

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

**File Ref No: CAM/11UF/OCE/2004/0014**

**Leasehold Valuation Tribunal:     Decision**

**Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")**

**The Tribunal Members were:**

Mrs Helen Bowers   BSc (Econ) MSc MRICS

Miss Marina Krisko BSc (Est Man) BA FRICS

Mr J J Sims LLM MPhil

**The Premises:**

Flats 1, 7, 12,14, 22 and 30 Birches Rise, High Wycombe, Buckinghamshire, HP12  
3AQ

**The Applicants:**

1, Birches Rise - Lynda Bryce,  
7, Birches Rise - Mr & Mrs Tarantino,  
12, Birches Rise - Mr R J Bunce,  
14, Birches Rise - Hillary Anziani,  
22, Birches Rise - Timothy Billings,  
30, Birches Rise - Jacqueline Marshall

**The Respondent:**

Cavernlodge Limited

**Date of Inspection and Hearing:**   Thursday 9<sup>th</sup> December 2004

**Appearances:**

**Expert Witnesses – Valuers**

Mr David Buller FRICS for the Applicants

Mr John Geraint Evans FRICS for the Respondent

<b>Premises:</b>	<b>Initial Notice:</b>	<b>Counter-notice:</b>	<b>Application:</b>
1, Birches Rise	17.03.04	19.05.04	23.08.04
7, Birches Rise	22.03.04	26.05.04	23.08.04
12, Birches Rise	15.03.04	18.05.04	23.08.04
14, Birches Rise	11.03.04	19.05.04	23.08.04
22, Birches Rise	16.03.04	19.05.04	23.08.04
30, Birches Rise	22.03.04	26.05.04	23.08.04

## **1. Introduction**

- 1.1 These matters relate to six flats located at Birches Rise, High Wycombe and applications pursuant to section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").
- 1.2 An application was made on the 23<sup>rd</sup> August 2004 to the Tribunal to determine the terms of acquisition that were in dispute between the parties.
- 1.3 No evidence or representations were made in respect of other matters raised in the application and in particular the transfer. These matters are therefore adjourned until 23<sup>rd</sup> February 2005. Unless an application is made by either party for a hearing date to dispose of all outstanding issues by that date, the application relating to those issues will stand dismissed.

## **2. The Law**

- 2.1 Chapter II of the Act sets out the provisions for the grant of a new lease and in particular Section 56 provides for a new lease of a flat to be granted for a term expiring 90 years after the expiry of the current lease and at a peppercorn rent. Schedule 13 of the Act sets out the provisions for the calculation of the premium that is payable in respect of the grant of a new lease.

- 2.2 In this matter, Section 60 of the Act needs to be considered in relation to costs incurred in connection with the grant of a new lease that are payable by the tenant.

**3. The Premises**

- 3.1 Shortly prior to the hearing the Tribunal had the opportunity to carry out an inspection of the property. Both Mr Buller, the representative for the applicants and Mr Evans the representative for the respondent accompanied the Tribunal.
- 3.2 Birches Rise is a purpose built development of five blocks of flats, dating from the 1980's. The development comprises ground to second floor accommodation. Construction is brick under a mansard roof. The common parts for each block are relatively utilitarian with exposed brick walls, solid floors and concrete stairwell with thermoplastic floor covering. Lighting is provided in the common parts on a timer switch.
- 3.3 The Tribunal made a brief inspection of 30 Birches Rise, which is a one bedroom flat on the second floor into the mansard roof and therefore slightly reduced floor area. The accommodation provides a living room, kitchen one bedroom and a bathroom. In this flat the kitchen and bathroom facilities seem to be original. The flat is heated with night storage heaters.
- 3.4 We also inspected the interior of 14 Birches Rise, which is a two bedroom flat located on the ground floor. The accommodation provides a living room, kitchen two bedrooms and a bathroom. Again the kitchen and bathroom fittings are original to the date of construction. Heating is provided by night storage heaters.
- 3.4 Externally, there are no garages although each flat has its own car parking space. The development is located just off the A40, a busy road leading from High Wycombe to West Wycombe. There is a main railway line at the rear of the development with trains currently running at one every hour.

#### **4. The Leases**

- 4.1 In the papers submitted to the Tribunal a copy of the standard lease for all the flats at Birches rise was enclosed. Each lease is for a period of 99 years from 1<sup>st</sup> June 1985. The initial rent passing is £ 80 per annum and there is a rent review provision at the end of each 33<sup>rd</sup> year.
- 4.2 The original Lessor was Tarmac Homes South Midlands Limited. The lease places certain obligations on the Company, in the first instance the Company was Chiltern Gardens Management Limited Amongst other terms, the Company is responsible for the repair, maintenance and insurance of the building and is able to recover the costs of these matters from the lessees.

#### **5. The Agreed Matters**

- 5.1 The following matters were confirmed to be agreed by both representatives:

The Property: A description of the property was agreed between the parties.

The Leases: Each lease is for a term of 99 years from 1<sup>st</sup> June 1985 at an initial ground rent of £80 per annum, subject to review every thirty third year.

Ground Rent Review: It is agreed that the percentage review referred to is 0.18765% of the capital value of the property.

Capital Values: The current capital value for a one bedroom flat is £117,500 and a two bedroom flat is £135,000.

Marriage Value: There is no marriage value payable.

## **6. Matters Outstanding**

- 6.1 Given that the above matters had been agreed, the matters that were still outstanding and requiring determination by the tribunal were: the appropriate yield to be applied and accordingly the premium to be paid for the lease extension. Also the valuation fees to be borne by the applicants are in dispute.
- 6.2 Mr Buller, acting for the applicants, suggested that the yield to be applied should be 9% for the term and reversion and that 11% should be applied to the reviewed rent. By applying these yields the premium for the lease extensions are £1,231.68 for a one bedroom flat and £1,247.95 for a two bedroom flat.
- 6.3 As to the question of fees, Mr Buller is of the opinion that the valuation fees are excessive.
- 6.4 The respondent's valuer, Mr Evans proposed that a yield of 6.5% should be applied to the term and this should rise to 7% for the reversion. This would produce a premium of £2,650 for a one bedroom flat and £2,930 for the two bedroom flats.
- 6.5 With regards to the fees that are recoverable under Section 60 of the Act, Mr Evans is seeking £275 plus VAT per property for the valuation fees.

## **7 Hearing**

- 7.1 At the commencement of the hearing clarification was sought on the matters that had been agreed and the items still remaining in dispute. As to the valuation date, although both sides had agreed a valuation date of 19<sup>th</sup> May 2004, it was acknowledged by both sides that the valuation date is the date of the Initial Notice and that this would have no significant impact on the level of capital values already agreed. For the sake of completeness the appropriate valuation dates are as follows:

<b>Premises:</b>	<b>Valuation Date:</b>
1, Birches Rise	17.03.04
7, Birches Rise	22.03.04
12, Birches Rise	15.03.04
14, Birches Rise	11.03.04
22, Birches Rise	16.03.04
30, Birches Rise	22.03.04

7.1 Both valuers had supplied proofs of their evidence to the tribunal. We invited them to tell us if they wished to add to their statements and to ask questions of one another. We asked some questions as well. We have summarised each case below.

## 7.2 Mr Buller's Evidence

### 7.2(i) Rent Review.

Mr Buller's interpretation of the rent review clause under the leases relies on treating all the flats in a similar manner. To the total capital value of the block, agreed at £4,545,000, the agreed percentage of 0.18765% should be applied. The resulting figure of £8,528.59 should then be divided by 36. This produces a revised ground rent of each flat of £236.90 per annum for each flat, irrespective of whether they are a one or two bedroom flat. This approach is supported by the fact that the ground rent for all the flats is £80 per annum and there is no differential made between one and two bedroom units.

### 7.2(ii) Yields.

Mr Buller supplied the Tribunal with details of several negotiated agreements, LVT decisions and a Lands Tribunal decision. These showed yield rates of between 8% and 9%. In his opinion a yield of 9% should be used in the current cases, as these are lease extensions, with no perceived gain that would normally be associated with a portfolio acquisition. It could be argued that the yield evidence supplied may be viewed as a preferable investment opportunity in comparison to the current scenarios as in some cases the un-expired terms

range from 69 years upwards and as the ground rents are fixed there is less degree of risk.

At the rear of the development, there is a main railway line that is subject to a proposal by Central Railways to create a main freight service from Liverpool to Lille. Although this proposal was initially rejected, it is perceived that this scheme will be re-visited. In Mr Buller's opinion this matter could have an impact on the value of the flats within the development. To reflect this element of risk, a yield of 11% should be used on the reviewed rent on the first reversion.

On the final reversion to the capital value of the flats, this should be discounted using a 9% yield. The valuations produced by Mr Buller are replicated in Appendix 1.

#### 7.2(iii) Valuation Fees.

It was suggested that the valuations undertaken in the current cases were quite simple. There is no marriage value and the leases were similar in format. Once one valuation had been carried out, then the following ones would have had quite a high element of duplication.

Mr Buller proposed that using a Surveyor based in Cardiff was not appropriate, as cheaper local agents could have been chosen. Reference was made to various LVT decisions as guidance as to what would be a reasonable level of fees. In his opinion a total fee of between £300 and £350 would have been reasonable in these cases.

### 7.3 Mr Evans' Case

#### 7.3(i) Rent Review.

Reference was made to the rent review clause in Paragraph 11 of Schedule 6 of the lease. Under the definitions in the lease "the Rent Review of the Building" makes reference to "each" and "individually". In Mr Evans'

interpretation stress should be placed on the words each and individually. Accordingly each review rent is different and should be calculated separately.

Therefore the approach to be taken is the application of the agreed review percentage to the current capital value of the flat. Namely 0.18765% of the capital value of a one bedroom flat at £117,500 produces a revised ground rent of £220 per annum. A two bedroom flat has an agreed capital value of £135,000 and therefore the revised ground rent becomes £253 per annum.

### 7.3(ii) Yields.

Mr Evans has considerable experience in the South East and South Midlands of England and Greater London. From this experience of negotiated settlements for lease extensions and collective enfranchisements the yield range was between just over 5% and over 7%.

In addition to cases with direct involvement, Mr Evans has examined open market evidence and in particular auction evidence. The Tribunal were presented with details of Allsops' "Residential Auction Analysis". The data derived from transactional information is from sales of freehold interests, where the lease terms are for periods more than 80 years. Initial yields in the 12 months up to July 2004 are between 4.95 – 5%. Actual auction sales were also detailed to us and the initial yields range from 1.59 to 6.18%. In Mr Evans' opinion the above yields should not reflect any benefits derived from potential insurance or management commissions, as these are areas of opportunity that have reduced significantly in recent years. The introduction of the Commonhold and Leasehold Reform Act 2002 has reduced the potential for insurance and management commissions and these aspects are now not reflected in the open market yields.

Mr Evans provided details of two cases in Barnet and Wapping, in which the cases were settled at yields of 6% and 6.1% respectively. These were two lease extensions with valuation dates in 2004 and 2003. Mention was made of the Lands Tribunal Case on 57 Shawfield Street in which it was determined that a yield of 6% for an enfranchisement case in Central London was too



high, whilst a yield of 5.25% was not too low. Additionally in the Lands Tribunal case of Messrs Day in respect of Flat 6, 32 Brechin Place, London stated that there had been a downward trend on yields.

Drawing the information presented together, Mr Evans concluded that as the properties under consideration were not in central London it would be more appropriate that a yield of 6.5% for the two terms and 7% on the reversion should be used. Mr Evans' valuations are shown in Appendix 2.

### 7.3(iii) Valuation Fees.

In the opinion of Mr Evans there are six properties and under RICS rules and under rules for Professional Indemnity, each requires a separate valuation. There is a need to read six leases, although after reading the first lease the subsequent leases are a lot quicker. A normal fee for such work is £375 per valuation and therefore £275 is a significant reduction to reflect any duplication of work. For clarification purposes it was confirmed that the preparation involved in the "First Value Certificate" was not included in the fee suggested above, as this work related to the application and therefore beyond the scope of Section 60 of the Act. Mr Evans had been instructed by the respondent's group of companies in about 10 to 15 cases since January 2003.

## 8. **Decision**

- 8.1 Mr Evans had placed emphasis on the words "each" and "individually" in the definition of the Rent Review of the Building. Our interpretation of reading the whole clause is that those words apply to the assumptions that should be made regarding the determination of the sale price that could be achieved for each flat and assumes no aggregate sale of the flats in the development, which could force the sale price down. The words "each" and "individually" do not apply to the application of the rent review on each flat separately.
- 8.2 We prefer the approach taken by Mr Buller that there is an overall application of the formula to derive the revised rent. We also consider that as there is no

differential for the initial ground rent for one and two bedroom flats, then on review the revised ground rent should be the same for both one and two bedroom units. Therefore the formula percentage of 0.18765 should be applied to the gross capital value of the development of £4,545,000, producing a figure of ££8,528.59. This figure should be divided by 36 to find the revised ground rent payable for each unit, namely £236.90 per annum.

- 8.3 Mr Buller's evidence of negotiated settlements, Lands Tribunal and LVT decisions showed an 8 – 9% yield, but he used 9 and 11% in his valuation. The higher yield reflecting the issue of the freight proposals on the railway line, a matter that may or may not occur. As this matter is not in existence at the valuation date it has not been reflected in the yield that we have determined.
- 8.4 On the other hand, Mr Evans has produced evidence of lower yields of 5-6% particularly from auction results. Whilst the tribunal have a preference for evidence obtained in the open market, we are concerned that the information supplied from the auction results is not sufficient to allow for an accurate analysis of the data. Although the reversions may be some time away, we have been given no indication as to capital values, whether there is any development or hope value. Additionally whilst we acknowledge that the Commonhold and Leasehold Reform Act 2002 has had some impact on insurance commissions or management fees, we feel that the market perceives that the potential has not been removed entirely. The auction data relates to freehold transactions and we anticipate that there is some element of potential gain in these cases that would not be experienced in a lease extension case.
- 8.5 We believe that there should be a differential in yield rates between prime locations such as central London and High Wycombe. The yield reflects not only the annual return but also expectations of capital growth, these being much higher in central London than suburban High Wycombe. Whilst the subject development is modern and fairly attractive it is not in a prime location in the town and the existence of the railway line at the rear of the property will have some impact. However we feel that it is inappropriate to use a higher yield at the first reversion to the revised ground rent to reflect risk, as that

element would already be incorporated into the capital values in the development. After careful consideration of the evidence of both sides the LVT determined that the yield that should be adopted in this case should be 8% for both the term and the reversion. We consider that this yield rate properly reflects the type and location of this property and the rising level of the ground rent. The valuation of the Tribunal is included in Appendix 3.

- 8.6 With regards to the valuation fees that are recoverable by the lessor under the Section 60 of the Act, we were not convinced by Mr Buller's view that a local agent should have been used and that accordingly the fee base would have been lower. As Mr Evans had been instructed by the respondent on a number of lease extension and enfranchisement cases in the last two years, it does not seem unreasonable that he should have been appointed in this case. However we believe that there are some economies of scale when dealing with a number of valuations on a similar format. We acknowledge that the lease for each property is in a similar format and that once one valuation had been undertaken it would not be too difficult to replicate the basic valuation issues for each following case. Accordingly, whilst we may consider that a valuation fee of £275 plus VAT would be appropriate for a single valuation, we are satisfied that in this case there is some duplication of the work undertaken and therefore the fee should be reduced in each case. We therefore determine the valuation fees of £175 plus VAT per flat, providing a total £1,050 plus VAT.

## **9. Determination**

- 9.1 In summary the yield that we have determined is 8% for the term and the reversion and when this figure is applied to the valuation, the premium for the lease extensions are £1,900 for a one bedroom flat and £1,940 for a two bedroom flat. The tribunal's valuations are provided in Appendix 3.
- 9.2 In addition to the above premium, a valuation fee of £175 plus VAT per flat determined to be reasonable.

A handwritten signature in black ink, appearing to read 'Helen C Bowers', written in a cursive style.

Helen C Bowers  
Chairman

18/1/2005

Date

## Appendix 1

### Applicant's Valuation

Birches Rise, West Wycombe Road, High Wycombe  
One Bedroom Flat

Initial Rent Received	£80p.a	
YP 14years @9%	<u>7.7862</u>	£622.89
Reversion to	£236.90	
YP 81 years @ 11%	<u>9.089</u>	
	2,153.184	
PV of £1, 14 years @11%	<u>0.2319948</u>	£499.53
Reversion to Capital Value	£117,500	
PV of £1 in 81 years @9%	<u>0.0009299</u>	
		<u>£109.26</u>
		£1,231.68
		<b>Premium £1,231.68</b>

**Applicant's Valuation**  
**Birches Rise, West Wycombe Road, High Wycombe**  
**Two Bedroom Flat**

Initial Rent Received	£80p.a	
YP 14years @9%	<u>7.7862</u>	£622.89
Reversion to	£236.90	
YP 81 years @ 11%	<u>9.089</u>	
	2,153.184	
PV of £1, 14 years @11%	<u>0.2319948</u>	£499.53
Reversion to Capital Value	£135,000	
PV of £1 in 81 years @9%	<u>0.0009299</u>	
		<u>£125.53</u>
		£1,247.95
		<b>Premium £1,247.95</b>

## Appendix 2

### Respondent's Valuation

Birches Rise, West Wycombe Road, High Wycombe  
One Bedroom Flat

Initial Rent Received	£80p.a	
YP 14years @6.5%	<u>9.013842</u>	£721
Reversion to	£220	
YP 66 years @ 6.5%	<u>15.14362</u>	
	£3,332	
PV of £1, 14 years @6.5%	<u>0.4141</u>	£1,380
Reversion to Capital Value	£117,500	
PV of £1 in 80 years @7%	<u>0.004596</u>	
		<u>£540</u>
		£2,641
		<b>Premium £2,650</b>

**Respondent's Valuation**  
**Birches Rise, West Wycombe Road, High Wycombe**  
**Two Bedroom Flat**

Initial Rent Received	£80p.a	
YP 14years @6.5%	<u>9.013842</u>	£721
Reversion to	£253	
YP 66 years @ 6.5%	<u>15.14362</u>	
	£3,831	
PV of £1, 14 years @6.5%	<u>0.4141</u>	£1,587
Reversion to Capital Value	£135,000	
PV of £1 in 80 years @7%	<u>0.004596</u>	
		<u>£620</u>
		£2,928
		<b>Premium £2,930</b>



## Appendix 3

### Tribunal's Valuation

Birches Rise, West Wycombe Road, High Wycombe  
One Bedroom Flat

Initial Rent Received	£80p.a	
YP 14.1667 years @8%	<u>8.29675</u>	£663.74
Reversion to	£236.90	
YP 66 years @ 8%	<u>12.4222</u>	
	£2942.82	
PV of £1, 14.1667 years @8%	<u>0.33626</u>	£989.55
Reversion to Capital Value	£117,500	
PV of £1 in 80.1667 years @ 8%	<u>0.00209</u>	
		<u>£245.58</u>
		£1,898.87
		<b>Premium £1,900</b>

**Tribunal's Valuation**  
**Birches Rise, West Wycombe Road, High Wycombe**  
**Two Bedroom Flat**

Initial Rent Received	£80p.a	
YP 14.1667 years @8%	<u>8.29675</u>	£663.74
Reversion to	£236.90	
YP 66 years @ 8%	<u>12.4222</u>	
	£2942.82	
PV of £1, 14.1667 years @8%	<u>0.33626</u>	£989.55
Reversion to Capital Value	£135,000	
PV of £1 in 80.1667 years @ 8%	<u>0.00209</u>	
		<u>£282.15</u>
		£1,935.44
		<b>Premium £1,940</b>