

Case Ref. BIR/OOCS/OAF/2005/0222

MIDLAND RENT ASSESSMENT PANEL

DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL

Leasehold Reform Act 1967

On an application under Section 21(1)(a) to determine the price payable for the Freehold interest and Section 21(1)(ba) to determine the costs payable under Section 9(4) for

46 CLAVERDON DRIVE, HAMSTEAD, BIRMINGHAM, B43 5HP

Applicant	Derek Brawn (Tenant)
Respondent	Rock One Limited (Landlord and Freeholder)
Date of Notice	25th July 2005
Date of Application to Tribunal	29th September 2005
Heard at	The Panel Office
On	24th November 2005

Members of the Leasehold Valuation Tribunal:

Mr I.D. Humphries B.Sc.(Est.Man.) FRICS
W.H. Hatcher Esq., Solicitor
Mrs C. Smith

Date of Tribunal Determination:

Determination:	Freehold Premium	£1,865.00
	Legal Fee	£325.00 plus VAT
	Valuation Fee	Nil

Investment Holding plc, the parent company of the Freeholder Rock One Limited, dated 22nd November 2005 which was provided to the tenant's agent prior to the Hearing.

4.4 There was common ground in the submissions as follows:

- 1 The ground rent was £16.00 p.a. fixed for the term.
- 2 The term and reversion were to be valued at the same capitalisation rate.
- 3 The entirety value was £165,000.
- 4 The s.15 ground rent was calculated by the standing house method.
- 5 The site apportionment was 33%.
- 6 Legal fees were agreed at £325.00 plus VAT.

4.5 The points in issue were:

	Mr Goldstein	Mr Moore
Capitalisation rate	5.5%	7.0%
Unexpired term	54 years	53.75 years
Premium	£3,300	£1,657
Valuation fee	£250	Nil

The submissions on each point are set out below.

4.6 **Capitalisation Rate**

Mr Goldstein valued at 5.5% based on the analysis of a parcel of 15 Freehold ground rents in Stonehurst Road, Birmingham sold by Rock One Ltd. to A.H. Field (Property) Developers Ltd. in June 2005 for an average price of £3,250 each. The analysis reflected a yield of 5.75% and Mr Goldstein considered yields had fallen since June 2005 by 0.25% leading to a yield of 5.5% for the subject property.

4.7 This was supported by sales evidence of two properties as individual auction lots and two other properties sold by private treaty, all of which Mr Goldstein analysed to a yield of 5.5%.

4.8 Mr Goldstein referred to the Lands Tribunal decision in *Cadogan & Anor* which we assume to be one of the cases collectively heard by the Lands Tribunal in July and August 2005; *Earl Cadogan and Cadogan Holdings Limited re 9 Astell St. LRA/18/2005*. Mr Goldstein said that the Lands Tribunal's capitalisation rate of 4.5% in that case should be increased by 1% to reflect the locational differences between the London property in that case and the subject property in Birmingham.

4.9 Mr Moore valued at 7.0%. He said that the average bank base rate since November 1970 had been around 9% and while financial rates were not directly related to property yields in the short term, he considered 7% to be a fair capitalisation rate for the subject property at the valuation date (25th July 2005) in the long term. He said that the nearest similar property investment would be an assured shorthold tenancy which would currently produce a return of about 5%, but since assured shortholds had the potential for relatively frequent rent reviews their returns would be lower than a ground rent where the income was fixed, in this case for the duration of the lease. The subject return should therefore be higher than 5% and he considered 7% to be appropriate.

4.10 ***Unexpired Term***

Mr Goldstein adopted an unexpired term of 54 years, Mr Moore 53.75 years.

4.11 ***Premium***

Applying the capitalisation rates and unexpired terms above, Mr Goldstein valued the premium at £3,300 and Mr Moore valued at £1,657.

4.12 ***Valuation Fee***

Mr Goldstein claimed a valuation fee £250 in the written submission to the Tribunal dated 22nd November 2005.

4.13 Mr Moore said a fee should not be paid as there was no evidence of a valuation having been carried out pursuant to the Notice of 25th July 2005.

5 Determination

5.1 The Leasehold Valuation Tribunal note that neither party's Surveyor provided a statement claiming to be an Independent Expert within the definition of the RICS Practice Statement *Surveyors Acting as Expert Witnesses - Second Edition*, or words to the like effect, and accordingly assume both parties to represent their clients as advocates.

We find regarding the issues as follows:

5.2 ***Capitalisation Rate***

In relation to Mr Goldstein's evidence, we accept as fact the sale price achieved for the block of 15 ground rents but do not accept that it necessarily accords with the basis of the Act. S.9(1) assumes the tenant is not buying or seeking to buy but it is well known that purchasers of freehold ground rents often buy in the hope of selling on to occupying tenants who may not take professional advice and may be unaware of the statutory basis of valuation. In some cases, occupying tenants are aware of the statute but have a particular anxiety to settle and pay above the statutory basis, generally known as the Delaforce effect per *Delaforce v Evans* (1970) 22 P&CR 770.

5.3 Mr Goldstein provides evidence of two auction sales of individual Freeholds, 140 Cranwell Boulevard and 9 Hilton Avenue but the identities of the purchasers are not provided and they may be occupying tenants or parties intending to sell to the occupying tenants at future dates. There is no certainty that the tenant's bid has been excluded.

5.4 The other 2 sales, 32 Claverdon Drive and 21 Claverdon Drive, are assumed to be sales to occupying tenants as Mr Goldstein's analysis assumes elements of 'marriage value' and they are of limited assistance.

5.5 In relation to Mr Moore's submission for 7.0%, we are not convinced this is the correct rate in this case although agree that general financial rates have a bearing on property returns.

5.6 We accept, as guidance, that in the absence of dependable evidence in the property market and we have none before us in this case, that the starting point for the capitalisation rate is the

yield on a risk-free investment which, in the absence of contrary evidence, was 2% on the date, derived from index-linked gilts.

5.7 We accept, as guidance, and in the absence of contrary evidence, that an allowance for comparative illiquidity should be made as part of the risk of a Freehold property investment and find in the present instance that 1% is appropriate.

5.8 We note that in *Cadogan*, the property was high value London property and that there is greater risk in respect of a house in Birmingham than may be inferred in London generally. To achieve a fair and just result we find an allowance of 3.75% to include requisite management costs, the risk of destruction, the potentially expensive costs of realisation at the expiry of the term and attractiveness of the house as an investment.

We therefore adopt a capitalisation rate of 6.75%.

5.9 ***Unexpired Term***

There is very little difference between the contentions of the parties but as there is a difference we find as follows.

5.10 The lease commenced on 25th March 1960 and expires on 24th March 2059. The valuation date is 25th July 2005 (the date of Notice) and the unexpired term at that date was 53 years 8 months, i.e. 53.6 years which we adopt in our valuation.

5.11 ***Premium***

Accordingly, our valuation is as follows:

Term			
Ground Rent	£	16	
Years purchase 53.6 years @ 6.75%		<u>14.3679</u>	
			£ 230
Reversion			
Entirety Value	£165,000		
Site apportionment @ 33%	£ 54,450		
Section 15 rent @ 6.75%	£ 3,675		
Years Purchase of reversion to perpetuity post 53.6 years 6.75%		<u>0.44513</u>	
			<u>£1,635</u>
Premium			<u>£1,865</u>

5.13 ***Legal Costs and Valuation Fee per s.9(4)***

5.14 ***Legal Costs***

It is common ground between the parties that the appropriate fee is £325.00 plus VAT and we find this to be reasonable.

5.15 Valuation Fee

We have been provided with no evidence to the effect that the property has been inspected by a representative of the Landlord or that a valuation has been prepared pursuant to the tenant's Notice, rather than for the Tribunal Hearing. We therefore find that no fee is payable.

5.16 *Summary*

Accordingly, we determine the premium payable in accordance with s.21(1) and s.9(1) of the Leaschold Reform Act 1967 to be £1,865 (One Thousand Eight Hundred and Sixty Five Pounds) and legal costs in accordance with s.21(1)(ba) and s.9(4) of £325.00 (Three Hundred and Twenty Five Pounds) plus VAT.



I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

12th January 2006