

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property**
TRIBUNAL SERVICE

S.27A & S20C Landlord & Tenant Act 1985(as amended)("the Act")

CORRECTION SLIP

Case Number:	CHI/21UC/LSC/2008/0132
Property:	46 Gables Court 44-46 St Leonards Road Eastbourne BN21 3QS
Applicant/Leaseholders:	Donald & Norah Houston
Respondent/Landlord:	Fairhold Homes (No4) Ltd
Tribunal:	Mr. R T A Wilson LLB (Lawyer Chairman) Mr N. Cleverton FRICS (Valuer Member)
Date of original decision:	16th June 2009
Date of this slip decision:	28th September 2009

BACKGROUND

1. Paragraphs 6 and 49 of the above mention decision ("the Decision ") are inconsistent in that they contain two different figures stating the maximum figure for legal costs recoverable by the Respondents.
2. The purpose of this correction slip is to rectify this inconsistency and to accurately record and further clarify the determination made by the Tribunal.
3. The Decision shall remain fully effective as varied by this slip and the terms of the Decision shall have effect as though the provisions contained in this slip had been originally contained in the Decision.

THE VARIATION

4. From and including the date of this slip, the Decision shall be read and construed as varied by the provisions set out in the Schedule.

THE SCHEDULE

VARIATIONS TO THE DECISION

Paragraph 6 of the Decision shall be deleted and be replaced by the following paragraph:

5. An order is made under section 20C of the Act such that the Respondent shall be able to recover its costs of these Tribunal proceedings by way of service charge but only so far as and to the extent permissible by the leases of the subject property, and limited to a maximum of £7,000 (exclusive of vat at the appropriate rate) plus disbursements. For the avoidance of doubt disbursements shall include fees paid or payable to Counsel.

Chairman


R.T.A. Wilson

Dated 28th September 2009

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Property:	46 Gables Court 44-46 St Leonards Road Eastbourne BN21 3QS
Applicant/Leaseholders:	Donald & Norah Houston
Respondent/Landlord:	Fairhold Homes (No4) Ltd
Appearances for the Applicants:	The Applicants appeared in person
Appearances for the Respondent:	Paul Letman Barrister Jane Caneham Solicitor Ian Rapley Secretary of Fairhold Homes (No4) Ltd Kevin Barr Group Head of Accounts of Peveral Management Services Ltd
Date of Inspection /Hearing	29th May 2009
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr N. Cleverton FRICS (Valuer Member)
Date of the Tribunal's Decision:	16th June 2009

THE APPLICATIONS

The applications made in this matter are as follows: -

1. for a determination pursuant to Section 27A of the Act of the Applicant's liability to contribute towards the charges for the resident house manager over and above the charges that it is alleged would have been incurred in providing a daily house manager for the service charge years 2000 to 2008 inclusive and the Applicant's liability to contribute towards the costs of external works to the property in 2005 and
2. for an order pursuant to Section 20C of the Act that the Respondent's costs incurred in these proceedings are not relevant costs to be included in the service charge for the building in future years.
3. The Tribunal is also required to consider, pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 whether the Respondent should be required to reimburse the fees incurred by the Applicant in these proceedings.

DECISION IN SUMMARY

4. The Tribunal determines for each of the reasons set out below that the amount that the Respondent may charge by way of service charge for the reasonable rent for the house managers flat at the premises shall be:-

SERVICE CHARGE YEAR	RENT
1999 – 2000	£2,800 (part year)
2000 – 2001	£6,250
2001 – 2002	£6,500
2002 – 2003	£6,750
2003 – 2004	£7,500
2004 – 2005	£8,000
2005 – 2006	£8,750
2006 – 2007	£9,500
2007 – 2008	£10,000

5. The amount already debited to the service charge account for the 2005 external decoration work, to include the goodwill refund of £2,353 made by the Respondent, is held to be reasonably incurred and thus recoverable.
6. An order under section 20C of the Act is made such that the Respondent shall be able to recover its costs of these Tribunal proceedings from future service charges limited to £7,500 exclusive of vat and disbursements at the appropriate rate.

7. No order is made in relation to the repayment of Tribunal fees incurred by the Applicants in these proceedings.

JURISDICTION

Section 27A of the 1985 Act

8. The Tribunal has power under Section 27A of the Landlord and Tenant Act 1985 to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable in so far as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
9. By section 19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

THE LEASE

10. The Tribunal had a copy of the lease relating to flat 46 Gables Court which is for a term of 125 years from the 1st October 1999 reserving a yearly rent of £385.
11. The Tribunal was informed that all the leases of the flats in the building were in similar form with the service charge provisions contained in the Fourth Schedule as supplemented by the information contained in the definitions section and the information contained in the Eighth schedule. The Sixth Schedule of the lease sets out the landlords covenant in relation to the services to be provided.

INSPECTION

12. The Tribunal inspected the property before the hearing. Gables Court comprises a substantial detached building constructed in 1999 / 2000 of brick walls under a pitched and tiled roof. The accommodation is a block of flats for people of 60 years of age or above and is built over five floors and contains 57 self-contained apartments constructed for sheltered housing with ancillary communal rooms including a warden's flat, a laundry room, a guest bedroom and a community lounge. There is communal car parking to the rear and small communal gardens to the front all of which appear to be well maintained. To the rear of the premises is a two storey detached building of brick walls under a tiled roof comprising a further four flats. The location is central to the town of Eastbourne but in an area largely predominated by modern office buildings.

PRELIMINARYS / ISSUES IN DISPUTE

13. The Applicants are the lessees under a long lease of apartment number 46 Gables Court Eastbourne, and the Respondent the freeholder and landlord.

14. By their application dated the 26th November 2008 the Applicants made the following challenges to the service charges claimed by the Respondent.
- i) The 'in principle' entitlement to recover the charges for the resident house manager over and above the charges that they allege would have been incurred in providing a daily house manager for the service charge years 2000 – 2008.
 - ii) Alternatively, on the basis that the charges for a resident house manager are found to be in principle recoverable, the Applicants challenge the reasonableness of the sums claimed alleging that the greater cost is unreasonable because the resident manager provides no better service than a daily manager.
 - iii) Again on the basis that the charges for a resident house manager are in principle recoverable, the Applicants challenge the reasonableness of the sums claimed in respect of the rent for the manager's apartment.
 - iv) Finally the Applicants challenge the reasonableness of the cost of external redecoration work carried out in the year 2005/2006.

THE APPLICANT'S CASE

15. In essence the Applicant's case was that they should not be liable to pay any part of the service charge in the years 1999 – 2008 inclusive which was directly attributable to the residential component of the house manager service.
16. Their reasoning for this view was that the lease terms were not wide enough to enable the cost of a resident house manager to be recovered unless and until the leaseholders had agreed to a variation pursuant to the variation provisions contained in clause seven of their lease. They contended that this mechanism had not been invoked and therefore the additional costs incurred in employing a resident house manager could not be recovered. They referred the Tribunal to the definition of the 'House Manager' in the lease, which clearly stated that the manager would only be available during reasonable hours during the day. This clause supported their contention that only the costs of a day manger were recoverable.
17. Mr Houston pointed to the fact that when his lease was signed in February 2000 there was no resident manager in situ and that this service had only been offered in July of that year without the variation being obtained.
18. The specific elements of charge to which they objected to were the flat rent, council tax and internal redecoration and maintenance costs for the flat, the laundry costs, insurance, electricity and heating charges, water rates, window cleaning, cleaning materials, ground maintenance, lift maintenance, fire equipment and lighting equipment.
19. The second element of their challenge was that as the resident house manager did not and could not perform any duties additional to those performed by a daily house manager then it followed that any additional costs incurred as a result of having a resident house manager should be disallowed.
20. The third element to their claim related to the reasonableness of the rent charged to the leaseholders for the house manager's flat. Mr Houston challenged the methodology utilized

by the Respondent for calculating the notional rent. The notional rent had been calculated on the basis of a commercial rate of return on the initial open market value of the house manager's flats which was then reviewed annually. Mr Houston claimed that this was an artificial method, which set an incorrect value from the start and failed to take into account the virtually static rents over the past 8 to 9 years for similar properties in the Eastbourne area leased on an assured tenancy.

21. Mr Houston contended that the correct methodology was to assess the rent by reference to open market rents for assured shorthold tenancies in the Eastbourne area. He put forward a considerable number of what he considered to be comparables which he had gathered over many months of research.
22. However in cross-examination Mr Houston accepted that he had rejected any rental evidence which related to retirement homes because the manager would not require these added facilities. He also confirmed that the rent for a flat which contained a house manager or resident house manager would be higher than the rent achievable for a flat without these additional facilities.
23. Mr Houston asserted that the advent of the large scale Sovereign Harbour development had had the effect of stagnating rents in the Eastbourne area for many years. In his written evidence he referred to a number of lettings in Sovereign Harbour where the rent of two bedroom apartments were considerably lower than the amount charged by the Respondent in the service charge account in the relevant years.
24. Mr Houston's final challenge related to the cost of exterior re-decoration in 2005. His case was that in 2005 the landlord invited bids to carry out external re-decoration. Three bids were received; one for £22,842 from Redec Limited, a second for £22,295 from MC Property Maintenance and the third for £9,500 from Fairhurst Ward Abbotts. In the event the third bid was rejected on the grounds that it did not cover all the items in the works specification and the contract was awarded to the next lowest bidder. In 2007 after the work had been completed, Fairhurst Ward Abbotts were invited to re-tender for the work and their re-tender came in at a very competitive £17,590. Mr Houston claimed that had FWA been asked to re-tender in 2005 then a saving of £4,706 could have been achieved. Mr Houston claimed that the Respondent had accepted that the consultation exercise had not been handled skillfully and as a result they had paid back 50% of the difference namely £2,353. It was Mr Houston's view that all of the difference should be re-paid and he invited the Tribunal to hold that a further £2,353 by credit should be given to the service charge fund by the Respondent.

THE RESPONDENT'S CASE

Issue 1: Entitlement to claim for a resident house manager

25. Mr Letman for the Respondent contended that on a proper construction of the Applicant's lease or by necessary implication under the scheme of the lease, the house manager to be provided under clause 7 of the Sixth Schedule to the lease was to be a resident house manager. He submitted that this was plainly the common intention of the parties at the date of execution of the lease, having regard to a number of clauses in the lease which all provided for a resident house keeper. These clauses were as follows:-

- i) The Eighth Schedule to the lease, which expressly allocated flat 26 as being the house manager's flat.
- ii) The service charge fraction which was fixed on the premise that there was a resident house manager without any liability to pay service charge.
- iii) The obligation under the Sixth Schedule, clause 4 to pay and discharge all rates and taxes in respect of the house manager's flat.
- iv) The obligation to keep cleansed etc the house managers flat at the Sixth Schedule clause three.
- v) The entitlement under the Fourth Schedule to recover the council tax and rates for the house manager, the cost of employing staff, the costs of providing and maintaining in repair etc the accommodation for the house manager together with the rents in respect thereof.

26. Having regard to all these clauses it was Mr Letman's submission that there could be no in principle objection to the provision of the resident house manager under this lease in the relevant service charge years.

27. Mr Letman then advanced further arguments in support of his contention that all of the reasonable costs of the house manger were recoverable as service charge. However, in view of the decision reached by the Tribunal there is no necessity to outline these submissions.

Issue 2: The reasonableness of sums claimed for the resident manager.

28. Mr Letman stated that the Applicants' appeared to argue that because a non-resident house manger would cost less than a resident house manager, the additional costs must be unreasonable so as not to be recoverable. Mr Letman asserted that this argument was misconceived. Once it was accepted that the Respondent was entitled to recover the costs of a resident house manager, the question was whether those costs of providing a resident rather than non-resident house manager are in themselves unreasonable. It was his contention that the cost of the resident house manager as charged to the service charge fund in each year was reasonable.

29. In support of this contention the Respondent relied upon the evidence of Kevin Barr. Mr Barr asserted that there was virtually no difference in the level of service charge costs paid by the lessees of Gable Court by reason of there being a resident house manager. In fact it was his view that a non- resident house manager may be less cost effective as the hourly remuneration was higher than for a resident house manager. The only cost that would fall away if there were no resident house manager would be the house managers flat rent which was to be considered by the Tribunal as a stand alone item.

30. Mr Letman reminded the Tribunal that the Applicants had not challenged the evidence of Mr Barr in this respect and that their own figures for the reduction were based on notional amounts only which were not supported by any hard / real evidence.

Issue 3: The reasonable rent for the managers flat

31. As to the reasonable rent for the house manager's flat Mr Letman submitted that the Tribunal should have regard to the following:-
- a) A part of the factual matrix when construing the lease was that there was a purchaser information pack supplied when the first purchasers entered into their lease which provided amongst other things, *'the service charges include also rent on the house managers flat ownership of which is retained by the landlords. The rent is calculated as a reasonable commercial rate of return on the initial open market house value of the house managers flat, and is reviewed annually'*. Mr Letman submitted that this indicated the intention of the parties at the time that the lease was entered into.
 - b) The recoverable charge should properly reflect the cost of providing the flat to the Respondent.
 - c) Any hypothetical letting should reflect the fact that the Respondent was bound to retain the flat and could not sell it.
32. Mr Letman acknowledged the role of suitable market evidence from comparable properties in assessing whether the rent calculated in the manner originally contemplated by the parties was a reasonable cost. In this regard he suggested that the evidence put forward by the Applicants was wholly inadequate. In particular they had deliberately avoided any market rents which related to sheltered accommodation. This approach was therefore fundamentally wrong. Furthermore Mr Houston had accepted that comparables to Gable Court would produce higher rents. In these circumstances Mr Letman invited the Tribunal to disregard the evidence put forward by Mr Houston, and accept in lieu the hypothetical rent based on capital value as set out in the property information pack. In the alternative he invited the Tribunal to have regard to the comparable rental evidence which his clients had put forward.

Issue 4: The 2005/2006 external decoration

33. Mr Letman's submissions in this respect were that the external works in question were subject to proper consultation in accordance with the act and that the actual costs amounted to £22,295.63.
34. Because of queries raised by the lessees after the completion of the works over the price incurred a quotation was obtained from FWA Contractors, which together with further costings from them gave a lower but notional figure for the works of £17,589.75.
35. In the light of this the Respondent offered, by way of settlement of the complaint, to make a good will payment of half the difference between the two costs and it was his assertion that this offer had been accepted by the Applicants. In these circumstances the Respondent contended that the charge for these works had been agreed and was no longer subject to challenge. Furthermore, the Respondent asserted that the nature of the alternative quotation and the variance between it and the reduced sum claimed did not support the allegation that the figure charged was unreasonable.

THE TRIBUNAL'S DELIBERATIONS

Issue 1: Entitlement to claim for a resident house manager

36. On this central issue we accept the case put forward by the Respondent that the lease provisions are wide enough to enable the cost of a resident house manager to be recoverable by the Respondent by way of a service charge. This is the case even if his duties are confined to working during the day. In coming to this conclusion we have had particular regard to the Fourth Schedule of the lease and the definition of service cost as set out in that schedule. The Respondent is entitled to recover all costs, expenses, overheads, payments, charges, loss and outgoings suffered or incurred in connection with the provision of all services. Those services include at clause 1.2.11 the costs of providing and maintaining in repair and good decorative order accommodation for the house manager together with rents in respect thereof.
37. It is the Tribunal's view that the common intention of the parties at the date of execution of the lease was that there would be a resident house manager. The references in the lease set out in paragraph 25 above all point to this conclusion. The Tribunal also accepts the Respondent's assertion that the combined effect of the clauses referred to at paragraph 25 above result in the costs, incurred in the provision of accommodation for the house manager, being recoverable as a service charge item. The two Leasehold Valuation Tribunal decisions contained in the hearing bundle supports this conclusion.
38. The Applicant's case is not assisted by paragraph 7 of the fourth schedule which sets out a procedure to be followed in the event of the landlord wishing to change the services provided. This clause is intended to cover an alteration in services either to discontinue a service, which under the lease a landlord is obliged to provide, (for example the repair of the building) or to add a service where there is no current contractual obligation (for example the installation and maintenance of a swimming pool). Clause 7 does not apply to the provision of a house manager as the ability to recover these costs was already present in the lease from its inception.

Issue 2: The reasonableness of sums claimed for the resident manager.

39. Having regard to the findings made above it is not necessary for the Tribunal to consider in any detail whether the costs of providing a resident manager are necessarily higher than the costs of providing a day manager. However, the evidence of Kevin Barr was useful in this respect and we accept that there is no material difference in the level of service charge costs paid by the lessees of Gable Court by reason of there being a resident house manager. This is because many of the services are aggregated for the whole building and accordingly those costs would not increase to a higher level because of the existence of a resident house manager. The Tribunal accepts the Respondent's case that remuneration equivalent to the value of the package obtained by the resident house manager would have to be paid to any non-resident house manager. In these circumstances therefore the complaint of the Applicants reduces down to the allegation that the rent charged for the manager's flat is unreasonable. (Issue 3)

Issue 3: The reasonable rent for the manager's flat

40. In determining the amount that the leaseholders should be required to pay for the house manager's flat the Tribunal looked at the provisions of the lease. There is a specific

reference to the obligations of the leaseholders to pay this item at paragraph 1.2.11 of the fourth schedule. This simply refers to the rents '*in respect of the house managers flat*'. There is no further explanation in the lease as to what is meant by the rents.

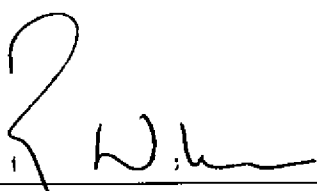
41. In the Tribunal's experience, to decide the rent for the house manager's flat by reference to its capital value has no basis in normal valuation principles. It is well settled that the capital values and rental values can fluctuate independently of each other depending on market conditions. Moreover the wording in the purchasers information pack was vague and unclear and the Tribunal decided that very little guidance as to the intention of the parties could be placed on it. In these circumstances the Tribunal therefore considered that it was a reasonable approach to construe the lease as simply requiring the lessees to pay a reasonable rent for the property, which would mean a reasonable rent which the flat might command if let on an assured shorthold tenancy in the open market.
42. Both parties had put forward what they considered to be comparable evidence. In particular the Applicants had gone to considerable trouble to put forward a very large portfolio of evidence relating to two bedroomed properties in the Eastbourne area. However on their own admission their values were derived from looking at properties that were not comparable i.e. they had not provided evidence of flats in sheltered homes because the resident manager would not need these additional services. Mr Houston accepted that the rents for flats in sheltered homes would be higher because of the additional services provided. The Tribunal considers this approach to be flawed. At arriving at a reasonable rent it was necessary to find comparables which involved valuing like for like i.e. sheltered accommodation. In these circumstances it found the evidence tendered by the Applicants to be of little assistance.
43. The only helpful evidence was that tendered by the Respondent which consisted of an opinion from Kirsty Hart a senior lettings agent with Girlings, a company which specialized in the letting of retirement/sheltered flats. It was her opinion that a two bedroomed flat within the subject property would command a rent in the region of £850 per calendar month as at December 2008.
44. Doing the best it could with the figures and evidence before it and having regard to its collective knowledge and expertise the Tribunal considered the figure of £850 per month was on the high side and that the open market rent for the subject property as at December 2008 was in the region of £830 per month or £10,000 per annum. Having regard to the rental evidence put forward by both parties in respect of earlier years and applying its own knowledge the Tribunal concluded that the rents set out in the summary decision above should apply inclusive of the service offered.

Issue 4: The 2005/2006 external decoration

45. The Tribunal is not satisfied that there was an unequivocal acceptance of the Respondent's offer of a good will payment of £2,353. However, the Tribunal was presented with no credible evidence that the statutory consultation procedure had not been properly carried out. Moreover it is common ground that the lower quotation was obtained some two years after the earlier estimates had been obtained and indeed after the work had been completed. On these facts and bearing in mind that the Applicants' had made no meaningful challenge that the original costs were unreasonable, the Tribunal is not persuaded that the Respondent should be required to credit the service charge account with a further £2,353. It therefore determines that the amounts already charged together with the good will rebate are recoverable.

SECTION 20C AND REIMBURSEMENT OF FEES

46. Both of these matters can be taken together as the Tribunal's considerations in relation to both are largely the same. The legislation gives the Tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it. The Tribunal has a very wide discretion to make an order that is, 'just and equitable' in all the circumstances.
47. Mr Houston contended that had the Respondent engaged with the issues and arguments that he had put forward there would have been no need for the hearing. Moreover it was accepted by the Respondent that they had not handled the consultation procedure professionally. Having regard to the above it would be unfair if the Tribunal did not make an order under section 20 of the Act.
48. Mr Letman referred the Tribunal to the leading case on costs namely the tenants of Langford Court v Doren Limited where his Honour Judge Michael Rich QC laid down the principles upon which the Tribunal should exercise its discretion in this regard, namely the conduct and the circumstances of the parties as well as the outcome of the proceedings. In this case his clients had shown a willingness to engage with the Applicants before the advent of these proceedings; there had been two meetings. His clients had also made a financial offer in relation to the issues arising out of the consultation exercise. Bearing in mind these facts it would be unjust to reverse what would otherwise be the Respondent's contractual right to recover its costs via the service charge.
49. The outcome of the case is that the Applicants have been partially successful as the Tribunal has determined that the rent charged for the house managers flat has been too high for each of the years challenged. However, on all other issues the Applicants have not been successful. Furthermore the Tribunal is not persuaded that the Applicants were, as they suggest, willing to engage in discussions to resolve the issues without recourse to Tribunal proceedings. Having regard to the conduct of the parties and the outcome of the hearing the Tribunal considers that it would be just and equitable for the Respondent to recoup a contribution of its costs limited to £7,000 exclusive of vat and disbursements.
50. The Tribunal makes no order under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 as it would not be just and equitable for the Respondent to have to repay the fees incurred by the Applicants in this matter.

Chairman 
R.T.A. Wilson

Dated 16th June 2009

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property**
TRIBUNAL SERVICE

APPLICATION FOR PERMISSION TO APPEAL

SECTION 175 of the COMMONHOLD AND LEASEHOLD REFORM ACT 2002 ("the Act")

Case Number: CHI/21UC/LSC/2008/0132

**Property: 46 Gables Court
44-46 St Leonards Road
Eastbourne
East Sussex BN21 3QS**

Applicants: Donald and Norah Houston

Respondent: Fairhold Homes (No4) Limited

DECISION AND REASONS

BACKGROUND

1. By an undated letter received on the 1st July 2009 the Applicant has applied to the Tribunal for permission to appeal the decision of the Leasehold Valuation Tribunal dated the 16th June 2009.

GROUNDS FOR APPEAL

2. In summary, the grounds for appeal are as follows:-
 - (a) The Tribunal failed to take into account all the evidence and submissions made by the applicants,
 - (b) the Tribunal failed to properly interpret the rental and other evidence adduced by the Applicants and
 - (c) the Tribunal failed to give the Applicants a right to reply .

DECISION

3. Leave to Appeal is granted in respect of ground (c) only.

REASONS

GROUND A: THE TRIBUNAL FAILED TO TAKE INTO ACCOUNT ALL THE EVIDENCE AND SUBMISSIONS MADE BY THE APPLICANT.

4. The Applicant's case is that the Tribunal failed to take into account their submissions in respect of Part Two of their case because, due an error, the hearing bundle failed to include large parts of their evidence and legal submissions. This matter was raised at the beginning of the hearing and it was agreed by the parties and the Tribunal that the Tribunal, in coming to their decision, would have regard not only to the documents contained in the hearing bundle which had been prepared by the Respondent's solicitors but also to the documents submitted by the Applicants at the pre-trial review which had also been chaired by Robert Wilson the chairman of the hearing. The documents available at the pre-trial review included two blue folders prepared by the Applicants; the first folder containing 263 pages of evidence and the second folder containing a further 143 pages of evidence. Much, but not all of this evidence, was duplicated in the hearing bundle.
5. In arriving at its final decision, the Tribunal had regard not only to the documents contained in the hearing bundle, but also to all the documents contained in the two volumes of evidence submitted by the Applicants at the pre-trial review. In these circumstances the Tribunal is satisfied that it gave proper consideration to all the points of law made by the Applicants.

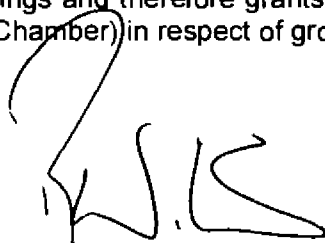
GROUND B: THE TRIBUNAL FAILED TO CORRECTLY INTERPRET THE VALUATION EVIDENCE AND THE LEGAL ARGUMENTS OF THE APPLICANTS.

6. In arriving at its decision with regard to rental values of the house managers flat, the Tribunal did have regard to the very considerable volume of written evidence put forward by the Applicants in this respect. However, the majority of this evidence related to 'asking' rents and not rents actually achieved and was therefore of limited application. In other cases capital values of flats were given and these were not considered by the Tribunal to be helpful. Mr Houston was cross-examined at some length in respect to the allegedly comparable rental evidence adduced by him and he accepted that he had deliberately avoided comparables, which related to retirement homes, "because the manager would not require these added facilities". During questioning Mr. Houston accepted that his approach to values was derived from looking at properties which were not comparable. He also accepted that comparables to the subject property would produce higher rents. It is therefore the case that Mr. Houston's oral evidence differed from his written evidence. In these circumstances the Tribunal cannot accept that it has wrongly interpreted the rental evidence adduced by Mr. Houston and considers that it did the best that it could with the conflicting evidence presented to it.
7. In respect of the many other specific matters raised in the appeal request, the Applicants in the main either re-run the same or similar arguments made by them at the hearing or seek to raise fresh submissions or points of law not raised in their statement of case or at the hearing. The Tribunal is satisfied that it understood the legal points made by the Applicants at the hearing and remains of the view that it arrived at a properly reasoned decision based on all the submissions made at the time.

GROUND C: THE HEARING WAS PROCEDURALLY FLAWED

8. The Applicants claim that the hearing was brought to an end without them having the opportunity of a right of reply. The facts of the hearing are these: at the beginning of the hearing the Chairman set out how the day would proceed and outlined the order and manner in which the parties would be asked to lead their evidence; the Chairman explained to the Applicants that it would be for them to go first as it was their application.
9. The Applicants were invited to lead their case by reference to their written statement of case. The chairman reminded the Applicants of the need to make specific reference to the relevant clauses in the lease of the subject property. After approximately ten minutes or so it became apparent to the Tribunal that the Applicants were having difficulty in locating the relevant clauses in the lease and were also having difficulty in finding the documentation included in the hearing bundle.
10. The chairman was conscious that the Applicants were unrepresented, whilst the Respondent was represented by senior counsel. In these circumstances the key is the maintenance of a balance between assisting and understanding what an unrepresented party requires while protecting their represented opponent against the problems that can be caused by the unrepresented parties lack of legal and procedural knowledge. In an attempt to assist the Applicants, the Chairman asked if they would like the Respondent's counsel to set out the Respondent's case for opposing the application. The Applicants readily agreed to this course of action, and Counsel for the Respondents led his client's case including the questioning of the two witnesses. The Applicants were given the opportunity to cross-examine each witness, which they did. Once Counsel for the Respondent had concluded his case there was a pause in the proceedings before the chairman invited the parties to address the Tribunal in respect of the section 20 C application brought by the Applicants. The Applicants did not specifically request a right of reply or raise the issue at the end of the hearing.
11. Thus it can be seen that the Applicants are correct that they were not given a right of reply and the Tribunal accepts that a right of reply should have been given.
12. The Tribunal in reaching its decision made careful findings of fact and applied the law on the basis of all oral and written evidence presented to it whether referred to or not in its written decision. Having given careful consideration to the application and the points made in the appeal letter, the Tribunal is not persuaded that a different body presented with the information that was before it at the hearing and in the written submissions would have reached a different conclusion on the facts and law. This is the case even if a right of reply had been given. However the Tribunal accepts that there has been a procedural flaw in the conduct of the proceedings and therefore grants permission for the Applicant to appeal to the Upper Tribunal (Lands Chamber) in respect of ground (C) only.

Signed



R T A Wilson LLB Chairman

Dated 24th July 2009