

Ref LON/NL/5482-5495/06

**LEASEHOLD VALUATION TRIBUNAL  
FOR LONDON RENT ASSESSMENT PANEL**

**DETERMINATION  
OF  
APPLICATIONS UNDER SECTION 48 OF THE LEASEHOLD  
REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993**

**Premises:** Nos. 11, 18, 23, 25, 28, 29, 32, 33, 36A, 36C, 36E, 40, 41 & 42  
Sterling Avenue, Edgware, Middlesex

**Applicants:** See attached List of Applicant Leaseholders

**Respondents:** Mr Harish Ravji Bhundia and Mr Sunil Ravji Bhundia  
(Freeholders/Landlords)

**Hearing:** 21 November 2006

**Inspection:** 22 November 2006

**Representative for Applicants:**

Mr D Cooper, MRICS, of David Cooper Associates

**Representative for Respondents:**

Mr B J C Mire, BSc (Est Man), FRICS

**Members of the Leasehold Valuation Tribunal:**

Professor J T Farrand, QC, LLD, FCI Arb, Solicitor (Chairman)

Mr F W J James, FRICS.

## Introductory

1. Fourteen technically separate Applications, all dated 9 August 2005, were sent to the Tribunal by Messrs Barnett Alexander Conway Ingram Solicitors on behalf of the Leaseholders of the numbered Flats being the Premises. These Applications all related to claims made for new (extended) Leases in respect of individual Flats in accordance with the provisions of the 1993 Act (Part I Chapter II ss.39-62 as amended). For the matters in dispute reference was merely made to the Initial Notices and Counter-Notices enclosed with the Applications.
2. The Applicants' Initial Notices were all but one dated 14 December 2005; the odd one out was as to Flat No.28 which was dated 19 December 2005. These Notices proposed premiums for new Leases of the different Flats ranging from £8,500 to £10,000. Otherwise, the terms proposed were a term of 90 years plus residue of existing term at a peppercorn ground rent with:

“All other terms in the same form as the current Lease save for modernisation for the purpose of compliance with the provisions of the current conditions of the Council of Mortgage Lenders Handbook”
3. The Respondents' Counter-Notices admitted the claims and accepted all the proposed terms *except* for the premiums. Instead, premiums were counter-proposed in respect of the different Flats ranging from £25,000 to £40,000. In addition, the Respondents proposed that each Applicant should pay their:
  - “surveyors costs estimated to be £500 and £87.50 VAT”
  - “solicitors costs estimated to be £700 & £122.50 VAT and disbursements”.
4. By letter dated 16 November 2006, the Applicants' Solicitors confirmed that “the issues to be determined by the Tribunal are valuation, costs and the terms of the new Lease”. However, despite the mention of estimates, no documentary or other evidence as to costs actually incurred by the Respondents has been submitted to the Tribunal so as to enable a determination of what if any amounts are properly payable by Leaseholders under s.60 of the 1993 Act. In particular, no information was provided as to whether the costs claimed were, in effect, to be multiplied by fourteen or discounted for

quantity and repetition. Further, despite inclusion in the Bundle supplied for the Applicants of: "Draft of New Lease incorporating Lessee's proposed amendments in red", no written or other representations have been received by the Tribunal explaining why the amendments (presumably disputed on behalf of the Respondents) are within s.57 of the 1993 so as to be approvable. Accordingly, this present Determination only deals with valuation issues. In so far as the other issues remain in dispute, they may be made the subject of appropriate supplementary Applications to the Tribunal.

5. As to valuation issues, the parties' respective Representatives, both expert valuers, had each submitted Valuation Reports to the Tribunal, dated 13 November (Mr Mire's) and 14 November 2006 (Mr Cooper's). These Reports, which were spoken to at the Hearing by the relevant Representatives, who gave oral evidence and cross-examined each other, were carefully considered by the Tribunal.
6. The Bundle also contained a 'Statement of Agreed Facts', signed by both Representatives and dated 13 November 2006. This Statement began with an account of the Location of the Premises, incidentally indicating that Sterling Avenue comprises solely flats, many "constructed in the post-second world war period", and the following Description of the Premises:

"2.1 The subject properties comprise either ground or first floor flats within blocks of either four or six similarly-constructed properties. Those flats which are located within blocks of six are either located within the centre of the terrace or at the end. The arrangement of the flats are as follows:-

11 Sterling Avenue	end terrace, first floor
18 Sterling Avenue	end terrace, ground floor
23 Sterling Avenue	end terrace, first floor
25 Sterling Avenue	mid terrace, first floor
28 Sterling Avenue	end terrace, ground floor

32 Sterling Avenue	mid terrace, ground floor
33 Sterling Avenue	end terrace, first floor
36a Sterling Avenue	end terrace, first floor
36c Sterling Avenue	mid terrace, first floor
36e Sterling Avenue	end terrace, first floor
40 Sterling Avenue	end terrace, ground floor
41 Sterling Avenue	end terrace, first floor
42 Sterling Avenue	end terrace, ground floor

2.2 The buildings are of traditional brick construction and are set under pitched, timber constructed, tile-covered roofs of centre ridge, hip-ended formation.

2.3 Communal gardens are located at the rear of the buildings and the ground floor flats benefit from direct access to those gardens.

2.4 The first floor flats which were constructed as part of the "first phase" (those flats which have approximately 53 years unexpired) have balconies which are accessed from the main bedroom at the rear which overlook the communal gardens.

2.5 Those first floor flats which were constructed as part of the "second phase" (those flats which have unexpired leases of 59.8 years) do not have balconies.

2.6 The following flats have garages:

11, 18, 23, 28, 32, 33, 36a, 36c, 36e and 42

2.7 The three flats without garages are numbers 25, 40 and 41"

Then it was stated as to Accommodation:

"3.1 All flats benefit from two bedrooms, reception room, kitchen and bathroom with slightly different layouts and sizes."

After this measurements made by Mr Cooper and generally accepted by Mr Mire were set out which indicated that all the Flats had a GIA of approximately 60 sq m.

7. Then, of present significance for valuation purposes, it was stated:

“4.1 Various Lessees have carried out improvements to the flats but it is agreed for the purpose of valuation that the flats shall be valued on the basis that they have single-glazed windows, unmodernised bathrooms, unmodernised kitchens and that central heating was not fitted.”

8. Also of particular significance for present purposes, the Statement set out the Lease Terms as agreed by the Representatives:

“6.1 The Leases are held on similar terms to one another.

6.2 All Leases are held on effectively full repairing and insuring terms.

6.3 The following flats are held on Leases for a term of 99 years less 21 days from 25 December 1959, thus expiring on or about 4 December 2058 and at the date of valuation, 14 December 2005, had approximately 53 years unexpired:-

11, 18, 23, 25, 28, 32, 33, 40, 41 and 42

6.4 The following flats are let on Leases for a term of 99 years from 29 September 1966, thus expiring on 28 September 2065 and thus having approximately 59.8 years unexpired, as at the date of valuation, 14 December 2005.

36a, 36c and 36e

6.4.1 It is agreed that for valuation purposes, flats 36a, 36c and 36e will be valued on the basis that they have 60 years unexpired at the date of valuation. -

6.5 The various Leases incorporate the following ground rent terms:-

6.6 **53-Year Leases, with Garages**

Nos. 11, 18, 23, 28, 32, 33 and 42 £22.05 per annum fixed

6.7 **53 Year Leases without Garages**

25, 40 and 41 £18.90 per annum fixed

6.8 **59.8 Year Leases with Garages**

6.9 36a, 36c and 36e £26.25 per annum fixed

6.10 Clause 2(i)(d) of the Lease requires the Lessee:-

"Not to make any structural alterations or structural additions to the demised premises nor to erect any new buildings thereon or remove any of the Landlord's fixtures without the previous consent in writing of the Lessor and Superior Lessor".

9. After all this the Statement of Agreed Facts continued with particulars of comparable transactions which were recent sales of eleven other flats in Sterling Avenue.
10. The Statement concluded with Mr Cooper's and Mr Mire's agreement that the capitalisation rate should be 8% and the deferment rate 5%.
11. The Tribunal was prepared to proceed with valuation on the basis of the Agreed Facts and incidentally noted that the valuation date had evidently been agreed as 14 December 2005. This is the relevant date (ie the date of the notice of claim: see s.39(8) of the 1993 Act) for all the Flats except No.28, where strictly the date should be 19 December 2005 but the difference could be disregarded as insignificant.
12. However, as to Lease Terms, the Tribunal additionally noted that the Lessees of first floor flats alone are liable for roof repairs: see eg the Lease of Flat 11 description of Upper Flat and Clause 3(i). The Lessor only covenants to repair "chimney stacks gutters and rainwater pipes of the Building": Clause 4(d) and only these repairs are within the service charge (for ground floor flats too): Fourth Schedule Part 1 para.1. Otherwise, services are essentially external decorations and estate gardening to which all Lessees contribute.

### **Inspection**

13. On the morning after the Hearing, the Tribunal inspected the following selection of five different sorts of Flat internally as well as externally: No.s 11, 32, 36C, 36E and 40 Sterling Avenue. Three of these were first floor Flats and attention was paid particularly to loft access. The Tribunal's view of the immediate locality was not as unfavourable as might have been expected from Mr Cooper's Report: Sterling Avenue is, effectively, a *cul de sac* and the well-kept communal gardens, at the front of the buildings as well as the rear, present an attractive appearance. Generally, however, the inspection enabled the Tribunal to confirm that the location, description and accommodation were as set out in the Statement of Agreed Facts. The Tribunal also saw two blocks of flats nearby which had been referred to by Mr Mire as containing comparable three bed-room flats but it

was obvious that these were too different from any of the subject Flats to be of any assistance.

## Hearing

14. At the Hearing, Mr Cooper supported new (extended) Lease premiums ranging from £10,950 to £15,000. Against this, Mr Mire supported premiums ranging from £28,051.85 to £33,379.65. The differences within the respective ranges could be partially explained by agreed facts: whether the Flat had a garage or not and whether the remainder of the term was 53 years or 60 years. But there were also other differences within the ranges as well as general valuation differences between the two valuer advocates.
15. The Tribunal was able to identify the following valuation issues as calling for decisions in order for premiums to be calculated for the individual new Leases: long leasehold value; short leasehold value; loft value; and garage value.
16. *Long leasehold value* – Mr Cooper had put the value of the extended Leases (whether currently 53 or 60 year terms) at £175,000. He had placed great reliance on the sale of No.15 Sterling Avenue for £175,000 on 15 November 2005 as “the best comparable in terms of valuation date notwithstanding that it is the lowest sale price of the above mentioned properties”. He also pointed out that a differently constituted Tribunal had referred to this sale as being without a garage when it was, in fact, with a garage (LON/NL/5290/2006; dated 8 October 2006). That Tribunal had considered other comparables and concluded that the long lease value of a first floor flat (unimproved) without a garage was £180,000 as at a valuation date of 13 March 2006.
17. Mr Mire had thought that this figure had been agreed with Mr Cooper, although not mentioned in the Statement of Agreed Facts, essentially on the basis of following the decision of the previous Tribunal.
18. The present Tribunal has seen no sufficient reason to differ from the £180,000 figure found by the Tribunal in the case of No.19 Sterling Road. Similarly to that Tribunal, it is assumed that the virtual freehold has a value of approximately 1% higher.
19. *Short leasehold value* – In Mr Cooper’s opinion the value of the Flats, without garages and with unextended terms, at the valuation date would be £167,000 and £157,500 for remaining terms of, respectively,

60 years and 53 years. He based this opinion on cited comparables, but excluding three more recent purchases by the Respondents, in effect, as not constituting good market evidence. However, he would allow an adjustment, by way of deduction, of 2½% to reflect the required 'no Act world' assumption, so that these values became £163,000 and £153,500.

20. In Mr Mire's opinion, the appropriate value was £157,000 whether the remaining term was 53 or 60 years. He also based his opinion on cited comparables, but relying in particular on the three purchases by the Respondents of Flats in Sterling Avenue between February and May 2006 which showed an average price of £157,000, all with garages. Mr Bhundia submitted a Witness Statement and gave oral evidence to show, according to Mr Mire, that these transactions were on market terms. Mr Bhundia stated that he and his brother had not marketed themselves as purchasers but that agents know that "if we agree to buy a property then we will", adding:

"This does mean that their vendor clients can be certain of a sale which is not always the case when the general public are involved in a sale and are required to arrange surveys, financing etc. I do not believe we have paid any less or any more than the market value to buy the flats we have bought. We have paid the price they were offered to us at which was normally after a period of marketing by the agent."

21. Further, Mr Mire contended that end of terrace Flats enjoyed a better layout and benefited from more windows than "internal" terraced houses. He expressed the "anecdotal" view, unsupported by any evidence, that these Flats "would command increased values of around 2½% from the average".
22. He also contended that the "no Act world" deduction, which Mr Cooper had allowed at 2½%, should be in the order of 5%. His reasoning was, essentially, mathematically based on an assumption that a freeholder would require a "sweetener" of 75% of marriage value: according to the marriage value figures in the valuations submitted by him, a 5% deduction would achieve this result.
23. The Tribunal agreed with Mr Cooper in respect of the short leasehold valuations. In the light of Mr Bhundia's own evidence, it was not accepted that the transactions undertaken by the Respondents could properly be taken as evidencing open market values but should rather



be regarded as sales made in circumstances tending to depress prices paid. Nor, in the absence of any market evidence, did the Tribunal accept Mr Mire's view that end of terrace Flats would attract higher market prices: in particular, it had been observed in the course of inspection, that any benefit of extra end windows was largely enjoyed by kitchens and bathrooms instead of living rooms. As to the "no Act world" deduction, allowing Mr Mire's 5% would, on the Tribunal's figures for marriage value, amount to a "sweetener" not of 75% but substantially in excess of 100%. Allowing 2½% results in a total of approximately 66.66% of that value being received by the Respondents, which seems to the Tribunal quite sufficient.

24. *Loft value* – Mr Mire had also added sums ranging from £1,500 to £2,000 to the premiums, payable according to his valuations, for new Leases of the first floor Flats (the higher sum being for mid-terrace Flats with a "better arrangement"). This was because those Flats, in his belief, "have the potential for additional value to be created by the use of the roof void either as simple storage areas or alternatively having undertaken building works, as additional residential accommodation". In indirect support, he produced copies of planning permissions granted (post the relevant valuation date) for such developments, together with plans and quotations for the work, in respect of two other Flats in Stirling Avenue. No conversions had yet been carried out. In effect, he submitted that, at a cost of approximately £30,000, three bed-roomed Flats could be produced with an increase in value of £60,000. Although he referred to prices for two three bed-roomed Flats in the near locality to support this value, he was unable to produce any comparable market evidence. Nevertheless, as a valuer, he considered that potential purchasers of these first floor Flats would pay the extra sums he had added to the premiums for the development opportunity.
25. Mr Cooper had included nothing for 'loft value' in his valuations. This was because he rejected the suggestion that purchasers would pay extra for this development opportunity. He emphasised that the costs of obtaining the Lessor's consent and, especially, of the works themselves, would negate any profit, as well as empathising the attendant stress. At the Hearing, he also objected that any such 'hope value' should be included in the yield rates used to calculate the premiums payable.

26. In the light of inspection as well as consideration of the permissions, plans and quotations, the Tribunal has concluded that Mr Mire was justified in his opinion that potential purchasers would pay extra for the first-floor Flats because of the opportunity or 'hope' of developing and using the loft space. However, the Tribunal does not agree that there would be any differential between mid-terrace and other Flats. Nor does the Tribunal accept that the extra sum would be as much as £2,000. Purchasers of first floor Flats should, in any event appreciate that they would carry sole liability for roof repairs under the Leases without the benefit of direct access, without stairs, to the gardens and grounds as enjoyed by ground floor Flats.
27. Accordingly, the Tribunal has decided that the sum of £1,000 only should be added into the valuation of the first floor Flats to represent so-called 'loft value'. However, the Tribunal does not agree that this extra sum should simply be added to the premium otherwise payable in the way that Mr Mire has in his Valuation Report. The 'loft value' does not belong to the Freeholder/Landlord under the Leases but is, in substance, part of the Flat demised. Nor does it constitute a loss arising out of the grant of a new Lease entitling the Respondents to compensation (see Schedule 13 to the 1993 Act, particularly paras 3, 4 and 5). Therefore, the 'loft value' simply serves to increase the leasehold values (*both* long and short) of the individual first floor Flats by £1,000 and does so only for the purposes of calculating the marriage value. In the result, the sum of £1,000 will be added and then deducted, so virtually cancelling itself out (only the 'no Act world' deduction of 2½% from the short leasehold value, with loft, will affect valuations but not significantly).
28. *Garage value* – Mr Cooper has valued garages at £5,000 whilst Mr Mire has valued them at £10,000, which had been accepted by the previous Tribunal already mentioned. The present Tribunal has adopted a value of £7,000. The grounds for finding this figure are that, on inspection, Sterling Avenue did not appear to present any real parking difficulties whilst the garages were not always easy to access and also that, in evidence, Mr Bhundi had indicated a rental for garages of £70 per calendar month which, capitalised at 12%, produces £7,000.
29. However, similarly to 'loft value', whatever garage value is decided upon, it must be added to both the long and short leasehold values of the Flats for the purpose of ascertaining the marriage value. Again, in

the calculation, the sum of £7,000, added and then subtracted, will be virtually cancelled out in the valuation to arrive at the premium payable.

### **Valuations**

30. Having decided the various valuation issues in dispute as indicated above, the Tribunal was able to determine the premiums payable for new, extended Leases of the subject Flats within the Premises. The figures are as follows:

No.s 11, 23 and 33	£20,532
No.s 13, 28, 29, 32 and 42	£20,494
No.s 25 and 41	£20,249
No.s 36a, 36c and 36e	£14,770
No.40	£20,211

These premiums are calculated as set out in the Tribunal's Valuations attached below.

**CHAIRMAN**



**DATE**



**November 2006**

## TRIBUNAL'S VALUATIONS

### LVT LEASE RENEWAL VALUATION

**No.s 11, 23 and 33 Sterling Avenue Edgware  
(First Floor Flats 53 Year Leases with garages)**

#### **Base Facts**

Valuation Date	14 December 2005 ( No 28 19 December 2005 ) – Agreed
Yield Rate	8% -Agreed
Deferment Rate	5% - Agreed
Unexpired Term	53 Years – Agreed
Long Leasehold	£181000 – LVT Decision
Freehold Value	£182810 – LVT Decision
Short Leasehold Value	£154500 – LVT Decision
Garage Value	£7000 – LVT Decision

#### **Value of Freehold Interest**

	£	£	£
Ground Rent		22.05	
YP for 53 Years @ 8%		<u>12.2884</u>	271
Revn to Freehold	182810		
Garage	<u>7000</u>	189810	
PV of £1 in 53 Years @ 5%		<u>0.0753</u>	<u>14293</u>
Freehold Value			14564

#### **Marriage Value**

Value Tenants LLH interest with garage		188000	
Less			
Freehold Value	14564		
Tenants SLH Value	154500		
Garage	<u>7000</u>	<u>176064</u>	
Marriage Value		11936	
50% Share			<u>5968</u>
			<u><b>£20,532</b></u>

## LVT LEASE RENEWAL VALUATION

**No.s 13, 28, 29, 32 and 42 Sterling Avenue Edgware  
(Ground Floor Flats 53 Year Leases with garages)**

### Base Facts

Valuation Date	14 December 2005 (No 28 19 December 2005) – Agreed
Yield Rate	8% - Agreed
Deferment Rate	5% - Agreed
Unexpired Term	53 Years – Agreed
Long Leasehold	£180000 – LVT Decision
Freehold Value	£181800 – LVT Decision
Short Leasehold Value	£153500 – LVT Decision
Garage Value	£7000 – LVT Decision

### Value of Freehold Interest

	£	£	£
Ground Rent		22.05	
YP for 53 Years @ 8%		<u>12.2884</u>	271
Revn to Freehold	181800		
Garage	<u>7000</u>	188800	
PV of £1 in 53 Years @ 5%		<u>0.0753</u>	<u>14217</u>
Freehold Value			14488

### Marriage Value

Value Tenants LLH interest with garage		187000	
Less			
Freehold Value	14488		
Tenants SLH Value	153500		
Garage	<u>7000</u>	<u>174988</u>	
Marriage Value		12012	
50% Share			<u>6006</u>
			<b><u>£20,494</u></b>

## LVT LEASE RENEWAL VALUATION

**No.s 25 and 41 Sterling Avenue Edgware  
(First Floor Flats 53 Year Leases without garages)**

### Base Facts

Valuation Date	14 December 2005 – Agreed
Yield Rate	8% - Agreed
Deferment Rate	5% - Agreed
Unexpired Term	53 Years – Agreed
Long leasehold Value	£181000 – LVT Decision
Freehold Value	£182800 – LVT Decision
Short leasehold Value	£154500 – LVT Decision

### Value of freehold Interest

	£	£	£
Ground Rent		18.90 pa	
YP for 53 Years @ 8%		<u>12.2884</u>	232
Revn to Freehold Value		182800	
PV of £1 in 53 Years @ 5%		<u>0.0753</u>	<u>13765</u>
			13997

### Marriage Value

Value of Tenants LLH Interest	181000
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### Less

Value Freehold interest	13997		
Value Tenants SLH interest	<u>154500</u>	<u>168497</u>	
Marriage Value		12503	
50%			<u>6252</u>
			<u><b>£20,249</b></u>

## LVT LEASE RENEWAL VALUATION

**No.s 36a, 36c and 36e Sterling Avenue Edgware  
(First Floor Flats 60 Year Leases with Garages)**

### Base Facts

Valuation Date	14 December 2005 – Agreed
Yield Rate	8% - Agreed
Deferment Rate	5% - Agreed
Unexpired Term	60 Years – Agreed
Long leasehold Value	£181000 – LVT Decision
Freehold Value	£182810 – LVT Decision
Short Leasehold Value	£164000 – LVT Decision
Garage Value	£7000 – LVT Decision

### Value of Freehold Interest

	£	£	£
Ground Rent		26.25pa	
YP for 60 Years @ 8%		12.3716	325
Revn to Freehold		189810	
PV £1 in 60 Years @ 5%		0.0541	10269
Freehold Value			10594

### Marriage Value

Value of Tenants LLH Interest inc garage		188000	
Less			
Freehold Value	10594		
Value Tenants SLH interest	164000		
Garage	<u>7000</u>	<u>181594</u>	
Marriage Value		6406	
50% Share			<u>3203</u> <u>13,797</u> <b><u>£14,770</u></b>

## LVT LEASE RENEWAL VALUATION

**No 40 Sterling Avenue Edgware  
(Ground Floor Flat 53 Year Lease without garage)**

### Base Facts

Valuation Date	14 December 2005 – Agreed
Yield Rate	8% - Agreed
Deferment Rate	5% - Agreed
Unexpired Term	53 Years – Agreed
Long leasehold Value	£180000 – LVT Decision
Freehold Value	£181800 – LVT Decision
Short leasehold Value	£153500 – LVT Decision

### Value of freehold Interest

	£	£	£
Ground Rent		18.90 pa	
YP for 53 Years @ 8%		<u>12.2884</u>	232
Revn to Freehold Value		181800	
PV of £1 in 53 Years @ 5%		<u>0.0753</u>	<u>13690</u>
			13922

### Marriage Value

Value of Tenants LLH Interest	180000
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### Less

Value Freehold interest	13922		
Value Tenants SLH interest	<u>153500</u>	<u>167422</u>	
Marriage Value		12578	
50%			<u>6289</u>
			<u><b>£20,211</b></u>



## **LIST OF APPLICANT LEASEHOLDERS**

STERLING AVENUE, EDGWARE, MIDDLESEX

- 11. Tessa Wilson (previously Conway)
- 18. Sonia Diamond
- 23. Paul McKenzie
- 25. Denise Nokleby
- 28. Chimara Harris
- 29. Ruth Deborah Cerner
- 32. Stella Levy
- 33. Junior De Cordeva Bent and Emelda Patricia Bent
- 36A Brian Ronald Kightley and Kim Kightley
- 36C Peter Victor Begon
- 36E Giselle Moreley
- 40. Ivor Chapman and Carole Chapman
- 41. Susan Ringle
- 42. Leslie Rosalind Diamond