

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

**Case No. CHI/00HN/OAF/2009/0010**

**REASONS**

**Application** : Sections 21(1)(a) and 9(1A) of the Leasehold Reform Act 1967 as amended (“the 1967 Act”)

**Applicant/Landlords** : Rupert John Aldington Edwards, Douglas James Edward Neville-Jones, Emma Jane Blackburn (née Bowditch), John Robert Barrett Bowditch, and Linda Jean Bowditch (the present trustees of the Alice Ellen Cooper-Dean Charitable Foundation)

**Respondent/Leaseholders** : Mr Amrik Singh Benepal and Mrs Kuldeep Kaur Benepal

**Building** : 1 Lansdowne Gardens, Bournemouth, Dorset, BH1 1QR

**Flats** : The six flats in the Building

**Date of Respondent/Leaseholders’ Initial Notice** : 22 December 2008

**Date of Application** : 11 September 2009

**Date of Provisional Directions** : 17 September 2009

**Date of Revised Directions** : 5 October 2009

**Date of Hearing** : 2 December 2009

**Venue** : Bay View Suite, Royal Bath Hotel, Bath Road, Bournemouth, BH1 2EW

**Appearances for Applicant/Landlord** : Mr Geoffrey Bevans FRICS, MCI Arb, CDipAF, FEWI

**Also in attendance** : Ms S Foye, Preston Redman

**Appearances for Respondent/Leaseholders** : Mr Howard Gross FRICS

**Also in attendance** : Ms K Scruby, H G Walker, and Mr Benepal

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr K M Lyons FRICS, and Miss R B E Bray BSc MRICS

**Date of Tribunal’s Reasons** : 3 January 2010

## Introduction

1. This application by the Applicant/Landlord is under sections 21(1)(a) and 9(1A) of the 1967 Act, namely for the Tribunal to determine the price payable upon the Respondent/Leaseholders acquiring the freehold of the Building from the Applicant/Landlord

## Statutory provisions

2. Section 9(1A) of the 1967 Act provides as follows :

*(1A) ..... the price payable for a house and premises,--*

*(i) the rateable value of which was above £1,000 in Greater London and £500 elsewhere on 31st March 1990, or,*

*(ii) which had no rateable value on that date and R exceeded £16,333 under the formula in section 1(1)(a) above (and section 1(7) above shall apply to that amount as it applies to the amount referred to in subsection (1)(a)(ii) of that section)*

*shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions:-*

*(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this Part of this Act conferred no right to acquire the freehold or an extended lease.;*

*(b) on the assumption that at the end of the tenancy the tenant has the right to remain in possession of the house and premises;*

*(i) if the tenancy is such a tenancy as is mentioned in subsection (2) or subsection (3) of section 186 of the Local Government and Housing Act 1989, or is a tenancy which is a long tenancy at a low rent for the purposes of Part I of the Landlord and Tenant Act 1954 in respect of which the landlord is not able to serve a notice under section 4 of that Act specifying a date of termination earlier than 15th January 1999, under the provisions of Schedule 10 to the Local Government and Housing Act 1989; and*

*(ii) in any other case,*

*under the provisions of Part I of the Landlord and Tenant Act 1954;*

*(c) on the assumption that the tenant has no liability to carry out any repairs, maintenance or redecorations under the terms of the tenancy or Part I of the Landlord and Tenant Act 1954;*

*(d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;*

*(e) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the*

*purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and (f) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below*

3. Section 9(1D) of the 1967 Act provides as follows :

*(1D) Where, in determining the price payable for a house and premises in accordance with this section, there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall be one-half of it*

#### **Documents**

4. The documents before the Tribunal are :

- a. Mr Bevans's expert report on behalf of the Applicant/Landlord 11 November 2009
- b. Revised joint statement 12 November 2009
- c. Mr Gross's expert report on behalf of the Respondent/Leaseholders 17 November 2009
- d. subsequent correspondence between the parties
- e. the following documents produced at the hearing :
  - RICS research report October 2009
  - various comparables submitted by each party
  - regional house price indices for south west and south east 1993 Q1 to 2009 Q3
  - agreed statement about the effect on value of clause 12.7.4 of the draft transfer
  - agreed summary of issues before the Tribunal

#### **Inspection**

5. The Tribunal inspected the Building on the morning of the hearing on the 2 December 2009. Also present were Mr Gross, Ms Scruby, and Mr Benepal
6. The Building is a detached property of brick construction and with a slate pitched roof. It was probably constructed in the early 1900's, with, apparently added later, a conservatory on the left (looking from Lansdowne Road), and garage on the right, and a ground floor extension on the right. There are helpful photos in Mr Gross's report
7. The Building is divided into 6 Flats. The Tribunal inspected them. There are helpful descriptions in Mr Bevans's report and Mr Gross's report, and helpful photos in Mr Gross's report

#### **Revised joint statement**

8. Mr Bevans and Mr Gross stated that the following matters were agreed :
  - a. the valuation date was the 22 December 2008, being the date of the initial notice
  - b. the Building was held leasehold on a lease dated the 9 October 1944 for a term of 99 years from the 29 September 1944 at an original fixed ground rent of £30 a year which was increased to £40 a year by a licence dated the 10 February 1961
  - c. by a surrender dated the 30 March 1981 a small area of land was acquired by Dorset County Council with no amendment to rent
  - d. there was an underlease of part for an electricity sub-station dated the 13 June 1968 for a term of 75 years at a rent of 5p a year
  - e. the authorised use of the Building under the terms of the lease was “.....as a private dwelling only or as not more than three residential flats”. By the terms of the 1961 licence consent was given for use as four private residential flats
  - f. at the valuation date the actual use of the Building was as :
    - Flat 1 : ground floor unit : hall, living room, kitchen, 2 double bedrooms, bath and WC
    - Flat 1c : ground floor unit : living room, kitchen, bedroom, bath and WC
    - Flat 1b : first and second floor maisonette : living room/kitchen, 2 double bedrooms, bath and WC
    - Flat 1c with : first floor unit split as follows :
      - Flat 1a1 : double bedsit, kitchen, bath/WC
      - Flat 1a2 : hall, living room/kitchen, double bedroom, shower/WC
      - Flat 1a3 : double bedsit, kitchen, shower/WC
  - g. the capitalisation of the ground rent, at the agreed rate of 6.5%, amounted to £547
  - h. the basis of valuation was in accordance with section 9(1A) of the 1967 Act
9. The matters in dispute were :
  - a. the existing and reversionary values of the Flats
  - b. the discount rate to be applied to the reversion

### **Mr Bevans's report**

10. Mr Bevans set out the basis of calculation of the price, namely the capitalisation of the rent, the present value of the right to vacant possession of the freehold interest at the end of the term, plus a figure to represent marriage value. Statutory assumptions were that the Respondent/Leaseholders had no right to acquire the freehold interest or to extend the lease, and that the Respondent/Leaseholders were not in the market to acquire the freehold
11. The parties had agreed that the figure for the capitalisation of the ground rent was £547, at an agreed rate of 6.5%
12. The present value of the reversion could be assessed on the basis of the Building as a single house, or alternatively as flats which could be sold on long lease or let for income. It was

unlikely that many potential buyers would be found for the Building as a single house, but it was perfectly possible that a buyer might live in one Flat and rent the others out

13. Based on Mr Bevans's experience of valuing similar properties where the ground rent was reviewed to a percentage of open market rent, he thought that the rents receivable on an assured shorthold tenancy basis would total about £37,000 a year
14. The "yield" for that type of property varied considerably as was demonstrated by the prices achieved for investment houses in Bournemouth in the Allsops Auction of the 29 October 2009 copied at Appendix B of Mr Bevans's report. The average "yield" of the four properties sold was 6.73% , which, if applied to the figure of £37,000 a year, would give a value of £550,000
15. An alternative method of assessing the reversionary value would be to estimate the price at which each individual Flat could be sold on a long lease at a peppercorn ground rent. Mr Bevans's valuations, at Appendix C of his report, set out his opinion of the individual Flat prices which could be achieved, and then allowed 15% deduction for profit to give an overall value of £497,250, say £500,000. Comparables supporting his opinion were at Appendix E of his report
16. Mr Bevans had therefore adopted as his reversionary value the midpoint between those two figures, namely £525,000
17. The appropriate discount rate to be applied to that reversionary value should be 4.75% in line with the Lands Tribunal recommendation following **Sportelli**
18. That resulted in a total freehold "value, term and reversion" of £110,000
19. Marriage value was calculated by assessing the reversionary value in possession and deducting from that figure the value of the freehold and leasehold interests immediately prior to acquisition. 50% of the marriage value was payable to the freeholder
20. Mr Bevans had already assessed the reversionary value and the present freehold value. All that was left was to assess the present value of the leasehold interest, taking care to ensure that the figure ignored any rights under the 1967 Act
21. At the date of valuation the lease had under 34 years expired. It was not therefore a property interest for which normal property financing would be available. A potential purchaser would therefore probably have to be a cash buyer but, given the "no Act" assumption the purchaser would not have any right to a lease extension, except perhaps, dependent upon use at reversion, the rights to a new business lease at full market value
22. Similarly, although long under leases could be created there would be no right of lease extension

23. Various graphs of relativity had been prepared over the last few years to show a trend of the relativity of lease values to freehold or virtual freehold values. None of the graphs related to Bournemouth property, although the graph published by Lease, made up purely of LVT decisions, would inevitably incorporate decisions about Bournemouth properties. The graphs which were most likely to reflect the situation in Bournemouth were those headed Greater London and England. A composite of those graphs was included at Appendix D to Mr Bevans's report
24. It could clearly be seen that the relativity at 38 [sic] years unexpired lay between 46% and 66%, dependent upon the graph adopted. However, in Mr Bevans' view the graphs needed further adjustment to reflect the fact that they depicted averages built up over many years. Given the poor economic climate at the valuation date the value of a lease with only 38 [sic] years unexpired would be less than at a date when the property market was accelerating rather than declining
25. In those circumstances it was appropriate to adopt relativity towards the lower end of the range. Mr Bevans had adopted 50%, giving a leasehold value of £262,500
26. As a check, Mr Bevans had considered what an investor might pay for the income stream of say £37,000 for the remaining term. Under normal economic circumstances Mr Bevans would have expected the income to be valued at a "yield" of say 3% above that of the freehold income and to apply a sinking fund of 2.5%. That would give a value of that income of about £317,000. However, due to the economic circumstances a cash purchaser would be able to command a discount of between 15% and 20%. That produced a range of between £253,000 and £270,000 and therefore gave comfort to the 50% relativity
27. The price for the Respondent/Leaseholders to pay to the Applicant/Landlord on the statutory basis was £186,250, [adjusted to £175,068 in accordance with calculations by the Tribunal based on revised figures submitted by Mr Bevans at the hearing and reproduced at Appendix I to these reasons]

#### **Mr Gross's report**

28. The terms of the transfer has not yet been agreed and other valuation issues might therefore arise when the terms of the transfer had been finalised
29. Mr Gross had valued the freehold reversion, on the basis of the current use and six flats, unimproved, at £505,000. He had then applied a discount of 10% of that figure to reflect the bulk-buying opportunity for the hypothetical buyer, giving a net figure of £454,500. That had been deferred for 34.77 years at the rate of 4.75% to produce a reversion payable to the freeholder under the Act of £90,074

30. That level of bulk buying discount would be reasonably sought by the hypothetical buyer in the real world, and Mr Gross could see no obvious reason why it should not be appropriate in a 1967 Act valuation
31. However, Mr Gross's alternative valuation, in which no bulk buying discount was used, adopted a deferral rate of 5% for a house, on the basis of the Lands Tribunal decision in **Sportelli**. Although the Building was a house for the purpose of qualification under the 1967 Act, it was being valued as flats. There was therefore no reason why the added risk factors for flats set out in the **Sportelli** decision should not be applicable in this case. On the alternative valuation the reversionary value would be £93,310
32. The comparable transactions which Mr Gross had taken into account when arriving at his values of various flats at the Building were set out in Appendix 4 to his report
33. The valuation exercise was particularly difficult because of the market conditions that prevailed on the date of the valuation. The Land Registry House Prices Index showed that the volume of residential property transactions in the Bournemouth area in the last six months of 2008 fell by about one third from an already quite low 252 in June 2008 to 171 in December 2008. The index also indicated that the average price of flats in Bournemouth Borough over that time fell by some 17%. That very low level of sales presented a valuer with difficulty in finding sufficient suitable comparable transactions. Mr Gross had therefore included a broader range of transactions than usual, which required adjustment for various factors to allow comparison with the Building
34. Mr Gross's valuation for each flat was as follows :
- |               |          |
|---------------|----------|
| a. Flat 1 :   | £150,000 |
| b. Flat 1a1 : | £50,000  |
| c. Flat 1a2 : | £80,000  |
| d. Flat 1a3 : | £50,000  |
| e. Flat 1b :  | £95,000  |
| f. Flat 1c :  | £80,000  |
35. In relation to marriage value relativity was normally expressed as a percentage of the freehold value. Mr Gross had not found any comparable transactions involving property with leases of about 34 years unexpired. Even if it had been possible to do so, it was unlikely that there would have been any transactions unaffected by the 1967 Act, thus making it difficult to disregard the effect of the Act
36. Mr Gross had derived from the October 2009 RICS research about various published relativity graphs a relativity of 65.75%, calculated as the average for 34.77 years unexpired from the following :

- a. Nesbit & Co : 62%
- b. South East Leasehold : 70%
- c. Andrew Pridell Associates : 64%
- d. Leasehold Advisory Service : 67%

37. Mr Gross had decided against adjusting the relativity to reflect the market conditions which were more volatile than normal around the date of valuation. The relativities referred to in the previous paragraph had derived from evidence based over a long period of time, covering both good and bad market conditions

38. The 50% share of the marriage value payable to the Applicant/Landlord would be £32,296, on the bulk buying discount basis, using a 10% discounted reversionary value, and a deferral rate of 4.75%. If the Tribunal considered it appropriate instead to adopt the alternative approach using no bulk buying discount and a deferral rate of 5%, the marriage value payable to the freeholder would be £39,915

39. The price payable, using a 10% discounted reversion, and a deferral “yield” of 4.74% [sic]), on the statutory basis, was £123,370, in accordance with the calculations at Appendix 2 to these reasons

#### **Matters agreed at the hearing**

40. The parties agreed at the hearing that :

- a. there were no unusual terms in the Lease dated 9 October 1944 as varied by the licence dated 10 February 1961 affecting the price
- b. there was no hope value in this case
- c. the retention or exclusion of clause 12.7.4 of the draft transfer, which had been referred to in correspondence before the Tribunal, was still an issue between the parties, but had no quantifiable effect on the price
- d. the number of years of the term unexpired at the valuation date was 34.77, despite different numbers appearing in some of the papers before the Tribunal
- e. the reversionary value of Flat 1a was £180,000
- f. the reversionary value of Flat 1 was £150,000
- g. the deferment rate should be 4.75%

#### **Mr Bevans’s oral evidence at the hearing**

41. Mr Bevans referred to the RICS research report of October 2009 and, in particular, section 2



relating to Greater London and England, which showed a range of relativities between 48.8% and 70% for a term with 35 years unexpired, as follows :

- |  |       |
|--|-------|
| a. Beckett and Kay (page 26 of the report) : | 48.8% |
| b. South East Leasehold (page 28) :          | 70%   |
| c. Nesbitt and Co (page 30) :                | 65%   |
| d. Austin Gray (page 32) :                   | 50%   |
| e. Andrew Pridell Associates Ltd (page 34) : | 65%   |

42. In cross-examination Mr Bevans said that he had arrived at his relativity figure of 50% partly on the basis of the RICS research report graphs and partly from his own opinion. Paragraph 4.4 at section 04 of the RICS research report quoted a comment in the Lands Tribunal case of **Arrowdell** that “in our judgement LVT decisions on relativity are not inadmissible, but the mere percentage figure adopted in a particular case is of no evidential value”
43. The composite graph on page 25 of the RICS research report showed two blue lines grouped together, namely the Beckett and Kay and Austin Gray graphs, and then a group of three lines, green, orange, and purple, grouped together, namely the Nesbitt and Co , South East Leasehold , and Andrew Pridell Associates Ltd graphs, with a gap between the two groups
44. The nature of the data in the Beckett and Kay graph was, according to page 27 of the RICS research report, opinion
45. The nature of the data in the Austin Gray graph relating to leases with less than 50 years remaining was, according to page 33, “settlement data which is very limited and.....opinion”
46. The nature of the data in the South East Leasehold graph was, according to page 29, transactions, which presumably meant transactions of the sales of the flats which had taken place in the context of the applicability of the 1967 Act, rather than in a “no-Act world”. The graph could only be taken into account as a guide
47. The nature of the data in the Nesbitt and Co graph was, according to page 31, “settlements conducted under the terms of the Act and LVT's where I have appeared”
48. The nature of the data in the Andrew Pridell Associates Ltd graph was, according to page 35, “opinion, settlement, transaction, LVT and Lands Tribunal”, mainly acting for tenants
49. Mr Bevans agreed that the Beckett and Kay and Austin Gray graphs were based on opinion, and that the other three graphs were based on other evidence including transactions. However it was not made clear in the RICS research report what was meant by “opinion”

50. Mr Bevans's relativity figure of 50% was at the bottom end of the range shown in the graphs in the RICS research report. He had reached it based on market conditions at the valuation date which were worse conditions than those during the periods shown in the RICS research report graphs, during which the markets have been good and had not reflected the current inability of people to purchase. This particularly applied to the purchasing of short leaseholds, which was confined to cash buyers
51. Mr Bevans was then cross-examined about the comparables listed in Appendix E of his report
52. Flat 6 Meriton Court : the flat had been noted by Mr Bevans as a one-bedroom flat with a term of 79 years unexpired which had been part of a collective freehold enfranchisement. The figure had been six months after the valuation date and a comparable figure had been arrived at by using the figures in the Land Registry index. Mr Bevans could not recall whether he had seen the estate agents details of the property itself. It was put to Mr Bevans that it had been sold by Goadsby as a two-bedroom flat for £97,000. Mr Bevans accepted that if it was a two-bedroom flat then it could not be compared with a one-bedroom flat
53. Flat 1 Moorend Hall : Mr Bevans said he had seen around the flat and had a good knowledge of it
54. Flat 4, 8 Cavendish Road : Mr Bevans conceded that the sale in April 2002 had been over six years before the valuation date. Its use as a comparable was that it was nearby. He had adjusted the price to the valuation date using the Land Registry index and then adjusted it again because the initial adjustment had resulted in an excessive value
55. Flat 4 Meyrick Park Mansions : Mr Bevans said that he had seen around the flat but had not seen the agents particulars. Mr Gross produced Goadsby sales particulars. The Tribunal gave Mr Bevans time to consider them. After doing so Mr Bevans had no objection to their admissibility. It was put to Mr Bevans that the sales particulars indicated that it was a two-bedroom flat. Mr Bevans said that the particulars indicated that it was a one/two bedroom apartment. The original design was as a one-bedroom flat with a storeroom, rather than a two-bedroom flat. Mr Bevans did not accept the suggestion that this flat was in a superior location compared with the Building
56. Mr Bevans was cross-examined about his calculations of the present value of the reversion. Mr Gross offered to show Mr Bevans his analysis of "yields". The Tribunal adjourned the hearing to enable the parties to discuss further
57. After the break Mr Bevans said that following discussions with Mr Gross Mr Bevans was now withdrawing his valuation based on income. His figure for the reversionary value was now £500,000, not £525,000. This compared to Mr Gross's figure of £454,500

### **Mr Gross's oral evidence**

58. Mr Gross had adjusted the figures in paragraph 5.10 of his report to take account of the agreement between the parties that the deferment rate should be 4.75% rather than 5%. The figures would now be as follows :

Freehold :	£91,074
Share of marriage value :	<u>£32,296</u>
	£123,370

59. Relativity should be based on the three evidence-based RICS research report graphs, not on the two opinion-based graphs

60. The valuation of the Building should be on the basis of the Building as it now was, allowing for tenants improvements

61. In cross-examination Mr Gross accepted that the differences between the parties about the overall value of the Building were because of the differences in valuations of Flat 1b and 1c

62. If the garage was to be disregarded as a tenant improvement then the Building would have to be valued as if there was no garage, but just a space, but as part of the garden. Mr Gross conceded that it was open to the owner of the freehold to demise to any individual flat whatever parking spaces the freehold owner wished to demise. The value of a parking space to a flat would be about £3,000. If each of the four flats were sold on a long lease with a parking space their gross value would not necessarily be increased by £12,000 because there would be a balancing decrease by losing some of the garden. A garage would increase the value of the flat by about £5,000 depending on location and condition. It was put to Mr Gross that the value of the Building could potentially be increased by £17,000 by the value of four parking spaces and a garage. Mr Gross agreed that there was potential for an increase but did not agree the figure

63. So far as concerned improvements to be disregarded in the valuation of Flat 1c :

- a. the alteration to enlarge the small kitchen added to the saleability of the Flat, but not necessarily to its value
- b. the electric night storage heater added about £1,000
- c. the replacement double glazed windows added about £1,000
- d. the creation of a shower room added about £1,500
- e. there was no evidence before the Tribunal of any of these improvements having been carried out by the Respondent/Leaseholders, but no one else could have carried them out

64. Mr Gross was then cross-examined about the comparables to Flat 1c in Appendix 4 of his report and in the separate bundle submitted at the hearing and to which Mr Bevans had no objection to being admitted in evidence, namely 8 Montague Court, 4 The Works, and 65 Portchester Road

65. Mr Gross was then questioned about Flat 1b
66. Parking was the same issue as for Flat 1c. Improvements were the bathroom in the roof void replacing the landing bathroom, which added about £1,500 to £2,000. Again, there was no evidence before the Tribunal of those improvements having been carried out by the Respondent/Leaseholders, but no one else could have carried them out
67. Mr Gross was then cross-examined about the comparables to Flat 1c in Appendix 4 of his report and in the separate bundle submitted at the hearing, namely, 5 Portchester Road, 4 Silverwood Court, 121 Capstone Road, Flat 1, 30 Richmond Road, and Flat 3, 30 Richmond Road
68. So far as relativity was concerned, Mr Gross's understanding of the "opinion" based RICS research report graphs was that they had been based on experience, or "gut feeling", whereas the "transaction" based graphs had been based on evidence of actual transactions, and "settlement" based RICS research report graphs had been based on what parties had agreed in enfranchisement cases. Mr Gross was not sure that he agreed with the suggestion that "opinion" based graphs were based on settlements, particularly as the Austin Gray graph was said to be based on settlement and opinion, which implied a distinction between the two, nor with the suggestion that in the vast majority of settlements an overall price was agreed without specifically agreeing the relativity or indeed any other part of the analysis of the settlement figure. Mr Gross's assessment of relativity had not included an adjustment of the RICS research report graphs because they had covered a long period with good and bad market conditions during that period. He agreed with the suggestion that the Halifax list of regional house price indices submitted by Mr Bevans at the hearing, which was for all properties including houses and not just flats, showed a general trend in the south-west and south-east of an accelerating market between 1995 and 2007, apart from one or two quarters. There had not been any really bad market conditions during that period apart from some difficulty in the early 2000's. The period covered by the RICS research report graphs had generally been in reasonable market conditions
69. In answer to questions from the Tribunal, Mr Gross accepted that if improvements were not disregarded then his price valuation would have to increase. He also accepted that if the Tribunal were to disregard the ground floor extension forming the majority Flat 1c then the Building would effectively have to be valued without Flat 1c. He said that the Building should accordingly be valued with that extension as it was. He accepted that logically there should be a disregard of all improvements or none, but he had valued the Building on the basis of its existing condition externally but disregarding internal improvements. He accepted that there was a conundrum in the Tribunal being asked to value the Building as it now was whilst at the same time having no evidence about who had carried out improvements or when.
70. Mr Gross did not accept the suggestion that the RICS must have regarded all of the graphs as relevant or they would not have included all in their report. He said that the Beckett and Kay graph had been referred to in **Arrowdell** and has accordingly been included in their report for comparison purposes. He said that it was difficult to pick out any one of the graphs as being the right one on its own, so he had taken an average of the top three graphs

71. So far as his “bulk-buy” discount was concerned, he accepted that his figure was 10%, that Mr Bevans’s discount figure was 15%, and that, whilst there was no evidence before the Tribunal in this respect, in his opinion a discount is what a hypothetical buyer would expect to command in the market conditions at the valuation date
72. Mr Bevans put it to Mr Gross that according to page 240 of Hague the onus of proof on the question of improvements for the purposes of section 9(1A)(d) was on the lessee. Mr Gross said that there was no evidence before the Tribunal in that respect, although there was no suggestion that anyone other than the Respondent/Leaseholders had carried out the internal improvements. However he accepted that the Tribunal had no alternative but to consider the value of the Building in its condition at the date of inspection but at the valuation date

#### **Mr Gross’s final submissions**

73. Mr Gross submitted that his valuation of £123,370 was a fair one. Evidence was difficult to produce because of the lack of transactions at the valuation date. He preferred to approach the valuation of the Building on the basis of the individual values of the Flats. The relativity question was difficult but he had approached it logically and fairly

#### **Mr Bevans’s final submissions**

74. Mr Bevans submitted that the Tribunal should value the Building as seen, which meant that improvements should not be disregarded. The value of the improvements should be included, namely the heating, the bathroom, double glazing, the parking space, and the garage. Both parties had valued the Building on a “break-up” basis with a discount. Mr Gross had suggested a 10% discount. Mr Bevans had suggested a 15% discount but accepted that it could be between the two. So far as comparables were concerned, the Tribunal had more details of the leases involved in the comparables put forward by the Applicant/Landlord than those involved in the comparables put forward by the Respondent/Leaseholders. So far as relativity was concerned “opinion” based graphs must have derived from the settlements, but the settlements often would have involved simply an agreement on a final figure without analysing or agreeing a figure for relativity. All five graphs should be taken into account, as should the state of the market. In answer to questions from the Tribunal Mr Bevans said that relativity should take account of difficult market conditions because a freehold would be more easily sold in difficult market conditions than would a short lease. Mr Bevans did not agree with the suggestion that the shortness of the lease was already taken into account in the relativity graphs, because he said that there would be fewer buyers for a short lease because the lack of availability of finance would lead to the majority of buyers being cash buyers, which would accordingly reduce the price. His adjusted discounted valuation of the freehold of the Building at the valuation date was £500,000, rather than the £525,000 stated in his report

#### **The proceedings**

75. Mr Bevens said that the form of transfer had not yet been agreed, although the parties were hopeful that this could be achieved shortly. The Tribunal indicated that there would be a direction that the proceedings should accordingly be adjourned until 8 January 2010 when the Tribunal's file would be closed unless either party had made a written application to the Tribunal for further directions

### **The Tribunal's findings**

#### **Capitalisation of the right to receive ground rents for the remainder of the term of the Lease**

76. The Tribunal notes that the parties have agreed that the figure to be included in the price under this heading is £547. The Tribunal accepts that figure accordingly, and has included it in the Tribunal's valuation in Appendix 3 to these reasons

#### **Value of the right to the freehold reversion of the Building with vacant possession at the end of the Lease term**

77. So far as the valuation methodology is concerned, the Tribunal notes that the parties have adopted a common approach to the valuation of the Building, namely to attribute a value to each Flat, as if each Flat were held on a long lease, to add those values together, and then to apply a discount, described by Mr Bevens as a discount for "profit", and by Mr Gross as a "bulk-buy" discount. The comparables submitted by the parties have been allegedly comparable flats

78. With due respect to the parties, the Building is a *building* arranged as flats, not a building comprising flats let on long leases, or a block of flats, and the Tribunal is accordingly surprised not to have received evidence about the values of comparable *buildings* arranged as flats. The nearest evidence in that respect is the evidence in Appendix B of Mr Bevens's report. However, that evidence was submitted in support of Mr Bevens's alternative valuation method based on the income received from the buildings concerned, which Mr Bevens withdrew at the hearing, and neither party has submitted any evidence about the extent to which the sale prices of those buildings can be treated as comparables in this case

79. In the absence of any evidence in that respect, the Tribunal accordingly finds that the Tribunal has no option in this case but to adopt the valuation approach which both parties have put forward

80. So far as improvements are concerned, the Tribunal finds that :

- a. there is no evidence before the Tribunal, as distinct from speculation, inference, and

comments by Mr Benepal during the Tribunal's inspection of the Building, about the dates of any improvements, or the identity of the party who carried them out

- b. there is no evidence before the Tribunal to enable the Tribunal to adopt Mr Gross's invitation to draw the inference that some improvements, for example internal improvements, have been carried out by the Respondent/Leaseholders or a predecessor, but that others, for example external improvements, have been carried out by the Applicant/Landlord or a predecessor
- c. if the Tribunal is to find that any improvements should be disregarded, then logically, in the absence of evidence to the contrary, all improvements should be disregarded
- d. the ground-floor extension forming the majority of Flat 1c appears to have been an addition to the Building as originally built, and could therefore arguably be an improvement, so that if improvements are to be disregarded, effectively the whole of Flat 1c would have to be disregarded
- e. that would be an absurdity, and neither party has invited the Tribunal to value the Building on that basis
- f. so far as parking spaces are concerned, there is no evidence before the Tribunal about the cost of creating new spaces or about the diminution in value of the parts of the garden which would be lost in their creation
- g. the only safe course is accordingly to value the Building in its existing condition at the date of the Tribunal's inspection, but in accordance with its value at the valuation date

81. The Tribunal notes that the parties have agreed that the value of Flat 1a at the valuation date was £180,000, and that there are no clauses in the lease, as varied, which affect the value of the Building, and the Tribunal accordingly makes no finding about the effect on value, if any, of the fact that the Building is effectively laid out as 6 letting units, even though the permitted use under the lease as varied is 4 letting units. The Tribunal has accordingly included that agreed figure in the Tribunal's valuation in Appendix 3 to these reasons

82. The Tribunal also notes that the parties have agreed that the value of Flat 1 at the valuation date was £150,000. The Tribunal has accordingly included that figure in the Tribunal's valuation in Appendix 3 to these reasons

83. So far as the valuation of Flats 1b and 1c is concerned, the Tribunal has taken full account of Mr Bevans's evidence, including in particular the comparables submitted, and of his submissions, including in particular his submissions that there should be additions for the cost of parking spaces, heating, double glazed windows, and bathroom installation. However, the Tribunal, having considered all the evidence in the round in the light of the Tribunal's collective knowledge and experience, prefers the evidence of Mr Gross, and finds that the values at the valuation date were £95,000 for Flat 1b and £80,000 for Flat 1c. The Tribunal has accordingly included those figures in the Tribunal's valuation in Appendix 3 to these reasons

84. The Tribunal therefore finds that the aggregate values of the Flats, if sold on long leases, would be £505,000

85. So far as concerns the discount to be applied to the aggregate values of the Flats, Mr Bevans has contended for 15%, but accepts that it might be a little lower. Mr Gross has contended for 10%. Bearing in mind that a lower discount favours the Applicant/Landlord, the Tribunal, in the absence of any evidence to the contrary, adopts Mr Gross's figure of 10% on behalf of the Respondent/Leaseholders
86. The discounted aggregate values of the Flats, if let on long leases, would therefore be £454,500, and the Tribunal has accordingly included that figure in the Tribunal's valuation in Appendix 3 to these reasons
87. So far as deferment rate is concerned, namely the rate to adjust the freehold value for the fact that vacant possession will not in fact be available until the end of the term, the Tribunal notes that the parties have agreed a rate of 4.75%. The value of the right to the freehold reversion with vacant possession at the end of the Lease term is therefore £90,527, in accordance with the Tribunal's valuation in Appendix 3 to these reasons
88. The Tribunal notes that the parties have agreed that there is no question of an addition for hope value in this case
89. The Tribunal therefore finds that the total value of the capitalisation of the right to receive ground rents for the remainder of the term of the Lease and the value of the right to the freehold reversion of the Building with vacant possession at the end of the Lease term is £91,074, in accordance with the Tribunal's valuation in Appendix 3 to these reasons

#### **Value of the leasehold interest**

90. The Tribunal finds that :
- a. Mr Bevans's suggested relativity figure of 50% is too low, because it gives too much weight to the graphs of Beckett and Kay and Austin Gray in the RICS research report, and not enough weight to the other graphs in that report
  - b. Mr Gross's suggested relativity figure of 65.75% is too high, because it effectively ignores the graphs of Beckett and Kay and Austin Gray, whereas the Tribunal finds that they should be taken into account, even if they do purport to be based less on evidence than the other graphs
  - c. having considered all the evidence in the round, and having drawn on the Tribunal's collective knowledge and experience, the Tribunal finds that the appropriate relativity figure in this case is 60%
  - d. the Tribunal therefore finds that the value of the leasehold interest in the Building is £272,700, in accordance with the Tribunal's valuation in Appendix 3 to these reasons

#### **Marriage value**



91. The Tribunal therefore finds that the Applicant/Landlord's share of marriage value is £45,363, in accordance with the Tribunal's valuation in Appendix 3 to these reasons

**Total price payable**

92. The Tribunal finds that the enfranchisement price payable is £136,437, in accordance with the Tribunal's valuation in Appendix 3 to these reasons

**Direction**

93. In relation only to the terms of the transfer, the proceedings are adjourned until 8 January 2010 when the Tribunal's file will be closed unless either party has in the meantime made a written application to the Tribunal for further directions

Dated the 3 January 2010



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor

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

**Case No. CHI/00HN/OAF/2009/0010**

**1 Lansdowne Gardens**

**Appendix 1**

**Mr Bevans's revised valuation as calculated by Tribunal**

**1 Lansdowne Gardens**

<b>Freehold interest subject to long lease</b>		
<b>Term</b>		
Ground Rent	40	
Term 34.77 @ 6.5%	<u>13.662</u>	
	546.48	
say		547
<b>FH VP value</b>		
	500,000	
PV 34.77 years at 4.75%	<u>0.1991794</u>	
	99,590	
		<u>99,590</u>
		100,137

<b>Marriage Value</b>	
FH VP value	£500,000
less value of freehold interest subject to long lease	£100,137
less value of leasehold interest - 50% relativity	<u>£250,000</u>
	£149,863
<b>Marriage Value</b>	<u>50%</u>
	£74,932

<b>Purchase Price</b>	
Value of freehold term and reversion	£100,137
Add share of marriage value	<u>£74,932</u>
	£175,068

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

**Case No. CHI/00HN/OAF/2009/0010**

**1 Lansdowne Gardens**

**Appendix 2**

**Mr Gross's valuation**

## APPENDIX 3 VALUATION

### VALUATION

#### 1) Freehold Term and

#### Reversion

#### Existing Term:

December 22, 2008 to September 29, 2043

rent income £ 40

yp

years 34.77

rate 6.5000%

13.675

#### Term value

£547

#### Freehold Reversion

£454,500

#### present value

years 34.77

defer rate 4.7500%

0.199179164

#### Reversion value

£ 90,527

#### term and reversion

£91,074

#### 2) Marriage Value

#### payable to freeholder

Freehold £ 454,500

#### less

tenants interest £298,834

freehold term and

reversion \*\* £91,074

£389,908

gain on marriage of

interests

£64,592

Freeholder share x 50%

0.5

£32,296

Price payable to

freeholder

£123,370

\*\*Existing Lease value calculation:

Freehold £454,500

Relativity 65.75%

Existing Leasehold £298,834

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

**Case No. CHI/00HN/OAF/2009/0010**

**1 Lansdowne Gardens**

**Appendix 3**

**Tribunal's valuation**

	B	C	D
1	1 Lansdowne Gdns		
2			£
3	FH vacant possession value (value as stands - i.e. with improvements)		<u>£454,500</u>
4			
5	Relativity		60.00%
6	Leasehold value		<u>£272,700</u>
7			
8	Freehold interest subject to long lease		
9			£
10	Ground Rent £pa	40	
11	Term 34.77years @ 6.5%	13.662	
12		546.48	
13	say		547
14	FH VP value	454,500	
15	PV 34.77 years at 4.75%	<u>0.19918</u>	
16		90,527	
17			<u>90,527</u>
18			<u>£91,074</u>
19			
20	Marriage Value	£	
21	FH VP value	454,500	
22	less value of freehold value interest subject to long lease	91,074	
23	less value of leasehold interest	<u>272,700</u>	
24		90,726	
25	Marriage value	50%	
26		<u>£45,363</u>	
27			
28	Purchase Price		
29		£	
30	Value of freehold interest subject to long lease	91,074	
31	Add share of marriage value	<u>45,363</u>	
32	Total	<u>£136,437</u>	
33			

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

**Case No. CHI/00HN/OAF/2009/0010**

**REASONS**

**Application** : Section 21(2)(a) of the Leasehold Reform Act 1967 as amended (“the 1967 Act”)

**Applicant/Landlords** : Rupert John Aldington Edwards, Douglas James Edward Neville-Jones, Emma Jane Blackburn (née Bowditch), John Robert Barrett Bowditch, and Linda Jean Bowditch (the present trustees of the Alice Ellen Cooper-Dean Charitable Foundation)

**Respondent/Leaseholders** : Mr Amrik Singh Benepal and Mrs Kuldeep Kaur Benepal

**Building** : 1 Lansdowne Gardens, Bournemouth, Dorset, BH1 1QR

**Flats** : The six flats in the Building

**Date of Respondent/Leaseholders’ Initial Notice** : 22 December 2008

**Date of Application** : 11 September 2009

**Date of Provisional Directions** : 17 September 2009

**Date of Revised Directions** : 5 October 2009

**Date of Hearing in Relation to Enfranchisement Price** : 2 December 2009

**Date of Tribunal’s Reasons** : 3 January 2010

**Date of Subsequent Directions** : 8 January 2010

**Date of Hearing in Relation to Terms of Transfer** : 21 April 2010

**Venue** : Bay View Suite, Royal Bath Hotel, Bath Road, Bournemouth, BH1 2EW

**Appearances for Applicant/Landlord** : Mr D Bromilow, Counsel

**Also in attendance** : Mrs B Kefford, Preston Redman, and Mr A E Cowen FRICS

**Appearances for Respondent/Leaseholders** : Ms K Scruby, H G Walker

**Also in attendance** : Mr Benepal

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman JP MA LLB (Chairman),



Mr K M Lyons FRICS, and Miss R B E Bray BSc MRICS

**Date of Tribunal's Reasons : 21 April 2010**

### **Introduction**

1. At the hearing on the 2 December 2009, and as confirmed in the Tribunal's reasons dated the 3 January 2010, the Tribunal directed that in relation only to the terms of the transfer, the proceedings were adjourned until 8 January 2010 when the Tribunal's file would be closed unless either party had in the meantime made a written application to the Tribunal for further directions
2. The Tribunal subsequently received correspondence from the parties indicating that the terms of the transfer had not been agreed, in that the Applicant/Landlords were contending for the inclusion of clause 12.7.4, whereas the Respondent/Leaseholders were contending for its deletion
3. The Tribunal gave further directions on the 8 January 2010
4. A copy of the draft transfer is attached to these reasons as Appendix 1

### **Statutory provisions**

5. The material parts of section 10 of the 1967 Act provide as follows :

*10 Rights to be conveyed to tenant on enfranchisement*

*(1) to (3).....*

*(4)As regards restrictive covenants (that is to say, any covenant or agreement restrictive of the user of any land or premises), a conveyance executed to give effect to section 8 above shall include—*

*(a)such provisions (if any) as the landlord may require to secure that the tenant is bound by, or to indemnify the landlord against breaches of, restrictive covenants which affect the house and premises otherwise than by virtue of the tenancy or any agreement collateral thereto and are enforceable for the benefit of other property; and*

*(b)such provisions (if any) as the landlord or the tenant may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of the tenancy or any agreement collateral thereto, being either—*

*(i)restrictions affecting the house and premises which are capable of benefiting other property and (if enforceable only by the landlord) are such as materially to enhance the value of the other property; or*

*(ii) restrictions affecting other property which are such as materially to enhance the value of the house and premises;*

*(c) such further provisions (if any) as the landlord may require to restrict the use of the house and premises in any way which will not interfere with the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy but will materially enhance the value of other property in which the landlord has an interest.*

*(5) Neither the landlord nor the tenant shall be entitled under subsection (3) or (4) above to require the inclusion in a conveyance of any provision which is unreasonable in all the circumstances, in view—*

*(a) of the date at which the tenancy commenced, and changes since that date which affect the suitability at the relevant time of the provisions of the tenancy; and*

*(b) where the tenancy is or was one of a number of tenancies of neighbouring houses, of the interests of those affected in respect of other houses.*

*(6).....*

## **Documents**

6. The documents before the Tribunal are :
  - a. the Applicant/Landlords' bundle
  - b. statement by Alastair Edward Cowen 8 April 2010
  - c. skeleton argument by Mr Bromilow 20 April 2010
  - d. skeleton argument by Ms Scruby

## **Inspection**

7. The Tribunal had inspected the Building on the morning of the hearing on the 2 December 2009. In the absence of any request by either party to re-inspect for the purposes of this hearing, and, in the light of the nature of the issues before it, the Tribunal did not do so

## **Applicant/Landlords' statement of reasons for the inclusion in the transfer of clause 12.7.4**

8. The Applicant/Landlords stated that clause 12.7.4 contained two alternatives in the square brackets so far as the use of the Building was concerned. The first alternative, namely use as four self-contained private residential flats, reflected the use as permitted by the licence dated the 10 February 1961. The second alternative, namely use as two self-contained private residential flats on the ground floor, three self-contained private residential flats on the first floor, and one self-contained private residential maisonette forming part of the first floor and the whole of the second floor, reflected the current actual use
9. The Applicant/Landlords had invited the Respondent/Leaseholders to opt for the second alternative

10. The Applicant/Landlords summarised the Respondent/Leaseholders' arguments in correspondence for the deletion of clause 12.7.4 as follows :
- a. *section 84 of the Law of Property Act 1925*: restrictions imposed in 1944 were no longer reflective of the changes in character of the neighbourhood and were in effect obsolete in a current transfer, as evidenced by the inconsistency in the lease noted in clause 12.7.4; the Respondent/Leaseholders would be seeking the removal of clause 12.7.4 as they would be able to apply for post-registration under section 84 of the Law of Property Act 1925, pursuant to which the LVT [sic] could modify or discharge existing restrictive covenants where by reason of a change in the character of the neighbourhood or other material circumstances they were obsolete, they impeded some reasonable use of the land whilst serving no practical benefit and whilst any loss could be compensated in money, or the discharge or modification would cause no injury to the person entitled to the benefit of it; in determining whether to impose a restrictive covenant on an enfranchisement under the 1967 Act the LVT should adopt a similar approach
  - b. *the restriction did not benefit or materially enhance other property*: restrictive covenants were not enforceable other than by the trustees of the estate and were unlikely materially to enhance the value of other property under section 10 (4)(b)(ii) [sic]; the locality and neighbouring properties had substantially changed since the grant of the lease; clause 12.7.4 did not particularly benefit neighbouring properties
  - c. *rationale for removal of clause 12.7.4*: during valuation negotiations the valuers agreed a joint statement whereby the enfranchisement price was unaffected whether clause 12.7.4 was included or not; the effect was therefore so negligible that there was no reason for the clause to remain
11. The Applicant/Landlords summarised their own arguments in correspondence for the inclusion of clause 12.7.4 as follows :
- a. *section 84 of the Law of Property Act 1925*:
    - the purpose of section 84 of the Law of Property Act 1925 was the discharge or modification of restrictive covenants; in order to rely on section 84 the applicant had to have an interest in the freehold premises; the Respondent/Leaseholders did not
    - the Tribunal's jurisdiction under section 21(2)(a) of the 1967 Act was to determine what covenants ought to be contained in the transfer; the modification or discharge of any of the covenants to be included in the transfer was not the function of the Tribunal
    - section 21(2)(a) of the 1967 Act and section 84 of the Law of Property Act 1925 required different considerations : Lands Tribunal decision in **Midhage v 60 Coolhurst Road Ltd** [2007] 3 EGLR 77, copied at page 35 of the Applicant/Landlords' bundle
  - b. *the restriction did not benefit or materially enhance other property*:
    - by virtue of section 10 (4)(b)(i) of the 1967 Act the Applicant/Landlords were entitled to require the continuance in the transfer of any of the covenants imposed in the lease which were capable of benefiting other property and which materially enhanced that other property; the wording in clause 12.7.4 secured the

- continuance of the existing wording (with suitable adaptations) in the lease
- the Applicant/Landlords owned the freehold properties known as 17 Cavendish Road, situated opposite the Building, and 2 Lansdowne Gardens; adjoining the Building, and therefore the restrictions in clause 12.7.4 were capable of benefiting other property
  - the restrictions did materially enhance the value of other property; without the restrictions in place the Building could be used for any purpose which could have a detrimental impact on both neighbouring properties and the Applicant/Landlords' other property; a use which was incompatible with the surrounding properties could lead to an increase in the flow of traffic and noise and become a significant nuisance and annoyance and have a general diminishing effect on the area
  - where there had been a change of use in the area to provide for a care home or language school, those uses were compatible with large residential areas
  - it was not sufficient to rely on planning control to determine what uses were permissible or appropriate : Lands Tribunal decision in **Moreau v Howard de Walden Estates Ltd** LRA/2/2002, copied at page 44 of the Applicant/Landlords' bundle
  - it was well established that it was not necessary for a party to adduce expert valuation evidence to demonstrate that restrictions would materially enhance the value of the property
  - the Respondent/Leaseholders had not provided any arguments or evidence in support of their statement that the restriction was *unlikely* materially to enhance the value of a property
  - material enhancement could realistically be considered only in general terms and was essentially a matter of general impression : **Moreau**, and LVT decision in **114 Tyrone Road**, copied at page 104 of the Applicant/Landlords' bundle
  - section 10 (4)(c) of the 1967 Act might apply if the user restriction in the transfer included the alternative provision allowing for six residential flats, as that restriction was not the wording in the lease; however, the test in that subsection was satisfied because the proposed user restriction would not affect the use of the Building in a way which interfered with the reasonable enjoyment of the Building as had been enjoyed during the term of the lease, but would, for reasons already given, materially enhance the value of other property in which the Applicant/Landlords had an interest
  - by virtue of section 10 (5) of the 1967 Act the Applicant/Landlords were not entitled to require the inclusion in the transfer of any provision which was unreasonable in view of changes since the date of the lease or in view of those affected in respect of other neighbouring houses where the lease was one of a number of other leases
  - the Applicant/Landlords disagreed with the Respondent/Leaseholders' argument that the locality had changed substantially since the grant of the lease in 1944; there had not been any substantial changes which affected the suitability of clause 12.7.4 , and the only change to the Building since the lease was granted was the number of residential flats permitted within it
- c. *rationale for removal of clause 12.7.4:*

- the agreed joint statement by the valuers confirmed that the enfranchisement price was unaffected by whether or not clause 12.7.4 was included in the transfer
  - it related to the Building only
  - it did not consider the impact of clause 12.7.4 on the Applicant/Landlords' other property
12. The proposed clause 12.7.4 merely reflected, and secured the continuance of, the existing terms of the lease with suitable adaptations. It would not interfere with the reasonable enjoyment of the Building as it had been enjoyed during the term of the lease
  13. It would benefit and materially enhance other property, and was therefore within the scope of section 10 (4)(b)(ii) [sic], section 10 (4)(c), and section 10(5)

**Respondent/Leaseholders' statement of reasons for the deletion from the transfer of clause 12.7.4**

14. Section 10 (4)(b)(ii) of the 1967 Act did not apply. It referred to restrictions affecting other property which were such as materially to enhance the value of "the house and premises". That expression meant the house and premises being transferred, i.e. the Building. The valuers had agreed that the proposed clause 12.7.4 had no quantifiable effect on the valuation of the enfranchisement price of the Building. In addition, clause 12.7.4 was a restriction affecting the Building and not other premises. The purpose behind the subsection was to enable a tenant to secure the benefit of covenants over the land which had an effect on the value of the land being transferred to the tenant
15. Section 10(4)(c) of the 1967 Act covered the situation where a landlord wished to include a further restriction which had the effect of materially enhancing the value of other property in which the landlord had an interest but did not interfere with the existing use of the house and premises. The continuance of the existing restriction on the use of the Building, or the imposition of the proposed alternative wording, did not enhance the value of other property belonging to the Applicant/Landlords. If, as the Respondent/Leaseholders alleged, the original restrictions, which were imposed in 1994, were no longer reflective of the changes in character of the neighbourhood, it was difficult to see how their retention could be said materially to enhance the value of that other land. It was the Respondent/Leaseholders' belief that they would have little difficulty in having the restrictions discharged if an application were made under section 84 of the Law of Property Act 1925 on the basis that by reason of the change in character of the neighbourhood or other material circumstances they were obsolete, they impeded some reasonable use of the land while serving no practical benefit and whilst any losses could be adequately compensated in money, or the discharge or modification would cause no injury to the person entitled to the benefit of it. In such circumstances the inclusion of the proposed restriction was pointless and would, in any event, be unreasonable in all the circumstances within the meaning of section 10(5) of the 1967 Act
16. So far as the argument under section 84 of the Law of Property Act 1925 was concerned, the decision in **Midhage** was not relevant because it was a decision under the Leasehold Reform,

Housing and Urban Development Act 1993 and because its decision was very fact specific. Although the Respondent/Leaseholders accepted that different considerations applied when an application was made to the Lands Tribunal under section 84 of the Law of Property Act 1925, the likely outcome of such an application was a factor which the Tribunal could and should take into account in determining unreasonableness under section 10(5) of the 1967 Act and in determining whether the presence of the suggested restrictive covenant materially enhanced the value of other property under section 10(4) of the 1967 Act

17. Whilst it was accepted that planning control was not a substitute for restrictive covenant control, it did offer protection against the feared incompatible use within a residential area. Its existence was something that the Tribunal was entitled to take into account when assessing both unreasonableness and enhancement in value
18. The Respondent/Leaseholders were opposing the inclusion of the proposed restrictions not because they had an intention to change the use of the Building but because they did not wish to put themselves or any successor in title at risk of having to pay a further sum to the Applicant/Landlords for them to allow such use, particularly in light of the common ground between the parties' valuers that the retention or exclusion of clause 12.7.4 did not affect the value of the Building in quantifiable terms

**Statement by Alastair Edward Cowen FRICS 8 April 2010**

19. Mr Cowen stated that he had been managing agent to the Applicant/Landlords and their predecessors as trustees of the Alice Ellen Cooper-Dean Charitable Foundation since 1980
20. From his records, and from at the latest 1963, prior to the Respondent/Leaseholders' ownership of the lease, the Building had been used as two ground floor flats, three first-floor flatlets, and a first and second floor maisonette
21. The majority of properties in the locality were also residential, and were either older houses converted into flats or new purpose-built block of flats, typically with between 6 to 12 flats in each block
22. The Building was in a conservation area
23. There was accordingly no evidence of a change in the character of the neighbourhood
24. Clause 12.7.4 would allow the present user arrangements to be confirmed. The present user provisions have probably been in place since at the latest 1963 and were entirely in line with the other properties in the locality. The restriction was therefore not obsolete
25. The other restrictions in the proposed clause 12.7.4 were :
  - a. trade or business: the situation of the Building on a sharp corner with parking

restrictions and limited off-road parking in a predominantly residential area meant that it would be most unlikely to receive planning consent

- b. school or chapel: the same comments applied
  - c. hanging out clothes to dry or being a nuisance or annoyance: the peaceful residential character of the area was largely the result of the restrictions in the Cooper-Dean leases and in the covenants imposed on sales, usually on enfranchisement; this was illustrated when in 1985 Mr Cowen had to write to the Respondent/Leaseholders about the sub tenants hanging out washing to dry at the Building
26. The Applicant/Landlords had referred to 2 properties in the vicinity owned by the Applicant/Landlords. There were others, namely in Cavendish Road, six buildings, now all flats and one language school, and in Dean Park Road, four blocks of flats, two private dwelling houses, and three language schools
27. The wider area also benefited from similar covenants in similar long leases as well as almost identical covenants imposed when freeholds had been sold off, usually on enfranchisement
28. Material enhancement of other property capable of benefiting from the restrictions: material enhancement was a somewhat ill-defined concept but past restrictions imposed in leases and on properties sold off by the Cooper-Dean estate had benefited and materially enhanced properties throughout the area
29. Planning restrictions were not sufficient as planning policy had changed over the years, but the current status as a conservation area had reinforced the enhancement given by the restrictive covenants
30. The valuers in this case had given no added financial value to the proposed clause 12.7.4 because it would have been impossible precisely to define the extra value. Comparable evidence would have been impossible to come by, with sales of almost identical property being compared, one with covenants and one without. Accordingly the best way had been to agree a nil value
31. The proposed clause 12.7.4 would definitely have a beneficial value to immediate neighbours as those properties could be devalued if the Building were demolished and a new block of flats constructed on a larger footprint on the site
32. The correspondence about the clothes being put out to dry vividly illustrated the value of that one small restriction
33. The valuers' assessment of the monetary value of the proposed clause 12.7.4 as nil did not mean that there was no value in restrictive covenants. There were two values which were difficult, if not impossible, to put into monetary terms :
- a. the value of restrictive covenants to the neighbouring or adjoining properties in the

same ownership: as an example, 2 Lansdowne Gardens had added value through the restrictive covenants imposed on the Building adjoining, as that property could be confident that there would be no change of use by the neighbour to, for example, an auction house, school or chapel; similarly the Building could be equally confident that it would not have unsightly signs or washing lines erected, just over the fence, on their boundary with number 2

- b. the value to the whole district, where “Cooper-Dean” covenants had managed to retain its original layout, trees, a mix of large and small residential properties and a general ambience of prosperity, space and quiet places to live close to the town centre
34. Reliance on planning restrictions was not sufficient to ensure that no damage was done to the value of adjoining properties in the same ownership. Loss of value to retained or adjoining land was not a concept accepted as a valid objection to a planning application. The planning authorities had often allowed inconsistent development which had caused annoyance to neighbours. One of the values of restrictive covenants was that they could override and control what might be seen to be unhelpful decisions by the planning authorities
  35. Restrictive covenants materially enhanced both adjoining properties and other properties in the locality, both in the same ownership and in other ownership
  36. Transfers from the Applicant/Landlords had generally, with very few exceptions, contained these or similar covenants on alterations, user, and the other matters included here. Those covenants enhanced the value of other property in which the Applicant/Landlords had an interest in maintaining values. Those values might deteriorate without those covenants. The covenants raised the tone of the area. This had been accomplished by restricting user largely to residential, or quasi residential, such as residential language schools. It also controlled the density and quality of development which was evidenced by the council making this a conservation area
  37. There was a substantial material enhancement to all properties in the locality in the same ownership and more particularly to the two neighbouring properties at 2 Lansdowne Gardens and 17 Cavendish Road
  38. The covenants were not obsolete, as the Dean Park area had changed very little since 1944 and remained largely residential in character

### **The hearing**

39. At the hearing, Ms Scruby said that the only part of clause 12.7.4 in the draft transfer which was in issue before the Tribunal was the part comprising the first 10 lines up to the words “.....second floor] and”. The remainder of the clause was not in issue before the Tribunal

### **Mr Cowen’s oral evidence**



40. Mr Cowen adopted his statement
41. There was no cross-examination
42. In answer to questions from the Tribunal, Mr Cowen accepted that over time there had been some intensification of residential use in other neighbouring properties. The neighbouring property, 2 Lansdowne Gardens, was now being used for the provision of sleeping accommodation for homeless people, although he did not know how many. Behind 2 Lansdowne Gardens there was a development of townhouses. The land at the rear of the Building was in different ownership. There had been a recent application for planning permission for townhouses but no variation of restrictive covenants had been granted so far

### **Mr Bromilow's submissions in his skeleton argument and at the hearing**

43. Mr Bromilow submitted that :
  - a. the potentially relevant statutory provisions were sections 10(4)(b)(i), 10(4)(c), and 10(5) of the 1967 Act
  - b. the Applicant/Landlords' primary submission was that only the first part of section 10(4)(b)(i) was actually relevant
  - c. this was because the second part of section 10(4)(b)(i) applied only if clause 12.7.4 was enforceable only by the Applicant/Landlords, whereas the preamble to clause 12.7 made it clear that the covenant was enforceable not only by the Applicant/Landlords, the Applicant/Landlords' successors in title, and those claiming under the Applicant/Landlords, but also by those to whom the Applicant/Landlords sold adjoining land or other land of the Applicant/Landlords in Bournemouth with the express benefit of the covenant
  - d. accordingly, the Tribunal merely had to be satisfied that :
    - the Applicant/Landlords required clause 12.7.4, which they did
    - clause 12.7.4 continued (with suitable adaptations) a restriction in the lease, which (with the adjustment in respect of the current number of residential units in the Building) it did
    - the restrictions in clause 12.7.4 affected the Building, which they did
    - the restrictions in clause 12.7.4 were capable of benefiting other property, which they were
  - e. in any event, if, contrary to the Applicant/Landlords' primary submission, clause 12.7.4 was enforceable only by the Applicant/Landlords, so that the second part of section 10(4)(b)(i) was relevant, clause 12.7.4 was such as materially to enhance the value of the property benefiting from the restrictions in clause 12.7.4, because :
    - an attempt to assess the value of a restrictive covenant in monetary terms was an impossible valuation exercise, and the issue of material enhancement could only be realistically considered in general terms and as a matter of general impression:

**Moreau**

- maintaining a value which would otherwise deteriorate amounted to material enhancement : **Moreau**
- planning control was not an adequate substitute for restrictive covenants and did not render them unnecessary : **Moreau**
- the restrictions in clause 12.7.4 materially enhanced the value of other land in the area for the reasons given by Mr Cowen
- user restrictions of this type were commonplace in the sales of new properties on new residential developments and were not obsolete or unnecessary given that they were considered desirable by the developers of modern estates
- in relation to the Respondent/Leaseholders' argument that clause 12.7.4 did not benefit other properties because there had been changes in the character of the neighbourhood, no details had been provided of any evidence relied upon in support of that allegation
- in relation to the Respondent/Leaseholders' argument that they would be able to have the covenant discharged under section 84 of the Law of Property Act 1925 :
  - different considerations applied to the question before the Tribunal, namely whether a restrictive covenant should be included by virtue of section 10 of the 1967 Act, from those applying to the questions which would be relevant in an application to the Lands Tribunal under section 84 of the Law of Property Act 1925 : **Midhage**
  - although **Midhage** was dealing with a transfer under the Leasehold Reform, Housing and Urban Development Act 1993 and was based on different facts, the operative parts of the 1967 Act and the Leasehold Reform, Housing and Urban Development Act 1993 were very similar, and it was a statement of general principle in **Midhage** which was significant, and the differences between the facts of the two cases did not provide grounds for distinguishing the two cases in relation to the statement of general principle
  - contrary to the Respondent/Leaseholders' arguments, the Tribunal should not take account of the "likely outcome" of an application to the Lands Tribunal under section 84 of the Law of Property Act 1925; the Tribunal should not seek to anticipate the Lands Tribunal's exercise of the Lands Tribunal's jurisdiction
  - in any event, there was no evidence to substantiate the Respondent/Leaseholders' general statement that they would have "little difficulty" in having the covenant discharged if such an application had to be made
- the covenants in clause 12.7.4 were of value and would be able to serve their intended purpose in maintaining the residential nature and high quality of the estate
- clause 12.7.4 should be included in the transfer

## **Ms Scruby's submissions in her skeleton argument and at the hearing**

44. Ms Scruby submitted that :

- a. the enfranchisement price had been determined on the basis that it would be the same whether or not clause 12.7.4 was included in the transfer
- b. it would ordinarily be argued that the imposition of such a covenant would suppress the value of a property because any potential buyer would take into account the possibility of having to pay the owner for its release
- c. therefore it could be argued that the Applicant/Landlords, by agreeing that the enfranchisement price was the same whether the clause was included or not, had already agreed that the price included the uplift for any release, and that the Applicant/Landlords should not be entitled effectively to make the Respondent/Leaseholders pay twice
- d. if the Applicant/Landlords had required further compensation for a release then they should have argued for a higher enfranchisement price, knowing that clause 12.7.4 was disputed
- e. under the 1967 Act the Applicant/Landlords could not require the continuance or inclusion of the restrictive covenants in the transfer unless they could show that the covenants benefited other people, which was not the case here, or that they materially enhanced the value of the Building or the value of other property in which the Applicant/Landlords had an interest
- f. Mr Cowen's statement did not show any substantive evidence that if the Building were redeveloped to be a more modern unit, rather than six bedsits, then any adjoining property would suffer
- g. Mr Cowen suggested at the same time that the proposed restriction was unquantifiable in value and yet added value to the neighbouring properties
- h. the fact that the adjoining properties identified by Mr Cowen must have been subject to a release of covenants meant that the Applicant/Landlords were likely to have expected a degree of compensation, which gave some identification about what that benefit was worth
- i. in relation to Mr Bromilow's submission that only the first part of section 10(4)(b)(i) applied because others could enforce the covenants, not just the Applicant/Landlords, the words "enforceable only by the landlord" meant "enforceable only by the landlord at the date of the transfer" not "enforceable only by the landlord at any time in the future", so that the whole of section 10(4)(b)(i) applied in this case
- j. section 10(4)(b)(ii) of the 1967 Act also applied in this case because the Applicant/Landlords had stated that similar restrictions had applied to sales of other properties in the area
- k. section 10(4)(c) of the 1967 Act also applied to this case
- l. sections 10(4)(b)(i) and (ii) and 10(c) of the 1967 Act should be read together in the round, and made it clear that the Applicant/Landlords had to prove material enhancement

- m. in relation to the argument about material enhancement :
- so far as enhancing the value of the Building was concerned, the valuers had already agreed that clause 12.7.4 did not have any effect on the value
  - so far as concerned a question put by the Tribunal, namely whether the fact that the valuers had agreed that the inclusion or deletion of clause 12.7.4 from the transfer had no impact on the enfranchisement price of the Building necessarily meant that clause 12.7.4 also had no impact on the value of other properties, Ms Scruby submitted that if clause 12.7.4 was now included in the transfer the Respondent/Leaseholders would have to pay a premium to have the restriction released, and the Applicant/Landlords should have raised that matter at this stage of negotiating the enfranchisement price
- n. section 10(5) of the 1967 Act applied in this case because there had been changes since the date of the tenancy in the intensification of the use of the Building
- o. the Applicant/Landlords accordingly could not require the inclusion of clause 12.7.4 if it was unreasonable
- p. the imposition of clause 12.7.4 was unreasonable because :
- it was clear that there had been plenty of development in the area, so that to keep the intensity of one plot was not essential to the retention of the peaceful character and nature of the area or of the land benefiting from the covenant
  - the value of the Applicant/Landlords' retained land would not be damaged by the addition of a property some distance away where one property already existed
  - the loss to the Applicant/Landlords was from the fact that they had no means of sharing in any increased value of land previously owned, which was a different sort of loss
  - the Respondent/Leaseholders would be able to apply to the Lands Tribunal under section 84 of the Law of Property Act 1925 to have the clause removed on the basis that it would be obsolete on the basis of the evidence of other developments in the area and the fact that the Building had been used in breach of the original covenant for many years; the Lands Tribunal would consider the original purpose behind the covenant
  - the covenant served no reasonable or practical benefit which could not be compensated in monetary terms, and any compensation would be negligible based on the previous determination of the enfranchisement price by the Tribunal, and consequently there would be no injury to the person with the benefit of it : **Marcello Developments Ltd** [2001] EW Lands LP/18/1999, LP/31/2000
  - if the Tribunal did not feel it had the jurisdiction to rule on the section 84 of the Law of Property Act 1925 point perhaps the Tribunal would consider a referral to the Lands Tribunal under section 175(2) of the Commonhold and Leasehold Reform Act 2002

### **Mr Bromilow's closing submissions**

45. Mr Bromilow submitted that :
- a. statutes had to be construed precisely, and not in the round
  - b. section 10(4)(b)(ii) of the 1967 Act was not relevant in this case
  - c. it referred to restrictions affecting other properties which were such as materially to enhance the value of the Building and accordingly was relevant only to any covenants which might have been required by the Respondent/Leaseholders, not to covenants required by the Applicant/Landlords
  - d. section 10(4)(c) was not relevant either : section 10(4)(b) applied, as here, where a landlord or a tenant were requiring to secure the continuance of covenants in the lease, whereas section 10(4)(c) applied where the landlord required other covenants
  - e. in section 10(4)(b)(i) the words “enforceable only by the landlord” could not be construed to mean “enforceable only by the landlord at the date of the transfer” because, unless, exceptionally, another party was named in the transfer as having the power to enforce the covenants, the landlord would always be the only party able to enforce the covenants at the date of the transfer, and the words would then be redundant
  - f. the fact that the Applicant/Landlords had not taken action in relation to the breach of the user covenant in the lease as amended by the deed of variation did not mean that they should not be able to object to further intensification
  - g. the question of reasonableness in relation to section 10 of the 1967 Act was not at large, but arose only if section 10(5) of the 1967 Act applied, which, in turn, was only if one of the two subparagraphs of that section applied
  - h. however, neither of those two subparagraphs applied because :
    - in relation to subparagraph (a), the changes since the date the lease commenced, namely the intensification of use, had already been taken into account in the second of the two alternatives in square brackets in clause 12.7.4
    - in relation to subparagraph (b), the lease was not one of a number of leases of neighbouring houses
  - i. even if, contrary to the Applicant/Landlords’ submissions, the Tribunal were to take into account a possible application to the Lands Tribunal under section 84 of the Law of Property Act 1925, the decision in **Marcello** was not relevant to this case; the covenant in that case had created a power to prescribe a building line as part of a statutory town planning scheme; that part of the statute had then been repealed, and the town planning scheme had been abolished, so that the power to prescribe had become obsolete
46. In answer to a question from the Tribunal, and after a short adjournment to enable the parties to discuss the matter, the parties agreed that if, contrary to Ms Scruby’s submissions, the Tribunal were to find that the whole of clause 12.7.4 should, in principle, be included in the transfer, the following wording should be substituted for the words in the two sets of brackets in the clause as presently drafted : “not more than six self-contained private residential units

in one building”

### **The Tribunal’s findings**

47. Having considered all the submissions from both parties, and the evidence of Mr Cowen, the Tribunal makes the following findings :
- a. in section 10(4)(b)(i) of the 1967 Act the words “enforceable only by the landlord” mean “enforceable only by the landlord *under the terms of the transfer*”, and not, as suggested by Ms Scruby, “enforceable only by the landlord *at the date of the transfer*”
  - b. under the terms of the preamble to clause 12.7 of the transfer, the categories of people by whom the covenant is enforceable include not only the Applicant/Landlords, their successors, and people claiming under them, but also buyers of the Applicant/Landlords’ adjoining land with the express benefit of the covenant
  - c. clause 12.7.4 is therefore not “enforceable only by the landlord”
  - d. accordingly, only the first part of section 10(4)(b)(i) of the 1967 Act applies in this case, and the question of whether the restrictions in clause 12.7.4 are such as materially to enhance the value of other property is not a relevant question in this case
  - e. section 10(4)(b)(ii) of the 1967 Act applies to restrictions affecting other property which materially enhance the value of the Building, and is not relevant in this case, where the restriction in the proposed clause 12.7.4 is a restriction affecting the Building itself
  - f. section 10(4)(b)(i) applies to provisions which a landlord may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of the tenancy, whereas section 10(4)(c) of the 1967 Act applies to other provisions
  - g. the Applicant/Landlords are seeking clause 12.7.4 as a continuance of the restrictions in the lease
  - h. section 10(4)(b)(i) therefore applies in this case, whereas section 10(4)(c) does not
  - i. in relation to the reasonableness or otherwise of the inclusion of clause 12.7.4 :
    - there is no express reference to reasonableness in section 10(4)(b)(i) of the 1967 Act
    - if the draughtsman of the 1967 Act had intended a landlord’s ability to require the inclusion of a covenant in a transfer to be subject to a test of reasonableness, it would have been a simple matter so to provide
    - indeed, the question of reasonableness is dealt with in section 10(5) of the 1967 Act
    - however, that question of reasonableness is expressly stated to be limited to the circumstances set out in the two subparagraphs of that section, in relation to which :
      - the reasonableness requirement in subparagraph (a) has been satisfied in

this case, in that the only changes since the date of the lease to which the Tribunal's attention has been drawn are the changes in the number of residential units in the Building, and the drafting of clause 12.7.4 reflects those changes and the Applicant/Landlords' acceptance of the status quo

- the Tribunal accepts as persuasive Mr Bromilow's submission that the circumstances referred to in subparagraph (b) do not apply in this case
- to the extent that the Applicant/Landlords have to satisfy the Tribunal about the reasonableness of their requirement for the inclusion of clause 12.7.4, they have done so
- j. the Tribunal therefore accepts as persuasive Mr Bromilow's primary submission that the only matters upon which the Applicant/Landlords have to satisfy the Tribunal for the purposes of section 10(4)(b)(i) of the 1967 Act are therefore that :
  - the Applicant/Landlords require clause 12.7.4
  - clause 12.7.4 continues (with suitable adaptations) a restriction in the lease
  - the restrictions in clause 12.7.4 affect the Building
  - the restrictions in clause 12.7.4 are capable of benefiting other property
- k. having considered all the evidence and submissions before the Tribunal, the Tribunal finds that the Applicant/Landlords have indeed satisfied each of those matters
- l. in relation to section 84 of the Law of Property Act 1925, the Tribunal finds that :
  - it is inappropriate for the Tribunal to take account of what might or might not happen in an application to the Upper Tribunal under that section after the transfer to the Respondent/Leaseholders because :
    - to do so would be to approach the question whether clause 12.7.4 should be included by reference to a test of reasonableness, whereas, for reasons already given, the possible outcome of an application under section 84 of the Law of Property Act 1925 is not one of those limited matters which the Tribunal can take into account under the only permissible consideration of reasonableness in this case, namely those matters set out in section 10(5) of the 1967 Act
    - different considerations apply to an application under section 84 of the Law of Property Act 1925 from those applicable in this case
    - the Tribunal does not have jurisdiction to entertain an application under section 84 of the Law of Property Act 1925, and it would be inappropriate for the Tribunal effectively to do so "by the back door", so to speak, by considering the factors which might be relevant in such an application and then trying to assess what the Upper Tribunal might or might not decide
  - the Tribunal has no jurisdiction to "consider a referral to the Lands Tribunal under section 175(2) of the Commonhold and Leasehold Reform Act 2002", because that section relates to applications to the Tribunal for permission for a party to appeal to the Upper Tribunal from a decision by the Tribunal, and not, to a "reference" as such from the Tribunal to the Upper Tribunal

- m. as already mentioned, the parties have agreed a form of wording in substitution for the words in brackets in the version of clause 12.7.4 in the draft transfer
- n. that wording is accordingly not in issue before the Tribunal, and the Tribunal therefore makes no comments in relation to it

**Decision**

48. The Tribunal therefore orders that the transfer to the Respondent/Leaseholders shall be in the form of the draft attached to these reasons as Appendix 1, but with the wording of clause 12.7.4 amended so that the wording in brackets shall be deleted, and the following wording substituted, namely “not more than six self-contained private residential units in one building”

Dated the 21 April 2010



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor



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

**Case No. CHI/00HN/OAF/2009/0010**

**1 Lansdowne Gardens, Bournemouth, Dorset, BH1 1QR**

**Appendix 1**

Draft transfer

# Land Registry Transfer of part of registered title(s)

# TP1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

<b>1</b>	Title number(s) out of which the property is transferred:
<b>2</b>	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any: DT119127
<b>3</b>	Property:  The land together with the premises erected thereon and known as 1 Lansdowne Gardens Bournemouth BH1 1QR  The property is identified  <input checked="" type="checkbox"/> on the attached plan and shown: for identification purposes only edged red  <input type="checkbox"/> on the title plan(s) of the above titles and shown:
<b>4</b>	Date:
<b>5</b>	Transferor: RUPERT JOHN ALDINGTON EDWARDS DOUGLAS JAMES EDWARD NEVILLE-JONES EMMA JANE BLACKBURN JOHN ROBERT BARRETT BOWDITCH LINDA JEAN BOWDITCH (the Trustees for the time being of the Charity known as the Alice Ellen Cooper-Dean Charitable Foundation) <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:  <u>For overseas companies</u> (a) Territory of incorporation:  (b) Registered number in England and Wales including any prefix:
<b>6</b>	Transferee for entry in the register: AMRIK SINGH BENEPAI and KULDEEP KAUR BENEPAI  <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:  <u>For overseas companies</u> (a) Territory of incorporation:  (b) Registered number in England and Wales including any prefix:

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.

Place 'X' in any box that applies

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

7 Transferee's intended address(es) for service for entry in the register:

43 Glenferness Avenue  
Talbot Woods  
Bournemouth  
H3 7EP

8 The transferor transfers the property to the transferee

9 Consideration

The transferor has received from the transferee for the property the following sum (in words and figures):  
ONE HUNDRED AND THIRTY SIX THOUSAND FOUR HUNDRED AND THIRTY SEVEN POUNDS (£136,437.00)

The transfer is not for money or anything that has a monetary value

Insert other receipt as appropriate:

10 The transferor transfers with

full title guarantee

limited title guarantee  
as modified by an additional provision in panel 12 of this Transfer

11 Declaration of trust. The transferee is more than one person and

they are to hold the property on trust for themselves as joint tenants

they are to hold the property on trust for themselves as tenants in common in equal shares

they are to hold the property on trust:

12 Additional provisions

Definitions

12.1 In this Transfer unless there is something in the context or subject inconsistent therewith words importing persons shall include a corporate body and/or a partnership and vice versa the singular shall include the plural the masculine shall include the feminine and vice versa obligations and covenants by more than one person are joint and several save in respect of the persons named in panel 5 of this Transfer or the trustees for the time being of the Charity in their capacity as the Transferor whose obligations (if any) shall be joint only any reference to a clause is to one so numbered in this panel unless otherwise stated and the following expressions shall have the following meanings:-

"the Charity" the Alice Ellen Cooper-Dean Charitable Foundation

"the Plan" the plan attached to this Transfer

"the Property" the property hereby transferred

"the Transferor's Adjoining Land" the land and buildings retained by the

Transferor being all adjoining and adjacent properties belonging to the Transferor

"the Lease as varied"

the lease of the Property (with other property) dated 9 October 1944 made between Joseph Cooper-Dean (1) and Helena Adelaide Ellwood (2) as varied by a Surrender of part dated 22 April 1960 made between Edna May Kemp ("Mrs Kemp") (1) Adelaide Frances Musgrave (2) and Alice Ellen Cooper-Dean and Edith Bethia Cooper-Dean (the "Misses Cooper-Dean") (3) and a Licence dated

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February 1961 made between the Misses Cooper-Dean (1) and Mrs Kemp (2) the title to which is registered under title number DT119127 and is vested in the Transferee

#### Additional Provisions(s)

12.2 This Transfer is made under the provisions of the Leasehold Reform Act 1967

12.3.1 The covenant set out in Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to the Transferor in so far as it provides that the cost of any action taken in relation to the covenant should be at the Transferor's expense

and

any such cost shall instead be at the Transferee's expense

12.3.2 The covenant set out in Section 3(3) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to charges or encumbrances created by the Transferor itself only and applies to this disposition of the freehold only and not further or otherwise

and

none of the Transferor is to be considered to be aware of an action of another person merely because it is or was known to or notice of it was given to a predecessor in title or a co-trustee or any other person having a proprietary interest in the Property

12.3.3 For the purposes of Section 6(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1994 all matters at the date of this Transfer now recorded in registers open to public inspection are to be considered within the actual knowledge of the Transferee

12.4 The Property is transferred subject to:

12.4.1 the Lease as varied and to the extent only that the same relates to the Property

12.4.2 a lease of an electricity substation relating to part of

the Property dated 13 June 1968 made between Walter John Young (1) and The Southern Electricity Board (2)

- 12.4.3 all easements quasi-easements rights of light support and protection and other rights in the nature of easements (whether public or private) as are now or are usually enjoyed over the Property or any part of it
- 12.4.4 such other matters (including but without prejudice to the generality of the foregoing the matters referred to in clause 12.3.3 of this Transfer) as affect the Property or any part of it or are capable of affecting the same at the date of this Transfer

12.5 For the purpose only of giving the Transferor and the Transferor's successors in title a full and sufficient indemnity the Transferee for the Transferee and the Transferee's respective successors in title covenant with the Transferor and the Transferor's successors in title at all times from the date of this Transfer to observe and perform all (which in the case of the Lease as varied are those on the part of the lessors or the landlords as the case may be therein) the covenants stipulations provisions responsibilities obligations liabilities and conditions referred to in clause 12.4 or contained in connected with or implied in the matters listed in the said clause in so far as they relate to the Property

or

any part thereof and are subsisting and capable of being enforced and to indemnify and keep indemnified each of the Transferor and the Transferor's respective estates and effects and likewise their successors in title and their respective estates and effects in respect of any obligation of the Transferor or their successors in title (as the case may be) relating to the same the future non-observance or non-performance of which

would

expose the Transferor or any of them or any of their successors in title to any liability whatsoever notwithstanding completion of this Transfer to the Transferee and there is excepted and reserved to the Transferor and their respective personal representatives or successors in title the right to enter upon the Property and (at the expense of the Transferee or the Transferee's respective successors in title (as the case may be)) to do anything necessary to minimise or fulfil any liability of the Transferor or their respective personal representatives or successors in title but without any obligation whatsoever on the part of the Transferor or any of them or their respective personal representatives or successors in title to do so and without prejudice to the indemnity contained in this clause in the event that the Transferor do not do so or their respective personal representatives or successors in title do not do so

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Rights granted for the benefit of the property

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Rights reserved for the benefit of other land

12.6 There is excepted and reserved out of this Transfer so far as the same relate to the Property or any part thereof the following rights for the Transferor and the Transferor's successors in title and their lessees and occupiers of adjoining and adjacent properties for the benefit of the Transferor's Adjoining Land and each and every part thereof

12.6.1 The right to the free passage and running of electricity gas water soil and the like to and from any parts of the Transferor's Adjoining Land and all other property now or formerly belonging to the Transferor through the tanks sewers pipes wires drains and other conducting media in under or over the Property

12.6.2 The right by their agents workmen and others duly authorised by the Transferor or the Transferor's successors in title (as the case may be) to enter upon the Property to cut lop or top and carry away such of the trees upon the Property as may in the opinion of the Transferor or the Transferor's successors in title (as the case may be) obstruct the view from the Transferor's Adjoining Land

12.6.3 The right to keep as an encroachment upon the Property the walls footings foundations gutters eaves and the like as are now existing and form part or parts of the Transferor's Adjoining Land which abut upon the Property and the right to support from the Property (including for the avoidance of doubt all buildings on it) for the adjoining parts of the Transferor's Adjoining Land (including for the avoidance of of doubt all buildings on it) with power for the Transferor their assigns and successors in title with or without workmen agents and others upon giving reasonable notice to enter upon the Property for the purpose of constructing connecting to cleansing repairing and renewing all tanks sewers pipes drains cables watercourses other conducting media and the like on the Property and for the purpose of constructing repairing renewing and maintaining the said walls footings foundations gutters eaves and the like (including the power to erect scaffolding upon the Property) the person so entering making good all damage occasioned thereby

Include words of covenant.

Restrictive covenants by the transferee

12.7 The Transferee for the Transferee and the Transferee's successors in title to the intent so as to bind the

Property and each and every part thereof into whosoever hands the same may come hereby further covenant with the Transferor and the Transferor's successors in title for the benefit of such of the Transferor's Adjoining Land and other land of the Transferor in Bournemouth as from time to time remains unsold by the Transferor or other the owner or owners for the time being thereof claiming under the Transferor otherwise than by a conveyance or transfer on sale or has from time to time been sold by the Transferor or any other person claiming under the Transferor as above with the express benefit of this covenant and each and every part of the Transferor's Adjoining Land and such other land that the Transferee and the Transferee's successors in title will at all times hereafter observe and perform the following stipulations and restrictions:

- 12.7.1 At all times hereafter to maintain the boundary walls fences or hedges belonging to the Property in good repair and condition and to the reasonable satisfaction of the Transferor
- 12.7.2 Not to erect upon the Property or any part thereof any additional buildings walls or fences nor make any alterations in the plans designs elevations or architectural decorations of any of the buildings situated on the Property at the date of this Transfer
- 12.7.3 Not to cut lop or carry away any of the trees now standing or being or which shall hereafter stand or be upon the Property without the consent in writing of the Transferor or the Transferor's successors in title (as the case may be) unless for necessary thinning and in any event without complying in every respect with any relevant Tree Preservation Order
- 12.7.4 **Not to use the Property otherwise than as a private dwellinghouse only or as *[not more than four self-contained private residential flats] [not more than two self-contained private residential flats on the ground floor three self-contained private residential flatlets on the first floor and one self-contained private residential maisonette forming part of the first floor and the whole of the second floor]* and not to exercise or carry on upon the Property or any part thereof any trade or business whatsoever or permit the same to be used as a school or chapel or permit or suffer any public sale or auction to be made therein nor hang out clothes to dry nor to do upon the Property or any part thereof anything which may be a nuisance or annoyance to the Transferor or the Transferor's successors in title (as the case may be) and/or to their tenants of other property in the neighbourhood and not to exhibit on the Property any board bill sign notice or advertisement or gilt or other lettering or flag or illuminated sign intended or liable to advertise or indicate that the Property is occupied or so let otherwise than**

**as one private dwellinghouse**

and an obligation in the foregoing stipulations and restrictions not to do any act or thing includes an obligation not to permit or suffer that act or thing to be done by another person

12.8 It is hereby agreed and declared that:

12.8.1 the Transferee and the persons deriving title under the Transferee shall not be or become entitled to any right of light or air which shall in any way affect diminish or interfere with the free and unrestricted user for building or other purposes by the Transferor or the Transferor's successors in title of the Transferor's Adjoining Land and this Transfer shall not imply the grant

of any such right nor shall the benefit of any restrictive covenants inherent in or annexed to the ownership of any part of the Property pass to the Transferee or the Transferee's respective successors in title

12.8.2 the Transferee and the persons deriving title under the Transferee shall not be entitled to any rights easements or quasi-easements over or against the Transferors' Adjoining Land or any other property formerly belonging to the Transferor by virtue of Section 62 of the Law of Property Act 1925 or the Rule in Wheeldon Versus Burrows

12.8.3 the Property is shown on the attached plan strictly for the purposes of identification only and the said plan is not intended to be proof either of the precise extent of the Property or of its exact boundaries

12.8.4 the Transferor hereby reserve the right for the Transferor and the Transferor's successors in title to modify waive or release any of the covenants restrictions or stipulations relating to any part of the Transferor's Adjoining Land and other land of the Transferor in Bournemouth or other property formerly belonging to the Transferor whether imposed or entered into before on or after the date of this Transfer

12.8.5 the freehold interest in the Property is held by or in trust for a charity by the Transferor and the Charity is not an exempt charity and the restrictions on disposition imposed by Section 36 of the Charities Act 1993 apply to the Property (subject to sub-section (9) of that section)

12.8.6 the Transferor certify that as charity trustees they have power under the trusts of the Charity to effect this disposition of the freehold and that

they have complied with the provisions of Section 36 of the Charities Act 1993 so far as applicable to it

[12.8.7 the Transferee declares that the Transferee's interest in the Lease is merged into the reversion



and immediately expectant on it and extinguished  
the Transferee applies to the Registrar to cancel  
the registration of the Lease]

12.8.7 this Transfer is executed by RUPERT JOHN  
ALDINGTON EDWARDS and DOUGLAS  
JAMES EDWARD NEVILLE-JONES being two of  
the Transferor as charity trustees and on behalf  
of all the present charity trustees of the Charity  
under a general authority given pursuant to the  
Charities Act 1993 Section 82

Restrictive covenants by the transferor

Include words of covenant.

Insert here any required or permitted  
statements, certificates or applications  
and any agreed declarations and so on.

Other

The transferor must execute this transfer  
as a deed using the space opposite. If  
there is more than one transferor, all must  
execute. Forms of execution are given in  
Schedule 9 to the Land Registration  
Rules 2003. If the transfer contains  
transferee's covenants or declarations or  
contains an application by the transferee  
(such as for a restriction), it must also be  
executed by the transferee.

13 Execution

**SIGNED AS A DEED** on behalf of the )  
Transferor by the said RUPERT JOHN)  
ALDINGTON EDWARDS, one of their ) .....  
number, under an authority conferred )  
pursuant to section 82 of the Charities )  
Act 1993 in the presence of: )

Witness Signature.....

Witness Name.....

Address .....

.....  
Occupation .....

**SIGNED AS A DEED** on behalf of the )  
Transferor by the said **DOUGLAS** )  
**JAMES EDWARD NEVILLE-JONES,** ) .....  
one of their number, under an authority )  
conferred pursuant to section 82 of the )  
Charities Act 1993 in the presence of. )

Witness Signature.....

Witness Name.....

Address .....

.....

Occupation .....

**SIGNED AS A DEED** by the said )  
**AMRIK SINGH BENEPAL** )  
in the presence of. ) .....  
) .....

Witness Signature.....

Witness Name.....

Address .....

.....

Occupation .....

**SIGNED AS A DEED** by the said )  
**KULDEEP KAUR BENEPAL** )  
in the presence of. ) .....  
) .....

Witness Signature.....

Witness Name.....

Address .....

.....

Occupation .....

**WARNING**

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.