266</u>	£ 896
2 <sup>nd</sup> Term	7 x £60	£420	
	YP 33 yrs @ 7% 12.754		
	PV 5.25 yrs @ 7% <u>0.7006</u>	<u>8.935</u>	£ 3,753
3 <sup>rd</sup> Term			
	7 x £120	£840	
	YP 33 yrs @ 7% 12.754		
	PV 38.25 yrs @ 7% <u>0.0752</u>	<u>0.9591</u>	£ 806
Reversion to Freehold Value		£1,434,500	
	PV 71.25 yrs @ 5%	<u>0.03093</u>	<u>£44,370</u>
			£49,825

Valuation of Current Leasehold Interest:

As Agreed	£1,434,500
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Marriage Value:

Value after Marriage (CV adjusted for Relativity)			
	£1,434,500 ÷ 93 x 100		£1,542,473
Less:			
Value before Marriage			
	Current L/hold Value	£1,434,500	
	Current F/hold Value	<u>£ 49,825</u>	<u>£1,484,325</u>
			£58,148
Freeholder share @ 50%			<u>£29,074</u>
			£78,899

**Valuation:**

## Valuation of Freehold Interest. Participating Flats.

Ground rents:			
1 <sup>st</sup> Term	7 x £30	£210	
	YP 5.25 yrs @ 7%	<u>4.266</u>	£ 896
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	7 x £120	£840	
	YP 33 yrs @ 7% 12.754		
	PV 38.25 yrs @ 7% <u>0.0752</u>	<u>0.9591</u>	£ 806
Reversion to Freehold Value		£1,434,500	
	PV 71.25 yrs @ 5%	<u>0.03093</u>	<u>£44,370</u> £49,825

## Valuation of Current Leasehold Interest:

As Agreed £1,434,500

## Marriage Value:

Value after Marriage (CV adjusted for Relativity)			
	£1,434,500 ÷ 93 x 100		£1,542,473
Less:			
Value before Marriage			
Current L/hold Value	£1,434,500		
Current F/hold Value	<u>£ 49,825</u>	<u>£1,484,325</u>	£58,148
Freeholder share @ 50%			<u>£29,074</u>
			£78,899

Valuation of Freehold Interest. Non Participating Flats.

Flats 1 & 6.

1 <sup>st</sup> Term	Ground rents	£60		
YP 5.25 yrs @ 7%		<u>4.266</u>	£	256
2 <sup>nd</sup> Term		£120		
YP 33 yrs. @ 7%	12.754			
PV 5.25 Yrs @ 7%	<u>0.7006</u>	<u>8.935</u>	£	1,072
Flat 1. 3 <sup>rd</sup> Term		£120		
YP 33 Yrs @ 7%	12.754			
PV 38.25 yrs @ 7%	<u>0.0752</u>	<u>0.9591</u>	£	115
Reversion to		£228,000		
PV 71.25 yrs & 5%		<u>0.03093</u>	£	7,052
Flat 6. 3 <sup>rd</sup> Term		£120		
YP perp. @ 7%	14.286			
PV 38.25 yrs @ 7%	<u>0.0752</u>	<u>1.074</u>	£	128
				<u>£ 8,623</u>

Enfranchisement Value = Freehold values + share Marriage Value £87,522

**Say £87,525.**