RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL &

LEASEHOLD VALUATION TRIBUNAL

Leasehold Reform Act 1967 : Section 21

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	CHI/00HN/OAF/2005/0027
Property:	**110 Poole Road** **Westbourne** **Bournemouth BH4 9EF**
Applicants:	David Lewis & Partners Limited
Respondents:	Ian Malcolm Fraser
Determination:	**£58,815.00**

Members of the Tribunal

Mr D M Nesbit JP FRICS FCIArb –Chairman
Mr T Dickinson BSc FRICS

Date of Hearing:	13th December 2005
Date of Consideration in Private:	17th February 2006
Date of Reasons:	12th April 2006

The Statement also provided details of agreed elements and facts relating to the valuation.

6. The Experts were not agreed on the value of the tenant's interest, arising from a difference in approach and yields, and in consequence the enfranchisement price. The Applicants' valuation was for the property as a whole, and total rental income and a term and reversion basis at a rate of 11%.

7. The Respondents' valuer did not take an "overall approach" by valuing the rental income of the shop and valuing the residential maisonette separately, and having regard to both rent and capital value.

Inspection

8. Prior to the Hearing, the Tribunal made a detailed inspection. The property is a three storey inner terrace building, originally built circa 1900 of brick cavity construction under a pitched tiled roof. The ground floor is currently arranged as retail shop premises, including a basement area. There is the benefit of a rear entrance.

9. The upper floors are arranged as a residential maisonette, with a separate ground floor entrance, with stairs leading to the first and second floors. The Tribunal particularly noted the state of serious disrepair affecting the maisonette, which had not been occupied for many years, and general defects affecting the structure of the building.

10. The Tribunal noted that the premises formed part of a local neighbourhood shopping area, in which various multiple firms were represented.

Hearing

11. The Applicants were represented by Timothy Harry, Counsel, instructed by Glinert Davis, who called Philip George Wright MRICS, of Sibbett, Gregory Wright & Coles Ltd of Poole. The Respondents were represented by Damian Greenish, Pemberton Greenish, solicitors, who called Simon John Walsham BSc FRICS ACIArb, partner, James & Sons of Poole.

12. Expert evidence for the Applicants was given by Mr Wright, whose proof of evidence had been submitted in advance. He proposed an enfranchisement price of £53,300. He reviewed his detailed proof, stating that because of its poor order, the residential maisonette was uninhabitable. He confirmed that two elements of the freehold valuation had been agreed, but not the value of the tenant's interest. His valuation approach had been to regard the property as one unit and a total rental income, but to deduct costs of essential repairs of £50,000. He had considered comparable properties, including the letting of the maisonette at 120 Poole Road with which he had been involved.

13. He provided information of sales of leasehold interests, including 5/6 Lansdowne Crescent, Bournemouth, with which he had been directly involved, an auction sale result of 194 Above Bar, Southampton, and sales of two properties at Bristol. As a result of his research, he maintained that an 11% investment rate was appropriate.

14. Mr Wright acknowledged that his valuation of the commercial element was as an investment, and he was looking at rental income for the property as a whole. He acknowledged his rate of 11% was greater than Mr Walsham's proposed rate of 8%, maintaining that investors took a different view of leasehold acquisitions, bearing in mind obligations to other parties. He commented upon the College of Estate Management research paper in respect of enfranchisement values and relativities. He did not agree that lettings for the residential maisonette on a room by room furnished basis was correct, pointing out more onerous requirements were likely if the premises were in multi-occupation.

15. During cross-examination by Mr Greenish, Mr Wright acknowledged that he was not a purely residential valuer, and this was his first appearance before an LVT. He was not asked if he had undertaken similar valuations. He described Westbourne as a busy sub-centre, serving a good quality locality. He confirmed he was not familiar with the locations for his Bristol comparables, and accepted that location would have an affect on yields.

16. Mr Wright did not agree that the maisonette, which had not been in use for some 15 years, had a value as proposed by Mr Walsham.

17. Mr Wright acknowledged he had no experience of selling leasehold flats. On the assumption that a tenant with a lease of 42 years unexpired, would have a right to claim a 90 year lease extension, he admitted that he would reduce his yield rate from 11% to 10%. He was closely questioned as to the relativities relating to the Bournemouth and Southampton transactions.

Regarding the letting of the maisonette at 120 Poole Road, Mr Wright stated there was a difference in the valuation date and the accommodation had the benefit of car parking, for which allowances should be made. He acknowledged that the Southampton comparable property was not comparable in Zone A terms to the subject property.

18. Mr Greenish introduced Mr Walsham, who reviewed his evidence and valuation, and also agreed the revised price for the Applicant was now £110,300.

19. He regarded Westbourne as a high class area where few shops had become vacant. In respect of the repair and condition of the premises, he had noted there was no requirement for a fire escape.

20. In respect of the valuation, the value of the tenant's interest had not been agreed. He had valued the maisonette and the shop separately, but also as a whole, and he could not accept the maisonette had a negative value. He had reviewed LVT Decisions, details being included as Appendices to his report.

21. In respect of the research document by the College of Estate Management, the information provided was an indication that should not be relied on, and in any event, had been published in August 2000. He had undertaken a valuation on the basis that a 90 year lease extension would be available. The maisonette had a value for "buy to let" purposes. He had allowed for the agreed cost of repairs of £50,000, together with deductions for management expenses and outgoings. He considered letting by rooms could be a possibility, and in support of his information of the residential element of

the property, his evidence included information provided by two local valuers Mr P Harrison and Mr C Wetherall.

22. Mr Walsham confirmed he had been involved with 20 cases of leasehold enfranchisement. He did not state whether he had appeared before a Tribunal.

23. Mr Walsham did not accept the comparables used by Mr Wright, and they were not similar to Poole Road, and that in investment yield terms there was little difference between a freehold and a long lease interest of, say, 99 years. A one or two percent differential would apply to shorter term leaseholds.

24. He considered his approach in respect of the maisonette was correct, and that a high deduction figure of 50% was excessive. He had assumed that the rooms would have been let on a furnished basis, with second hand furniture that complied with fire regulations, and the accommodation would have been cheaper to fit out.

25. In cross-examination by Mr Harry, he acknowledged that a new shop lease would have been available under the 1954 Landlord & Tenant Act. There were detailed questions in relation to the five LVT cases, which Mr Walsham had selected as being the five closest to the valuation date. Mr Harry referred to the Lands Tribunal decisions in *"Arbib v The Cadogan Estate"*, and noted Mr Walsham had not included in his comparable table within his report, details relating to the sale at Above Bar, Southampton.

26. Mr Walsham stated that the LVT decisions in summarised form, together with the College of Estate Management research paper, seemed to point in the same direction as his own approach.

27. In respect of his alternative valuation for the maisonette, he accepted there would be voids for multi-occupation, but there would be strong demand from students, either at Bournemouth University or from three local language schools. There was a very strong "buy to let" market locally, and he maintained there were numerous investors who would take on the management, and that a 35% deduction was generous. He was critical of the calculations made by Mr Wright regarding his comparables.

28. In respect of the two supplementary valuations being reports of Mr Harrison and Mr Wetherall, he accepted he had no idea how those valuations had been undertaken, or whether the reference in Mr Harrison's report to the 1993 Act was correct.

29. Mr Walsham was questioned by the Tribunal as to whether there may have been any changes in the relativities following the time of the publication of the College of Estate Management report, any additional requirements that might be imposed on conversion of the maisonette into flatlets, having regard to property in multi-occupation requirements, and any research regarding student lettings.

30. At the conclusion of the valuation evidence, Mr Harry made a detailed legal submission on several points. Having regard to those points, and that Mr

Greenish had no prior knowledge, Mr Harry and Mr Greenish were invited to submit full submissions on the legal issues. Those submissions were received and have been considered in detail by the Tribunal, and to which we now refer.

31. Mr Harry's first point was that no weight should be given to the valuation reports of Mr Harrison and Mr Wetherall. That information was contrary to the Direction regarding the exchange of Expert evidence. Neither of the valuers were present at the Hearing for questioning, neither of the reports included the declarations required by Experts in their evidence to Courts or Tribunals, and as Chartered Surveyors. Further, Mr Harrison may have made an incorrect reference to the 1993 Act, at best the information was only hearsay, there was no analysis of the valuations and, indeed, Mr Wetherall's valuation stated his report was not available for publication to other parties.

32. Mr Greenish acknowledges the two reports were insufficient to constitute primary evidence for the purposes of the statutory valuation. However, the reports had been included by Mr Walsham as support to local market conditions, and both authors were reputable and well known professionals.

33. Mr Greenish reminds us that the primary task of valuers under Section 9 (1A), is to find the amount which at the relevant time the premises, if sold on the open market by a willing seller, might be expected to realise. Mr Greenish suggests the Tribunal should be cautious in simply disregarding opinion of open market value from those who have the knowledge and experience of the market.

34. Mr Walsham had stated that he was properly cautious about the reports, as they lacked the analytical approach required by an Expert surveyor. However, Mr Walsham had reviewed his primary valuation evidence by looking at the opinions of others, and had Mr Wright taken that approach he would have come to the conclusion that a negative value for the maisonette was wrong, and that a relativity of 46% for an unexpired term of 42 years was also clearly wrong, when no evidence had been produced in support.

35. Finally, Mr Greenish maintained that the reports at least indicated that in the open market the maisonette had a value, Mr Wright had failed to address the issue and where the short lease of the maisonette would have a capital value beyond a capitalised rental value.

36. Our view on that point is we accept there are limitations as evidence of the two reports. We accept the two reports were not prepared for the purposes of the application before us. It is our experience that there are always transactions in any market conditions, that it is our responsibility to decide what weight we give to such evidence, which we acknowledge is frankly limited. However, we take the view that the maisonette, despite its serious disrepair, would be capable of use after extensive works had been undertaken, and we accept there would be delays before the flat had an enhanced value whilst essential works were undertaken. It is our experience that there would be investors prepared to accept the challenge and, in our opinion, the maisonette does have a value. In that sense the opinions of Mr Harrison and Mr Wetherall merely support our view.

37. The second point made by Mr Harry was whether any weight should be given to other decisions of the LVT or to settlement evidence. Mr Walsham had mentioned a number of Leasehold Valuation Tribunal decisions which he felt were useful guidance. Mr Harry referred to *"Arbib v Earl Cadogan"*. EGLR 2005, paragraph 112, which stated the "duty of the LVT in which an element in the valuation required to be determined is not agreed ..... is to consider the evidence adduced and to arrive at a determination in accordance with the relevant statutory provisions. To treat any figure, which is not agreed, as being 'established', rather than as a figure which must be justified at the valuation date ..... would be a failure by the Tribunal to perform its statutory function. We have no hesitation in stating clearly any LVT whose decision is so based, is to that extent wrong .....".

38. Specifically, Mr Harry referred us to paragraphs 115 and 116, which we repeat in full.

> (115) LVT decisions on questions of fact or opinion or secondary evidence and should be given little or no weight in other LVT proceedings and in proceedings in this Tribunal, even if they are admissible. In *Land Securities Plc v Westminster City Council* (1992) 44 EG 153, the issue was whether an arbitrator's award determining the market rent of an office building on review was admissible evidence in another rent review relating to adjoining offices. Hoffman J, after referring to the admissibility of evidence of rents in the market and on review, said (at 155):-
>
> > "An arbitration award on the other hand is an arbitrator's opinion, after hearing the evidence before him of the rent at which the premises could reasonably have been let. The letting is hypothetical, not real. It is therefore not direct

> In principle the judgement, verdict or award of another tribunal is not admissible evidence to prove a fact in issue or a fact relevant to the issue in other proceedings between different parties. The leading authority for that proposition is *Hollington v Hewthorn and Co Ltd...*"

He concluded that the award was inadmissible and said (at 158):-

> "This is not in my view a technical decision on outdated rules of evidence. Properly analysed I think that the arbitrator's award has in itself insufficient weight to justify the exploration of otherwise irrelevant issues which its admissibility would require."

(116) The same principles apply to decisions on matters of fact or opinion by LVTs and this Tribunal (see eg *Cadogan Estates Limited v Hows* where earlier decisions of LVTs and this Tribunal on yield were rejected in favour of settlement evidence), although a decision of this Tribunal may be referred to where general guidance has been given on valuation principles or procedure (eg *Clinker & Ash Limited v Southern Gas Board* (1967) 203 EG 735: observations on the use of the residual method of valuation in litigation).

39. Further, we were referred to the summary, paragraph 180 (4). "Decisions of LVT's and this Tribunal on questions of fact and opinion should not be treated as evidence of value in later cases. Such decisions do not establish any conventions or precedents, a decision of this Tribunal setting out general guidance on valuation principles or procedure however may be applied or referred to in subsequent cases." And at paragraph 180 (7) "statements relating to comparable properties are admissible as evidence of value, but are subject to criticism and will usually be given weight only where a detailed analysis of the price or value has been agreed and the agreement has not been influenced by the Delaforce effect".

40. Mr Harry maintained the Lands Tribunal derived no assistance from settlements made on the Cadogan Estate, either by way of analysis of agreements or by seeking to discover the motives and circumstances which led to the settlements. Mr Harry supported the Arbib conclusion of paragraph 180 (7).

41. Mr Harry maintains it is simply not known what factors may have led to settlements or their constituent elements. Where no detailed analysis of the price or value has been agreed, no weight should be given to that evidence, on which Mr Walsham purported to rely in support of his valuation.

42. Mr Greenish accepts previous LVT decisions and questions of fact and opinion should be given little weight, but that does not mean those decisions should simply be ignored. Those decisions become indirect or secondary evidence. Mr Greenish reminded us that decisions of the Leasehold Valuation Tribunal "form part of a broad picture". *(Blendcrown Limited v The Church Commissioners for England").*

43. Mr Greenish accepts the general criticism of settlement evidence, but submits it is not an issue that settlements are inadmissible, it is a matter of the weight that should be given to them. Mr Walsham, in his evidence, indicated there was no direct evidence that could assist us to determine the yield, a factor also acknowledged in Arbib – paragraph 180 (2). Mr Greenish commented that Mr Walsham was an experienced valuer, and his analysis of the evidence relied on by Mr Wright, should be given weight.

44. Mr Greenish comments that valuation evidence is rarely consistent and factors behind comparable evidence may not be fully known, and transactions may be capable of different analysis and influence by factors that the statute requires valuers to disregard. A valuer should consider as much evidence as is available, and finally consider whether his conclusions are supported by the evidence.

45. We respect the opinions of both Mr Harry and Mr Greenish, but their different interpretation of the "Arbib" decision only highlights the problems which valuers must consider for the purposes of determinations in accordance with the Act.

46. It is rare that directly comparable evidence is available, but it is important that valuers with experience in these technical cases have regard to as much local evidence as possible. What is a comparable property is bound to vary with the facts of each case, and it is a matter of judgement what evidence a valuer decides is relevant and includes in an Expert's report. That report will be subject to forensic examination at a Hearing.

47. In this case, there is no directly local evidence, other than information relating to the letting of the maisonette at 120 Poole Road. Mr Walsham with his greater experience, relies on information extracted from LVT decisions, mainly London based. He has also made reference to the College of Estate Management research paper.

48. As in all such cases where clear differences of opinion arise, a Tribunal has to take a balanced view, but valuers have a difficult task to perform. We do

not accept Mr Harry's contention that all LVT evidence should be disregarded. In our opinion, it is a matter for each Tribunal to make its judgement as to the weight to be given to the elements of evidence. We do state that in this instance and after a full review that the LVT information submitted by Mr Walsham is of limited assistance.

49. Mr Harry's third point is the interaction of the 1967 Act and the 1993 Act. In his evidence and during cross-examination, Mr Wright accepted his investment yield would be reduced by 1% to reflect an increased value for the Respondent being able to claim a new lease of the maisonette under the 1993 Act. That point had been made by Mr Walsham, which Mr Harry maintained was incorrect, and there was no need for any reduction in yield.

50. Mr Harry refers us to part of the speech by Lord Scott in the House of Lords decision, *Malekshad v Howard De Walden Estates Limited (2002)* at paragraphs 99, 100 and 101, to which we refer.

> **[99]** The approach ..... that I have suggested would have the consequence that where the division of a building has been mainly on horizontal lines, none of the several units could qualify as a house. It would be inevitable that the overhanging or underlying part of each unit would be a material part of the unit. But where the building has been divided mainly on vertical lines, with only a minor degree of horizontal division, the approach would make it possible for the vertical units, or at least some of them, to qualify.
> **[100]** Moreover, this approach dovetails, it seems to me with Ch II of the Leasehold Reform, Housing and Urban Development Act 1993. The purpose of Ch II was to enable a qualifying tenant of a flat, who would necessarily be unable to enfranchise under the 1967 Act, to obtain a new long lease on payment of a discounted premium (see Sch 13). 'Flat' is defined in as 101(1) as:
>
> '..... a separate set of premises (whether or not on the same floor) –
> (a) which forms part of a building, and

'..... a separate set of premises (whether or not on the same floor) –
(a) which forms part of a building, and
(b) which is constructed or adapted for use for the purposes of a dwelling , and
(c) either the whole or a material part of which lies above or below some other part of the building .....

[101] It was clearly the intention of Parliament to bring about a state of affairs in which a dwelling which formed part of building would either be a 'house' under s 2(1) and (2) of the 1967 Act or, if it was not, would be a 'flat' as defined in s 101(1) of the 1993 Act. Into which category would 76 Harley Street fall? It seems to me natural to regard it as a 'house' rather than a 'flat'. A natural reading of para (c) of the s 101(1) definition would require the 'material part' to be a part material to the flat. If it is not material to the flat, then the dwelling cannot be a 'flat' as defined.

51. Mr Harry also commented upon the cases quoted by Mr Greenish – *Maurice and others v Holloware Products Limited (2005), Earl of Cadogan and another v Search Guarantees Plc (2004);* and the LVT decision in *Trustees of the Gunter Estate v Giorgi.*

52. At the hearing, and renewed in his written closing submission, Mr Greenish stated Mr Harry had misunderstood the position and misinterpreted Parliament's intentions. Mr Greenish maintained that the Respondents were entitled to claim a new lease of the maisonette in accordance with the provisions of the 1993 Act, in addition, and not in substitution for, the right to claim the freehold under the 1967 Act. Further, Mr Greenish maintained that the existence of that right could be taken into account for valuations made in accordance with Section 9 (1C) of the 1967 Act.

53. Chapter 2 of Part 1 of the 1993 Act, confers on the tenant of a flat who fulfils certain conditions, the right to acquire a new lease. That new lease is

granted in substitution for the existing lease with the payment of a premium for a term expiring 90 years after the term date of the existing lease at a peppercorn rent. Mr Greenish posed three questions –

i) Is the maisonette a flat?

ii) Is the Respondent a qualifying tenant of that flat?

iii) If he is, was he at the valuation date a qualifying tenant for the last two years?

54. For the purposes of the 1993 Act a flat is "a separate set of premises which forms part of a building, constructed or adapted for use for the purposes of a dwelling and the whole was materially part of which lies above or below some other part of the building". Mr Greenish submits that in all respects the maisonette of the subject property is a "flat" for the purposes of the 1993 Act. It is not part of the Respondents' case, nor in Mr Walsham's evidence, that the shop could be included in a claim for a new lease of the maisonette.

55. A person is a qualifying tenant of a flat if he is a tenant of a flat under a long lease. He would not qualify if his lease is a business lease to which Part 2 of the Landlord & Tenant Act 1954 applies. Part 2 applies to any tenancy where the property comprised in the tenancy is, or includes, premises occupied by the tenant for the purposes of a business carried on by him. For the subject property, the shop was sub-let. The Respondent was not in occupation of any part of the property, and accordingly the lease was not a business lease. Mr Greenish directs us to *"Maurice and Others v Holloware Limited"*, which we have considered.

56. Mr Greenish submits that –

a) The maisonette is a flat for the purposes of the 1993 Act.

b) The Respondent was a qualifying tenant of that flat at the valuation date and had been so for at least two years.

c) The Respondent would have had the right at the valuation date to claim a new lease of the maisonette.

57. Mr Greenish responds to the reference in Malakshad commenting that Mr Harry fundamentally misunderstood Lord Scott's comments. Mr Greenish maintains Lord Scott was making the point correctly that the same set of premises cannot be both a "house" and a "flat" as legislation intended a set of premises would be either one or the other. In this instance, the property could be described as a shop with residential accommodation, or as a flat with a retail unit. As a whole it is still a house, and there is nothing in Lord Scott's comments, or the 1967 or 1993 Acts, to suggest that because a building as a whole is a house for the 1967 Act, then a flat within that building which would have the right to claim a new lease under the 1993 Act is precluded from doing so. Mr Greenish also refers to the decision in *'Earl of Cadogan and another v Search Guarantees (2004)"*, which we have considered, and also the reference in "Hague on Leasehold Enfranchisement", Fourth Edition, at page 225, - paragraph 9-33.

> "..... However it is considered that (the 1967 Act) does not preclude taking into account other factors that may be relevant to a sale in the open market of the freehold interest subject to the tenancy.
>
> For example, it is already well established that a building comprising flats can be a house for the purpose of the 1967 Act. In such circumstances, some of those flats might be subject to long sub-tenancies that entitle the sub-tenants to seek individual lease extensions under Chapter II of Part I of the Leasehold Reform, Housing and Urban Development Act

1993 or to make a collective enfranchisement claim under Chapter I. The 1967 Act claimant may himself be a "qualifying tenant" under the 1993 Act that would entitle him to claim a statutory lease extension of his flat or participate in a collective claim. Tenants of part of the house may have rights under Part II of the 1954 Act or under Schedule 10 to the 1989 Act. In such cases, there seems no reason why these and similar factors should not be taken into account in the valuation.

58. We have given these matters very careful consideration. We prefer the approach of Mr Greenish, which we find more logical and persuasive. Those views support our own experience as an expert Tribunal. We accept that it is correct to take into account a right of a qualifying tenant to an extended lease, which in turn has an impact upon the rates used within the valuations, as Mr Wright conceded.

59. We have reviewed all of the case papers and the expert valuations. We gave extended consideration of the legal submissions and we have reviewed the cases noted therein. We reviewed the yield rates proposed by the expert valuers. Mr Wright had proposed 11%, which he reduced to 10%. Mr Walsham adopted 8%. Having carefully considered all of the evidence, we have decided that the more appropriate rate is 8.5%. We have made the following conclusions -

i) That the maisonette does have value, despite its condition.

ii) That an "overall" approach to the valuation is more appropriate.

iii) That the comparable evidence is of limited or direct assistance.

iv) We determine the appropriate valuation rate shall be 8.5%.

60. Our full valuation is included as an Appendix to these Reasons. We determine that the enfranchisement price shall be £58,815.00 (fifty eight thousand eight hundred and fifteen pounds).

61. We express our appreciation of the assistance given to us by Mr Harry and Mr Greenish in their detailed legal submissions.

62. There is the outstanding matter of costs to be resolved. Some representations were made within the original Hearing bundle. Additional papers were included in the written closing submissions.

63. In the light of our determination of the enfranchisement price, we Direct that the parties submit their final representations as to the amount and liability as to costs within 14 days of publication of these Reasons.

Signed:.....

Date: 12th April 2006

D M NESBIT JP FRICS FCIArb
Chairman
A member appointed by the Lord Chancellor

110 Poole Road, Westbourne, Bournemouth

Value of Tenant's Interest

1. Commercial

Term			
Rent passing at Review Date	=	£16,000 pa	
Less Ground Rent	=	£ 390 pa	
Profit Rent	=	£15,610 pa	
YP @ 8.5% for 1.583 years	=	1.4252929	
			£22,249
Estimated Rental Value at			
Rent Review Oct 2005	=	£19,000 pa	
Less Ground Rent	=	£ 390 pa	
Profit Rent	=	£18,610 pa	
YP @ 8.5% for 41.167 years	=	11.355403	
Deferred 1.583 years ie PV of £1	=	0.8788499	
			£185,722
Sub-total "core commercial value"			£207.971
2. Residential			
Tribunal's assessment of market value			£ 56,000
Value of leaseholder's interest			
			£263,971

Enfranchisement Price Calculation

Value of unencumbered freehold interest (Agreed)		£350,000
Less		
Value of Landlord's interest (Agreed)	£ 31,600	
Plus		
Value of Tenant's interest	£263,971	
		£295,571

Marriage Value		£ 54,429
50% share of marriage value		£27,214.50
Plus		
Landlord's interest		£31,600
Enfranchisement Price		£58,814.50
	but say	**£58,815**

STATEMENT OF AGREED FACTS

110 Poole Road, Westbourne
Bournemouth
BH4 9EF

1. The Property

a) Description

The property comprises a mixed use property arranged as a ground floor shop and basement with first and second floor maisonette in a three-storey mid-terraced building constructed principally of cavity brickwork under a pitched and hipped interlocking concrete tile roof. Upper floors containing living accommodation are self-contained. It is thought the property was built originally around 1900.

b) Accommodation

Ground Floor

Shop ITZA 48.49 sqm (522 sqft) or 46.08 sqm (496 sqft) with a kitchen/store of 9.85 sqm (106 sqft), stairs down to:- Basement 52.77 sqm (565 sqft)
Sep Entrance Hall, stairs to: -

First Floor

Lower Landing, Kitchen, Bathroom, Sep WC, Steps up to Upper Landing, Bedroom 1 (D), Lounge, stairs to: -

Second Floor

Half Landing with access to roof space
Landing, Bedroom 2 (D), Bedroom 3 (D), Bedroom 4 (D)

Outside

Rear yard

c) Situation and Location

The property is situated fronting onto Poole Road in a prominent position within the commercial shopping centre of Westbourne, approximately 1½ miles west of Bournemouth town centre. The property adjoins a branch of Lloyds bank plc and is situated amongst several national as well as more local retailers and a variety of mixed commercial uses including A2 offices, cafes, restaurants and wine bars. Westbourne is generally regarded as a good class vibrant retail area.

2. The Head Lease

a) Date of Lease	15th January 1948
b) Term	99 years from 25th December 1947
c) Repair	FRI
d) Alienation	Non-restrictive
e) General	No other significant clauses affecting Value
f) Ground Rent	Fixed Ground Rent £390.00 p.a.

3. The Shop Lease

a) Date of Lease	25th October 2002
b) Term	5yrs from 10th October 2002 (ie until 2007)
c) Repair	FRI with 50% contribution to main structure
d) Alienation	Part Prohibited. Pre-emption rights on any assignment
e) Rent Review	10th October 2005

	Upwards Only
	Usual Assumptions and Disregards
	Interest payable
f) User	A1 Retail (Open user clause)
g) L&T '54	Contracted Outside the Landlord and Tenant Act 1954
h) Commencement Rent	£16,000 p.a.
i) Reviewed Rent	£20,000 p.a. 10th October 2005
i) General	No other significant clauses affecting Value

4. Valuation

a)	Valuation Date	-	25th February 2004
b)	Fixed Head Lease Ground Rent	-	£390 p.a.
c)	Unexpired Term from Valuation Date	-	42.83333 years
d)	Unexpired Term from Rent Review Date	-	41.167 years
e)	Term from Valuation Date to Rent Review Date	-	1.583 years
f)	Value of residential part in good condition	-	£130,000
g)	Value of residential part in actual condition	-	£ 80,000
h)	Rental Value of Shop as at Valuation Date	-	£ 19,000 p.a.
j)	All Risks Yield (ARY) – Freehold Interest	-	6.115%
k)	Unencumbered Freehold value at Val Date	-	£350,000
l)	Value of Landlord's interest at Val Date	-	£31600

OUTSTANDING ISSUES

The valuers are not agreed on the value of the Tenant's interest and as a result the enfranchisement price.

The difference arises from a difference in approach and the yields adopted.

In summary Mr Walsham considers it inappropriate to Value "overall" bearing in mind the effect of the Full Repairing lease on the shop. Mr Walsham is valuing the rental income from the shop premises on a term and reversion basis at a single rate of 8% and valuing the maisonette separately by having consideration to both rental and capital value.

Mr Wright is valuing the property as a whole on the basis of the total rental income also on a term and reversion basis at a single rate of 11%.

S J Walsham BSc FRICS ACIArb

P G Wright MRICS

Dated 24th November 2005

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
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Your reference: RAD

Our reference:

Date: 31st May 2006

Case No: CHI/00HN/0AF/2005/0027
Re: 110 Poole Road, Westbourne, Bournemouth
Application to Appeal

1. Messrs Glinert Davis, solicitors for the Applicants, David Lewis & Partners Ltd, by letter dated 28th April 2006 apply for permission to appeal the Tribunal's Decision dated 12th April 2006.

2. The Grounds of Appeal, are that there would be a reasonable prospect of persuading the Lands Tribunal that the Decision is wrong.

3. This Tribunal has carefully considered the Grounds of the Application, and for which a further review of the Decision Reasons and the case file has been undertaken. This Tribunal responds as follows.

4. The full Grounds have been considered, the headings are for convenience.

Ground No 1
'The Applicants state that the LVT erred in giving any weight to the "reports" of Mr Harrison and Mr Wetherall.'

5. The Tribunal's Decision makes it clear there are limitations as evidence of the reports referred to, and which the Tribunal accepted were not prepared for this case. Notwithstanding the Tribunal's views, reference was made to the reports within the evidence, but the

Ground No 2

'The Tribunal's Decision erred in giving any weight to other LVT Decisions or settlement evidence.'

6. These points are covered in full within the Tribunal's reasons at paragraphs 37-48. The Applicants are seeking to repeat evidence made at the Hearing and in subsequent written submissions, with particular reference to the Decision in "Arbib".

7. The Tribunal's Decision fully reviewed those arguments and makes clear that evidence from LVT Decisions quoted were of limited assistance (see paragraph 48). The Applicants' contentions regarding the "Arbib" decision are not accepted, as set out within the Tribunal Decision.

Ground No 3

'The Tribunal erred in determining that the Respondent had a right to claim a new lease of the flat under the 1993 Act and such right was not to be disregarded under the 1967 Act.'

8. Again, the Tribunal received very full representations at the Hearing and in subsequent written submissions. The Tribunal's Decision referred extensively to the specific issues (paragraphs 49-58). That Decision indicates why the arguments for the Respondents were judged to be more logical and persuasive, and the Decision refers to cases which are binding on an LVT, specifically Maurice and Others –v- Holloware Ltd.

Ground No 4

'The Tribunal erred in that it did not have or provide recent valuation basis for the yield rate of 8.5%.'

9. The Tribunal disagrees there was no valuation evidence to support the adopted yield. That yield rate was within the range of rates proposed by both parties' Experts and as amended during the Hearing. Further, the Tribunal is entitled to use its expert judgement in respect of all the evidence, which it fully reviewed in reaching its conclusions.

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Ground No 5

'The Tribunal erred in not accepting the evidence of Mr Wright for the Applicants.'

10. It is the Tribunal's function to weigh and to adjudicate upon the evidence. It has done that in this instance and the reasons for its conclusions are fully set out. It is not suggested that this is a conclusion that was not open to a Tribunal acting reasonably in the matter.

Conclusions

11. The Tribunal's views are there are no additional issues arising which in the public interest would justify an appeal to the Lands Tribunal. This Tribunal is entitled to decide what weight to give to all evidence and to decide how their decisions apply to the facts of the case. In this instance, the issues were very fully tested at the Hearing and repeated in subsequent detailed legal submissions.

12. Leave to appeal is refused

13. It is open to the Applicants to make further application to the Lands Tribunal within 21 days of the date of this Decision.

Signed:..... Dated: 31st MAY 2006

D M NESBIT
Chairman

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HN/OAF/2005/0027

Property: **110 Poole Road**
Westbourne
Bournemouth BH4 9EF

Applicants: David Lewis & Partners Limited

Respondent: Ian Malcolm Fraser

COSTS DETERMINATION

1. In our Decision dated 12th April 2006, we directed that the parties submit their final representations as to the amount and liability as to costs, within 14 days of publication of those Reasons.

2. We subsequently received final submissions.

3. We have reviewed those submissions, including those made by both parties, at and following the close of the Hearing in this case.

4. The Tribunal noted that the claim for costs under Section 9 (4) Leasehold Reform Act 1967 had not been agreed with the Respondent.

5. The costs claimed are –

Solicitors' costs	£ 450 +VAT
Counsel's costs	£ 250 + VAT
Conveyancing costs	£ 300 + VAT
Valuation costs	£1,050 + VAT

6. We have fully reviewed all of the correspondence and submissions and explanatioins as to the amounts claimed. We are satisfied that all of those costs are appropriate and reasonable, and have been incurred in accordance with the provisions of the Act

7. Accordingly, we determine that the amounts as set out are payable in full by the Respondent to the Applicants.

Signed:..... Date: 31st MAY 2006

D M NESBIT JP FRICS FCIArb
Chairman
A member appointed by the Lord Chancellor