

**CHI/43UK/OCE/2007/0068**

**DECISION OF THE LEASEHOLD VALUATION  
TRIBUNAL ON APPLICATIONS UNDER SECTION 24 OF  
THE LEASEHOLD REFORM, HOUSING & URBAN  
DEVELOPMENT ACT 1993**

Address: 109 Eldon Road  
Applicant: Mr L Gorman, as Nominee Purchaser  
Respondent: Mr P Savva  
Application: 2 October 2007  
Inspection: 18 March 2008  
Hearing: 18 March 2008

Appearances:

**Tenants**

Mr Richards BSc (Hons) MRICS, Richards & Co, Property Consultants & Surveyors  
Chartered Surveyor  
Mr L Gorman Leaseholder

For the Applicant

**Landlord**

Mr P Savva FRICS, Freeholder  
Chartered Surveyor

For the Respondent

Members of the Tribunal:

Mr I Mohabir LLB (Hons)  
Mr D Lintott FRICS  
Mr A O Mackay FRICS

**IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**CHI/43UK/OCE/2007/0068**

**IN THE MATTER OF SECTION 24 OF THE LEASEHOLD REFORM,  
HOUSING & URBAN DEVELOPMENT ACT 1993**

**AND IN THE MATTER OF 109 ELDON ROAD, CATERHAM, SURREY, CR3  
5JU**

**BETWEEN:**

**LEIGHTON IVOR GORMAN  
(AS NOMINEE PURCHASER)**

**Applicants**

**-and-**

**PETER SAVVA**

**Respondent**

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**THE TRIBUNAL'S DECISION**

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***Introduction***

1. This is an application made by the Applicant, as nominee purchaser, pursuant to s.24 of the Leasehold Reform, Housing & Urban Development Act 1993 (as amended) ("the Act") to determine the disputed terms on which the participating tenants can acquire the freehold interest in the property known as 109 Eldon Road, Caterham, Surrey, CR3 5JU ("the subject property").
2. By an initial notice dated 28 March 2007 served pursuant to s.13 of the Act ("the s.13 notice"), three of the four leaseholders of Flats 2, 3 and 4 in the subject property exercised their statutory right to acquire the freehold interest

in the subject property<sup>1</sup>. The lessee of Flat 1 did not participate in the application. Paragraph 9 of the said notice stated that this right was being exercised by Mr Leighton Gorman, as the nominee purchaser, on behalf of the participating tenants. Paragraph 2 of the s.13 notice also stated that the additional freehold being acquired was in relation to the common pathways, garden ground and driveways at the subject property, as the participating tenants were entitled to do so under s.1(2)(a) of the Act (“the additional freehold”). It was property which the participating tenants were entitled under the terms of the lease of their respective leases in common with the occupiers of the other premises.

3. The s.13 notice proposed a purchase price of £20,000 for the freehold interest in the subject property and a further £100 for the additional freehold. The date by which the Respondent was required to serve a counter notice, under s.21 of the Act, was 6 June 2007.
4. By a letter dated 2 April 2007, the Respondent acknowledged service of the s.13 notice and stated, “*As you have expressed interest in purchasing the freehold interest, I would not raise any objections to your proposal*”. The letter went on to counter propose a purchase price of £100,000 for the freehold interest on the basis of the unexpired term of each lease (“the initial counter notice”).
5. On 2 October 2007, the Applicant made this application to the Tribunal for a determination of the following matters:
  - (a) the terms of acquisition and price to be paid for the freehold interest.
  - (b) that the counter notice served by the Respondent was invalid.
  - (c) or, in the alternative, if the counter notice was valid in respect of the freehold, that the additional freehold should be transferred for a consideration of £100.

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<sup>1</sup> see p.4 of the bundle

6. Pursuant to the Tribunal's Directions dated 2 November 2007, the Respondent filed his valuation evidence of the freehold interest in the sum of £100,000. An amended valuation was filed by the Respondent on 7 March 2008 but it did not alter his valuation of the freehold. By a further letter dated 30 November 2007, the Respondent valued the additional freehold in the sum of £15,000. On 29 November 2007, the Applicant's valuer, Mr Richards of Richards & Co, Property Consultants & Surveyors, filed his valuation report valuing the freehold interest at £37,000. In a subsequent letter dated 18 December 2007, Mr Richards contended that because the Respondent had not served a counter notice in relation to the additional freehold, he was not out of time to do so and had to accept the Applicant's proposed figure of £100.
7. By a letter to the Tribunal dated 12 December 2007, the Respondent contended that none of the participating tenants had been resident in their respective flats for the preceding 10 years and could not be qualifying tenants within the meaning of s.13(3)(e)(iii) of the Act. In other correspondence, the Respondent also submitted that the Applicant had failed to comply with one or more of the requirements of s.12A of the Act and could not, therefore, serve a valid s.13 notice. Consequently, the application was invalid. In subsequent and numerous letters to the Tribunal, the Respondent maintained this stance and strenuously sought to have the application withdrawn by the Tribunal without success. In a letter dated 10 January 2008, Mr Richards contended that the Respondent was now out of time to challenge the validity of the s.13 notice in the County Court.
8. In a further letter to the Tribunal dated 14 March 2008, the Respondent stated that, in addition to a share of the marriage value he believed that he was entitled to claim for the loss of the development value of the site. He believed that the site could be redeveloped to provide 8 one-bedroom self-contained flats. The Respondent valued this at £25,600.
9. On 19 March 2008, the Respondent purported to serve on the Applicant a further counter notice pursuant to s.23(6)(b) of the Act. For the purpose of these proceedings it is not necessary to consider the effect of this counter

notice because the initial counter notice served by the Respondent did not contain a statement that complied with s.21(2)(c) of the Act, that is, a statement he intended to redevelop the whole or substantial part of the specified premises. In the same letter to the Applicant, the Respondent asserted that the additional freehold was not appurtenant property within the meaning of s.1(2)(3) and (7) of the Act because it was not described as such in either the Second or Third Schedules of the leases.

10. On 25 March 2008, the Respondent issued a Part 8 claim in Barnet County Court seeking a declaration that the s.13 notice was invalid for various reasons and a further declaration that the additional freehold was not appurtenant property within the meaning of the Act. It appears that a Directions hearing will take place in these proceedings on 15 July 2008. In correspondence with the Respondent, the Tribunal indicated these parallel proceedings did not prevent the Tribunal from issuing its determination in this matter. However, the Tribunal accepted that its determination will be subject to the outcome of the County Court proceedings. If the Respondent succeeded, then the Tribunal's determination would be a nullity. Otherwise, the Tribunal's determination would stand, subject to any appeal brought in either proceedings.

### ***The Issues***

11. The facts agreed by the parties are set out in the Tribunal's valuation annexed to this Decision. The issues that remained in dispute and upon which a determination was sought were:
  - (a) the existing and long lease values (unimproved).
  - (b) the capitalisation rate.
  - (c) if, relevant, the value of the additional freehold.
  - (d) the redevelopment value of the site, if any.
  - (e) the Respondent's s.33 costs.

Each of these matters is considered in turn below by the Tribunal.

### ***Inspection***

12. The Tribunal inspected the subject property on 18 March 2008. The Tribunal inspected the subject property on 18 March 2008, including the interiors of Flats 2, 3 and 4, but not the interior of the non participating Flat 1. We found the property to comprise a detached building, probably built in the 1930's, with pebbledash rendered elevations under a tiled roof and comprising four purpose built self contained flats - two on each floor, and each with their own separate access. There are gardens to the front and rear of the building which have been apportioned between the four flats.

### ***Hearing***

13. The hearing in this matter also took place on 18 March 2008. The Applicant was represented by its valuer, Mr Richards with Mr Gorman, as the nominee purchaser in attendance. The Respondent, Mr Savva, appeared in person.

#### ***(a) The Existing and Long Lease Values***

14. It was a matter of common ground that under paragraph 3(c) of Schedule 6, Part II the Act, any increase in value as a result of improvements carried out to any flat held by a participating tenant should be disregarded when valuing the freehold interest. Mr Richards said that he had been informed by the leaseholders that all of the flats have had some improvements carried out including replacement kitchens, bathrooms, central heating systems, double glazing and general garden improvements. He estimated that the cost of these works was approximately £10-15,000 per flat. This was not challenged by the Respondent.
15. As to the existing lease values, Mr Richards relied on the sale of 3 properties in Eldon Road as comparable evidence. These were:

#### **6 Neville Court, Eldon Road**

Sold on 11 October 2007 for £169,000 with an unexpired term of 87 years.

#### **118 Eldon Road**

Sold on 6 July 2007 for £162,000 with an unexpired term of 71 years.

108 Eldon Road

Sold on 1 June 2007 for £171,000 with an unexpired term of 71.5 years.

Mr Richards concluded that, having regard to this market evidence, and disregarding any tenant's improvements, he valued the existing leases at £160,000.

16. In his amended valuation 7 March 2007, the Respondent also valued the existing leasehold interest of Flats 2, 3 and 4 at £160,000 with an unexpired term of 70 years each. He valued Flat 1 at £150,000 because of the slightly shorter unexpired term of 63 years.
17. The Tribunal concluded that the best evidence before it of the existing lease values of the subject property was the comparable evidence of the sale of 108 and 118 Eldon Road, as both of these properties had been sold with leases of 71 years unexpired. This was almost identical to Flats 2, 3 and 4 in the subject property. The average of these two sales produced a figure of £166,500 per flat. From this, the Tribunal deducted the (unchallenged) sum of £10,500 to reflect the tenants' improvements thereby producing an unimproved value of £156,000 per flat on the basis of a 70 years lease.
18. Mr Richards relied exclusively on the Relativities Graph produced by the Leasehold Advisory Service ("LEASE"), which was a record of Tribunal determinations. This indicated that the appropriate relativity for a lease of 70 years and 3 months unexpired was 93% and this figure was to be applied to Flats 2, 3 and 4. As to Flat 1, the LEASE graph indicated a relativity of 90% for a lease with an unexpired term of 63 years and 6 months. By way of a cross check, Mr Richards referred to a determination made by another Tribunal on 15 December 2006 regarding 93/95 Bear Road, Brighton when a relativity figure of 96.62% was determined for two leases with unexpired terms of 73 years. In this instance, with a slightly shorter term of 70 years and 3 months, it confirmed his figure of 93% to be reasonable.

19. The Respondent placed no reliance on any graphs of relativities. His valuation approach was to take the 3 comparable properties relied on by the Applicant above and applied a 20% uplift to the sale prices. He did so on the basis that these properties were not purpose built blocks of flats, which suffered from a poorer internal arrangement because of the site limitations. They would have 2 single bedrooms instead of the double bedrooms to be found in the subject flats. Indeed, Flat 3 in the subject property was offered for sale in the recent past by the firm of surveyor's initially instructed by the Applicant, Messrs Rayners, for the sum of £190,000. The sale did not proceed because the market "had turned". The Respondent submitted that this was the best evidence of the long lease value.
20. The evidence before the Tribunal on this issue was unsatisfactory in many respects. However, the Tribunal concluded, on balance, that the only independent evidence before it, as to the long lease values, had been adduced by the Applicant. The Respondent's evidence was not independent and was simply a number of unsubstantiated assertions made by him. Whilst the LEASE graph of relativities could not be said to be "untainted" because it is based on other Tribunal determinations based almost certainly on different evidence, it was the only independent evidence before this Tribunal. Accordingly, the Tribunal adopted a relativity figure of 93% for Flats 2, 3 and 4 and 90% for Flat 1. The long lease value of the flats is, therefore £167,000, if £156,000 represents a 93% share of the freehold/long lease value. Consequently, for the shorter lease of Flat 1, applying a relativity figure of 90% to the figure of £167,000 produces a value of £150,500 for the existing lease value of this flat.

***(b) The Capitalisation Rate***

21. Mr Richards, for the Applicant contended for a figure of 7.5% on the basis that determinations that had taken place after "*Sportelli*" had adopted rates between 7% and 8%. He had simply chosen a midway point between these figures. Again, by way of a cross check, he had regard to an earlier Tribunal determination in relation to 2 flats at 337 Knights Manor Way, Dartford, had found for a figure of 8%.



22. The Respondent contended for a figure of 6% because this was the figure that Mr Richards had initially adopted in earlier negotiations.
23. The difficulty encountered by the Tribunal on this issue was that there was no compelling evidence either way on which it could base its determination. The figures contended for by the parties appeared to be based on nothing more than unsubstantiated opinion and was, ultimately, self-serving. Accordingly, the Tribunal, using its own expert knowledge and experience, determined that a capitalisation rate of 7% should be adopted.

***(c) The Additional Freehold***

24. Pursuant to the Tribunal's Directions given after the hearing, both parties filed further evidence as to the title and extent of the demise, supported by coloured plans.
25. On the basis of this evidence it is clear that the additional freehold area is in fact the small pedestrian pathway and area immediately in front of the front doors of the subject property. The Tribunal accepted the Applicant's submission that this area, although not specifically demised under any of the leases, was clearly appurtenant to all of the flats in the subject property. This area was subject to rights of way in favour of the lessees. It had no intrinsic value to the Respondent. Accordingly, the Tribunal determined that it fell within the definition of "appurtenant property" envisaged by s.1(3) of the Act and should form part of the transfer of the freehold interest. However, as stated earlier in this Decision, the Tribunal's finding is, of course, subject to the outcome of the County Court proceedings.
26. Moreover, and perhaps more significantly, the additional freehold was expressly claimed by the Applicant at paragraph 2 of the s.13 notice. The Applicant, correctly, submitted that in his initial counter notice, the Respondent made no reference to this area, only to the freehold interest itself. The date for service of a counter notice was 6 June 2007. The Respondent made no reference to the additional freehold until his letter of 30 November

2007, when he counter proposed a price of £15,000. The Applicant has submitted that its s.13 notice was valid, that the Respondent has not served a counter notice in relation to the additional freehold claimed and he is now out of time to do so. However, it does not follow that this interest is automatically acquired by the Applicant at the price proposed in the s.13 notice by default. In the absence of any such counter notice, it appears to the Tribunal that the Applicant may have to make a separate application under s.25 of the Act. The County Court may direct the Respondent, in the event his claim fails, to re-serve a fresh counter notice under s.22(3) of the Act to deal with this matter.

***(d) Redevelopment Value***

27. This was not claimed by the Respondent until 14 March 2008 and received by the Tribunal until the day before the hearing. The Tribunal had little difficulty in rejecting this claim out of hand. It did so for the following reasons:

- (i) that the Respondent had not specified in his counter notice that he had intended to redevelop the whole or part of the specified premises in accordance with s.21(2)(c) of the Act.
- (ii) that, in any event, no application had been made under s.23(1) of the Act.
- (iii) that the Respondent, in evidence, accepted that the possibility of redevelopment was remote and appeared to have been based on nothing more than a cursory enquiry to the local authority.
- (iv) there was no other evidence whatsoever before the Tribunal that redevelopment of the site was realistic or possible.

***(e) Section 33 Costs***

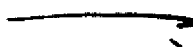
28. At the hearing, both parties invited the Tribunal to determine the Respondent's costs to which he is entitled under s.33 of the Act. The Respondent has submitted a costs schedule claiming the sum of £3,120. The Applicant submitted that the Respondent, as a Chartered Surveyor and acting on his own behalf, has no entitlement to profit costs and proposed a figure of £500, as being reasonable.

29. A landlord's entitlement to costs under the Act are only in relation to the costs incurred pursuant to those matters set out in s.33(1) and nothing else. Essentially, this is limited to deducing title and valuing the freehold interest. However, it seems to the Tribunal that the Respondent had not "incurred" any other external costs because he had acted on his own behalf throughout this matter. Under s.33 there is no entitlement to his own profit costs in so doing. This should be distinguished from the position where external advisers are instructed by a landlord. The only costs that the Respondent could have reasonably incurred in deducing title and other valuation issues would have been relatively modest disbursements. Using its expert knowledge and experience, the Tribunal determined that the Respondent's reasonable costs recoverable under s.33 is £100.
30. Accordingly, the Tribunal determined that the purchase price to be paid by the Applicant to the Respondent for the freehold interest only is **£37,550**. The Tribunal's valuation is annexed to this Decision. For the avoidance of doubt, this valuation does not, for the reasons set out above, include the value of the additional freehold claimed. In the event that the County Court makes a ruling that the Applicant is entitled to acquire this interest and on what terms, then, in the absence of the parties failing to agree the value, the Tribunal may have to revisit this matter.

Dated the 25 day of June 2008

CHAIRMAN..... *J. Mohabir*.....

Mr I Mohabir LLB (Hons)



## Leasehold Reform, Housing & Urban Development Act 1993

### Freehold Enfranchisement Valuation 109 Eldon Road, Caterham, Surrey CR3 5JU

**Agreed Facts:**

Valuation Date            28<sup>th</sup> March 2007

Lease Expiration dates:

Flat 1.	28.09.2070
Flats 2,3 & 4	23.06.2077

Unexpired Lease Terms at Valuation Date:

Flat 1.	63 years
Flats 2,3 & 4	70 years

Participating Flats:        Numbers 2,3 & 4

Non Participating Flat:    Number 1

**Matters of Determination:**

Existing Lease Values (Unimproved):

Flat 1.		£150,500	
Flats 2,3 & 4	3 x £156,000	=	<u>£468,000</u>
£618,500			

Long Lease Values (Unimproved):

Flats 1,2,3 & 4	4 x £167,000	=	£668,000
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Capitalisation Rate        7.0%

Reversion Rate            5.0%

**Valuation:**

1. Value of Existing Freehold Interest:

Flat 1.			
Ground rent		£25 p.a.	
YP 63 yrs. @ 7.0%		<u>14.084</u>	£352.00
Flats 2,3 & 4.			
Ground rents. 3 x £25		£75 p.a.	
YP 70 yrs. @ 7.0%	<u>14.160</u>	<u>£1,062.00</u>	£1,414

2. Value of Freehold Reversion:

Flat 1.			
Reversion 28.09.2070 to		£167,000	
P.V £1 in 63 yrs. @ 5.0%	<u>0.0462460</u>		£7,723.00
Flats 2,3 & 4.			
Reversion 23.06.2077 to		£167,000	
PV of £1 in 70 yrs @ 5.0%	<u>0.0328662</u>		
		£5,488.65	
3 flats	x 3	<u>£16,466.00</u>	£25,603

3. Value of Current Leasehold Interests:			
Flat 1.	£150,500		
Flats 2,3, & 4 3 @ £156,000		<u>£468,000</u>	
£618,500			
4. Value of Proposed Leasehold Interests:			
Flats 1,2,3,& 4 4 @ £167,000			£668,000
5. Marriage Value:			
i. Value after marriage		£668,000	
ii. Value before Marriage;			
Leasehold Current Value	£618,500		
Freehold Current value	<u>£25,603</u>	<u>£644,103</u>	£23,897
Apportionment of Marriage Value:			
Freeholder 50%			£11,948
Leaseholders 50%			£11,948
6. Enfranchisement Value to Freeholder:			
Freehold Value	£25,603		
Marriage Value	<u>£11,948</u>	£37,551	Say <b>£37,550</b>

**THE LEASEHOLD VALUATION TRIBUNAL for the  
SOUTHERN RENT ASSESSMENT PANEL.**

**CHI/43UK/LIS/2007/0038**

**CHI/43UK/LDC/2008/011**

**S. 27A & S.20ZA OF THE LANDLORD & TENANT ACT 1985  
S.168(4) OF THE COMMONHOLD & LEASEHOLD REFORM ACT 2002**

**DECISION ON AN APPLICATION FOR LEAVE TO APPEAL  
RE: 43 TREETOPS, HILLSIDE ROAD, WHYTELEAFE, SURREY, CR3 0BY**

**Applicant: Mr Vito Rubbino**

**Respondent: Hillview Court Limited**

1. The Tribunal has considered the Applicant's request for permission to appeal dated 10 June 2008 and determines that permission be refused on the basis that the grounds of appeal disclose no reasonable prospect of success.
2. The various grounds of appeal relied on all effectively turn on the same point, namely, that the Tribunal could not have reached the conclusions it did based on the evidence before it. The Tribunal does not consider that it had erred in its findings for the reasons set out in the Decision.
3. In accordance with Section 175 of the Commonhold and Leasehold Reform Act 2002, the Applicant may make further application for permission to appeal to the Lands Tribunal.

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**Tribunal: Mr I Mohabir LLB (Hons)  
Mr J N Cleverton FRICS  
Miss J Dalal**

**Signed:**

*J. Mohabir*

**Dated: 11 July 2008**

**Chairman**