

**SOUTHERN RENT ASSESSMENT PANEL**  
**& LEASEHOLD VALUATION TRIBUNAL**

**LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993**  
**SECTION 48**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

<b>Case Nos:</b>	<b>CHI/29UP/OLR/2003/0022</b> <b>CHI/29UP/OLR/2003/0023</b>
<b>Property:</b>	<b>7 and 14 Dry Bank Court, Dry Bank Road Tonbridge, Kent, TN10 3BP.</b>
<b>Applicants:</b>	<b>Dr. K.G.A. Clark and Mr. M.R. Hoddle c/o Messrs. Thomson Snell &amp; Passmore, Solicitors, 3 Lonsdale Gardens, Tunbridge Wells, Kent, TN1 1NX.</b>
<b>Respondent:</b>	<b>Elliott Land Company Limited, 15 Bridge Road, Weybridge, Surrey, KT13 8XS.</b>
<b>Date of Hearing:</b>	<b>7th May 2004</b>
<b>Members of the Tribunal:</b>	<b>Mr. R. Norman (Chairman) Mr. J.N. Cleverton FRICS Mr. M.G. Marshall FRICS</b>
<b>Date Decision Issued:</b>	

**RE: 7 AND 14 DRY BANK COURT, DRY BANK ROAD, TONBRIDGE, KENT, TN10 3BP**

**Background**

1. These are two applications under Section 48 of the Leasehold Reform, Housing & Urban Development Act 1993 (the 1993 Act) by Dr. K.G.A. Clark, the leasehold owner of 7 Dry Bank Court and by Mr. M.R. Hoddle, the leasehold owner of 14 Dry Bank Court, for the

determination of the premium to be paid by each of them to Elliott Land Company Limited, the freehold owner, on the grant of a new lease to each of them at a peppercorn rent for a term expiring 90 years after the term date of their existing leases. Each property is at present held on a lease for 99 years from the 25th December 1962 at a fixed ground rent of £15 per annum.

2. The parties requested that both these applications be heard together as the properties and the evidence to be given in respect of them are similar and the parties submit that the same valuation process should be applied to each of them. The Tribunal was agreeable to dealing with both applications together. Our decision and valuation appear at paragraphs 33 - 45 below.

### **Inspection**

3. On the 7th May 2004 before the commencement of the hearing, the Tribunal inspected the interior of both properties and the exterior of Dry Bank Court in the presence of Dr. Clark and Mr. Martin.

4. Both properties are ground floor flats each with one reception room, two bedrooms, kitchen and bathroom, in purpose built three storey blocks with six units in each block. There is a single storey garage block and a communal garden. The properties, lease terms, location and amenities, services, condition and roadways are described in a valuation report dated January 2004 prepared by Mr. C.R. Martin FRICS IRRV DipEstMan. Sections 1 - 9 of that report, except as to the reference in Section 1.(ii) to the Commonhold & Leasehold Reform Act 2002 (the 2002 Act) have been agreed by Mr. Scrivener FCIOB, MRICS, FRSH on behalf of the Respondent as being factual.

5. We found that apart from a window frame in No. 7 which had been replaced and that the garage roof is corrugated asbestos rather than felt, the description of the properties and Dry Bank Court accorded with Mr. Martin's report.

### **The Hearing**

6. The hearing was attended by Dr. Clark, Mr. Martin and Mr. Scrivener. Mr. Martin pointed out that he was acting in the capacity of an independent expert not as an advocate and that he appreciated his duties to the Tribunal. He confirmed that the views he expressed were his own and truthful and correct. He had provided a report and there was a skeleton argument which had been supplied by Messrs. Thomson, Snell and Passmore, Solicitors acting for the Applicants. The Respondent was represented by Mr. Scrivener who appeared as a director of the Respondent and as an advocate. Mr. Scrivener had provided a valuation report and submissions.

7. Mr. Martin and Mr. Scrivener confirmed the following:

- (a) They wished both applications to be dealt with together because the same issues are involved in both.
- (b) That all notices are accepted as valid.
- (c) That there is no dispute that the Applicants each have the right to acquire a new lease under the 1993 Act.

- (d) That the leases are in common form.
- (e) That there is no claim under Section 47 (1) of the 1993 Act in respect of redevelopment.
- (f) There is an agreement signed by Mr. Martin and Mr. Scrivener on behalf of the parties in which it is stated that Sections 1-9 of Mr. Martin's report are agreed except as to the reference in Section 1.(ii) to the 2002 Act. At the hearing Mr. Scrivener accepted that his exception to the reference to the 2002 Act was based on a misunderstanding of the Sections of the 2002 Act in force but that the amendments made to the 1993 Act by the 2002 Act did not have any practical bearing on these applications.

8. Mr. Martin and Mr. Scrivener confirmed their agreement to the following:

- (a) The valuation date of May 2003.
- (b) The length of time unexpired on the leases from the valuation date agreed as 58½ years.
- (c) £115,000 is approximately correct as representing the value for a lease with 58½ years unexpired in this development (assuming modernised properties).
- (d) £130,000/£135,000 is the value of a new lease of 99 years or more (assuming modernised properties).
- (e) Taking into account improvements that would otherwise have been undertaken the entirety value of each of the subject properties is £124,000.
- (f) There is no compensation to be paid in respect of any development prospects.
- (g) The marriage value is to be divided equally between the parties.
- (h) Solicitors' costs are £480 + VAT for each flat.

9. Mr. Martin and Mr. Scrivener confirmed that the matters in dispute are as notified to the Tribunal before the hearing:

- (a) The premium to be paid by the Applicants.
- (b) The ground rent.
- (c) Administration charges.

10. They also confirmed that the percentage yield was not agreed for the value of a virtual freehold.

#### Administration charges.

11. Mr. Scrivener had stated in a letter dated 10th November 2003 to Messrs. Thomson, Snell and Passmore that the administration charges (which had been £350 but had risen to £410) represented "...the surveying and administration costs in connection with compliance of Section 60 and where the writer is the fee earner in his professional capacity as a chartered surveyor employed by ESC Surveying acting for the ground landlord. The costs have now risen as a result of complying with the correspondence dated 27th August 2003 to the new figure of £410.00". Mr. Scrivener stated that the figures were for each flat and he produced a copy of a letter dated 26th March 2004 which he had written to Messrs. Thomson Snell and Passmore. Mr. Martin had not previously seen that letter but after looking at the copy he stated that he had no strong views about it and would not want to dispute the administration charges. He did not dispute the level of charges. In the letter of 26th March 2004 it was stated that the sum of £350 represented "...processing and office administration together with the anticipated surveying work for each property in respect of:- Notice and Counter Notice, Valuation, Communications written and received, Telephones, Instructing solicitors in

respect of Lease extension and providing documents and Titles, Agreeing deed engrossment and sealing deeds.” 4 hours @ £80.00 = £320 and expenses of £30, total £350.

12. Messrs. Thomson Snell and Passmore had made the point in correspondence that Mr. Scrivener was in house and had dealt with a number of properties in the same development. Mr. Scrivener said that in surveying matters he is a fee earner of ESC Surveying and the Respondent is charged for his work. The amount of work was reduced because he was working on the two flats at the same time and that saving was built in to the figure claimed. It was now £410 for each property. The extra £60 was in respect of additional surveying costs shown in correspondence. £80 per hour he considered was very reasonable when compared with surveying fees for the Applicants and Mr. Martin agreed with that. Dr. Clark said that no actual visit was made to the properties by Mr. Scrivener who replied that he did not visit the flats because he knew them and that had cut down the costs. He had agreed the state etc. of the flats with Mr. Martin. Dr. Clark said that long delays in responses to Thomson, Snell and Passmore’s letters had extended the process and Mr. Scrivener made no comment about that.

13. We asked Mr. Martin and Mr. Scrivener if they wished us to treat this as an application by the parties under Section 60 of the 1993 Act for a determination under Section 91 (2)(d) of the 1993 Act of the amount of costs other than solicitors’ costs payable by the Applicants and they said they did.

#### The evidence of Mr. Martin

14. Mr. Martin referred to his report and in particular from paragraph 10 onwards which dealt with the matters in dispute. He stated that he considered the 7.5% yield rate to be correct from his own experience. He knew that rate had been approved by other Leasehold Valuation Tribunals and he gave some details of other cases where a similar percentage had been used. He considered that a decline of around 12% was correct and gave details of other cases which supported that.

15. Mr. Martin was asked by Mr. Cleverton why in the letter from Thomson, Snell and Passmore to Mr. Scrivener of 27th August 2003 a figure of £11,200 had been put forward. Mr. Martin said he considered he had a duty to keep his client out of court where possible. Mr. Martin had been asked if he could increase the figure to achieve early settlement and that figure was produced to keep the client out of court and keep costs low. He had not seen the letter. A copy was shown to him and he said the solicitors must have misunderstood. He put forward £11,200 but did not agree 16.5%. The letter from the Respondent suggested that percentage but he did not accept that percentage. It was open correspondence. Mr. Scrivener said that the letter of 27th August 2003 had been received and there had been no other correspondence and nothing verbal and that it was a surprise when in the application £11,200 was withdrawn. However, we noted that in his letter of the 10th November 2003 Mr. Scrivener wrote that the counter offer of £11,200 was not accepted and that at their meeting in March 2004, at which Mr. Martin said they discussed percentages, they had drawn up and signed a document setting out the matters which were agreed and the percentage of 16.5% had not been noted as being agreed.

16. Mr. Martin's valuation was as follows:

<u>Diminution in Freehold Interest</u>	£	£	£
<u>Term</u>			
Ground rent levels	15		
Term remaining 58½ years, years purchase @ 7.5%	13.139	197.08	
<u>Reversion</u>			
To entirety value	124,000		
Deferred 58½ years @ 7.5%			
from present value of £1 tables	.0155	1,922	2,119.08
less			
To entirety value	124,000		
Deferred 148½ years @ 7.5%	0.0000	0	<u>2,119.08</u>
<u>Marriage Value</u>			
Difference between			
Lessees current interest (i.e. entirety value less 12%)	109,120		
plus			
Landlords interest prior to grant	2,119.08	111,239.08	
and			
Lessees proposed interest	124,000		
plus			
Landlords interest post grant	<u>0</u>	124,000	
Marriage Value		12,760.92	
Landlords share @ 50%			6,380.46
plus			
Diminution in Freeholders interest			<u>2,119.08</u>
<u>Price to be paid</u>			8,499.54

Say £8,500 in respect of each property.

The evidence of Mr. Scrivener

17. The Respondent suggested a premium and a new ground rent as in Mr. Scrivener's report of the 17th February 2004. However at the hearing Mr. Scrivener stated that he accepted it was unlawful under the 1993 Act to have a ground rent.

18. He referred to his submissions dated 20th January 2004 and the conclusion but wished to submit a revised valuation with the ground rent negated. He handed in a document showing the "Diminution of Leaseholder's Interests". In the document it was stated that a

lease with 40½ years expired of a 99 year term (i.e. 40.9 %) of the lease term) shows a 16½ % fix on the 'S' curve graph. 16½ % of the value has therefore been lost.

Lost Value: £124,000 x 16½ % =	£ 20,460.00
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Less saving in respect of 50 %  
of the marriage value:

Agreed valuation	£124,000	
Current sale price	<u>£115,000</u>	
	<u>£9,000 x 16½ %</u>	
	2	= (742.00)
		<hr/>
		£19718.00

Ground Rent to remain at a peppercorn.

19. As to the appropriateness of the S curve graph, Mr. Scrivener referred to a copy of the graph, which he produced to the Tribunal and to Mr. Martin, where the diagonal straight line on the graph indicates a lineal assent to the reversion. The early years represent little reversion value. The opposite is so in the later years. He had highlighted the lower part in yellow and the upper part in green. It was a mathematical interpretation and it should be noted that as much of the yellow area shown should in theory also be shown in the green area. It would be possible to use different S curves and to use them in different ways. He considered this to be a fair S curve graph, he had been using it for the last 12 years and the Respondent had a large number of agreed valuation cases based entirely on that concept.

20. Referring to his submissions at paragraphs 2. (d) i) and ii), these were other properties at Dry Bank Court and similar to the subject properties. They are based on the graph, prior to the 2002 Act but following the 1993 Act. A ground rent was set and agreed at a figure which did not comply with the 1993 Act but ground rent represented the marriage value or part of it. Therefore there was a saving in what the leaseholder had to pay at the time. He did not know what the figures would have been if there had been no ground rent. No further cases were cited in the submissions but Mr. Scrivener had been involved in a number of recent cases using the S curve graph and they had been agreed.

21. Referring further to the handwritten page showing "Diminution of Leaseholder's Interests", Mr. Scrivener said that the lost value represents a high proportion of the overall property price and that can be seen from the fact that the ground rent in 1962 represented 0.4412% of the consideration whereas in the case of a good many properties that ratio stands at 0.1% to 0.25%. That is one of the reasons why the passing rent principal seems inappropriate because the rent now at £15 is of little use in determining value and hence the reason why he asked the Tribunal to consider his analysis of the diminution in the way he had shown it.

22. Mr. Martin assumed that Mr. Scrivener was at the hearing as an advocate rather than as an expert and Mr. Scrivener agreed.

23. Mr. Martin submitted that lease extensions referred to by Mr. Scrivener were some while ago, that the parties did not have the benefit of the 1993 Act and did not qualify and

therefore could not use the 1993 Act. Mr. Scrivener said that that was certainly so in the case of Flat 11 but he did not believe it to be so in the case of Flat 10.

24. Mr. Martin said that the Secretary of the Residents Association said that neither of those parties had the benefit of the 1993 Act and it is different if you do not have that benefit. Mr. Martin also acts for landlords and he knows that desperation occurs because a sale is going through and then it is found that a lease extension is needed and to keep the sale going a lessee is forced to accept a higher figure and a different ground rent figure than would otherwise be the case.

25. Mr. Scrivener did not agree. He said that the Respondent did not operate in that way; from his memory there was no correspondence that would indicate forcing a leaseholder into a situation by high handed tactics. Dr. Clark said he did not suggest it was a deliberate policy but the effect was what Mr. Martin had said. In a difficult position to progress a sale or if not covered by the 1993 Act at the time, a lessee would accept the terms offered.

26. Mr. Martin was suspicious of the S curve. Mr. Scrivener had not said from where it was derived; whether it was from some publication? A 16½ % decline was against his own practical experience. If the S curve were applied to a lease with 30 years unexpired then it would tend to indicate 82% of the value of the property had disappeared and that was not the case. He referred to some properties in Bromley with 98 year leases and with 30 years to run where the freeholders and leaseholders had been professionally represented and three lease extensions had been agreed this year. Valuations showed a 30% reduction whereas the S curve would indicate 82%. He questioned the accuracy of the S curve method.

27. Mr. Scrivener stated that the S curve came from a surveyor the Respondent previously employed. Mr. Scrivener had used it over a period of over twelve years and it was formulated on the type of reversion for the type of flats concerned. It did not come from a surveying handbook. If you look at the straight line and have to get from 99 to 0 years somehow and if you have the sort of figures Mr. Martin was advocating it was almost certain that there would be very little worth for the reversion until nearly the end. Mathematically that is not acceptable. The reversion has a significant value when getting to the end of the term. There may be reasons for an agreement being struck for less; all sorts of reasons such as difficulties of rights of way or sitting tenants. It is necessary to get from A to B and it is important to look at how that happens. On a straight line basis 30 years gives 70% roughly whereas Mr. Scrivener could not see the graph would make any sense at all using Mr. Martin's figures. Most of the value would not be achieved until the very end and in the market place that was not correct.

28. Mr. Martin noted that the source of the graph was a former employee and that it had been used for 12 years; therefore this was before the 1993 Act. At that time lessees had no rights to extend, extensions were at the whim of the landlord and the lessees took it or left it. It was an historic relic and not appropriate under the 1993 Act. Whichever side he had been on and the other side had been professionally represented, he had not seen such a proposal as Mr. Scrivener was putting forward. The methodology was inappropriate to that set down under 1993 Act.

29. Mr. Cleverton asked Mr. Martin if there was anything special in the cases where there was a 30% decline and he said there was not.

30. Mr. Cleverton asked Mr. Scrivener whether in the two Dry Bank Court cases the lessees had been represented by a surveyor. Mr. Scrivener said they had not. Asked if figures using the S curve had been agreed with other surveyors, Mr. Scrivener said that they had in Oxford but not in the South East.

31. Mr. Marshall asked Mr. Scrivener about Flats 10 and 12 at Dry Bank Court, whether they were similar leases commencing in 1962 and whether they had changed hands near the time of the grant of the new leases. Mr. Scrivener said that in the case of Flat 11 the tenant was going to purchase from his landlord, the Respondent's leaseholder. The Respondent gave him the quote and he accepted at the same time as purchasing the leasehold of the flat. As to Flat 10 that was either an outgoing or a new lessee.

32. Neither Mr. Martin nor Mr. Scrivener had anything further to say to the Tribunal in closing.

### Decision.

33. In the absence of the parties, the Tribunal considered all the evidence which had been provided.

34. The 1993 Act as amended provides under Section S.39 (1) that a tenant has the right to acquire a new lease on payment of a premium. Section 48 provides for an application to a Leasehold Valuation Tribunal to determine items in dispute. Schedule 13 to the 1993 Act, as amended, provides for the calculation of the premium.

35. The items said to be in dispute were the premium, the ground rent and administration charges. The 1993 Act provides for ground rent of a peppercorn and this was accepted by Mr. Scrivener at the hearing. We had therefore to determine the premium for a new lease at a peppercorn ground rent and to determine the administration charges.

### The Premium

36. We considered the different methods of valuation proposed by Mr. Martin and Mr. Scrivener.

37. Mr. Scrivener gave a mathematical explanation to support his use of the S curve and stated that it would be possible to use different S curves and to use them in different ways but he considered this to be a fair S curve graph and had been using it for the last 12 years. He accepted that it did not come from a surveying handbook and provided no authority to justify its use. It had been produced by a former employee of the Respondent before the 1993 Act gave leaseholders the right to a new lease. His approach had little market evidence to support it. The majority of cases where Mr. Scrivener had used that method had involved lessees who were not represented by surveyors or the negotiation of the premium was carried out at or near the time of the sale of the leasehold interest, with the pressures that that situation could produce likely to affect the price, or where new leases had been granted without reference to the 1993 Act. We were told that the method had been agreed with other surveyors in Oxford but not in the South East.



38. Mr. Martin's method of valuation we found was in accordance with the 1993 Act, as amended, and with our knowledge and experience. It was supported by examples and followed the usually accepted valuation process adopted by many tribunals. We were not persuaded that we should depart from that valuation process in respect of these applications.

39. We noted the figures which had been agreed between the parties and used those as the basis for our valuation which appears below. We did not agree with one of the figures from the tables used by Mr. Martin in respect of his valuation of the reversion and as a result our valuation is slightly different from his but we have rounded up the final figure.

40. We found that a yield of  $7\frac{1}{2}\%$  and a 12% deduction from the entirety value were appropriate.

<u>The Valuation</u>	£	£
<u>Present Interest</u>		
Ground Rent under current lease	£15.00 p.a.	
YP for $58\frac{1}{2}$ years @ $7\frac{1}{2}\%$	<u>13.139</u>	197
Reversion to	124,000 (as agreed between the parties)	
Present Value of £1 in $58\frac{1}{2}$ years @ $7\frac{1}{2}\%$	<u>0.0145</u>	<u>1,798</u>
Total value of lessor's present interest		1,995
<u>Marriage Value</u>		
Lessees Proposed Interest	124,000	
Lessors Interest with new lease	<u>0</u>	
	<u>124,000</u>	
Lessees Present Interest	109,120 (deduction of 12%)	
Lessors Present Interest	<u>1,995</u>	
	<u>111,115</u>	
Marriage value	12,885	
	50%	<u>6,442</u>
		8,437
Premium payable for a new lease for each of the subject properties	Say	8,500

Administration charges

41. We noted that Mr. Scrivener had not visited the properties but had knowledge of the development and his evidence was that his fees had been reduced as a result.

42. As Mr. Martin agreed the hourly fee is reasonable. The number of hours is low and the figure of £30 for expenses, although not itemised, is a reasonable figure for what would be expected.

43. We accepted the administration costs of £350 including £30 expenses in respect of each property which included anticipated surveying work but we found that we did not have evidence that justified the additional £60 in respect of each property for dealing with the letter of 27th August 2003.

44. The Tribunal determined that the price to be paid by Dr. Clark on the grant of a new lease at a peppercorn rent for a term expiring 90 years after the term date of the existing lease in respect of No. 7 Dry Bank Court is £8,500 and that the price to be paid by Mr. Hoddle on the grant of a new lease at a peppercorn rent for a term expiring 90 years after the term date of the existing lease in respect of No. 14 Dry Bank Court is £8,500.

45. The amount of the administration charges to be paid by each Applicant is £350.



R. Norman  
Chairman.