

Leasehold Reform Housing and Urban Development Act 1993

DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL

In the matter of

Enville Manor Limited (the Nominee Purchaser)

(the Applicant)

and

SM Properties (21) Limited (the Freeholder)

(the Respondent)

On the Applicant's application to the Tribunal under ss.24 and 91 Leasehold Reform and Urban Development Act 1993 for determinations:

- (i) Of the extent of property to be acquired by the Applicant;
- (ii) Of the Applicant's rights to use the septic tank on adjoining property;
- (iii) Of contested provisions to be contained in the conveyance to the Applicant;
- (iv) Of the price payable by the Applicant (s.32 and Schedule 6) for the freehold interest in the specified premises (s.13(12)); and
- (v) Of the costs payable by the Applicant to which s.33 applies

**Specified Premises: Enville Manor (also known as Enville Rectory and The Old Rectory),
Bridgnorth Road, Enville, South Staffordshire DY7 5JA**

Heard at:

The Panel Office

On:

13 June 2006

APPEARANCES:

For the Applicant Nominee Purchaser:

Mr D Readings (Counsel), instructed by Hadgkiss Hughes
and Beale (Solicitors)

For the Respondent Freeholder:

Ms Y Fletcher (an employee of the Respondent and its
managing agent, SM Properties (a firm))

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)

Mr J E Ravenhill FRICS

Mr P J Waller Solicitor

Date of Tribunal's determination:

Determination of the price payable:

£10,320

Determination of Applicant's liability
for s.33 costs:

The Applicant is liable to the Respondent for a sum not
exceeding £1,020 plus VAT if appropriate

Definitions:

The 'Act'	- Leasehold Reform Housing and Urban Development Act 1993.
The 'CLR Act'	- Commonhold and Leasehold Reform Act 2002.
The 'Freeholder'	- SM Properties (21) Limited.
The 'Purchaser'	- Enville Manor Limited as the nominee purchaser.
The 'Tenants'	- The Tenants of the 8 Flats within the Development.
The 'Development'	- The three storey block of 8 Flats, garages and grounds at Enville Manor (also known as Enville Rectory and The Old Rectory), Bridgnorth Road, Enville, South Staffordshire DY7 5JA.
The 'Flats'	- 8 no. Flats and 8 no. garages within garage blocks: Flat 1 (ground floor) with 2 bedrooms, Flat 2 (ground floor) with 1 bedroom (previously 2), Flat 3 (ground floor) with 1 bedroom, Flat 4 (1 st and 2 nd floors) with 2 bedrooms, Flat 5 (1 st and 2 nd floors) with 2 bedrooms, Flat 6 (1 st and 2 nd floors) with 2 bedrooms and 2 reception rooms, Flat 7 (1 st floor) with 1 bedroom, Flat 8 (basement) with one bedroom.
The 'Appurtenant Land'	- The communal areas, garden and grounds (s.1(3) the Act).
The 'Shed'	- The brick and tile single storey building adjoining the north east side of the barbeque area in the gardens (identified on the lease plan of Flat 7).
The 'Pole'	- A pole in the grounds of the Development.
The 'Oil Tank'	- The underground oil storage tank in the grounds of the Development, storing fuel oil for central heating.
The 'Leases'	- The Leases of the 8 Flats: all for a term of 99 years from 24 March 1988; each at an initial rent of £35 pa, rising to £75 pa from 24 March 2021 and to £105 pa from 24 March 2054.
The 'Notice'	- The 8 participating qualifying Tenants' initial notice 23 July 2004 under s.13 the Act exercising the right to collective enfranchisement identifying the Purchaser as the nominee purchaser. There are no non-participating qualifying tenants.
The 'Counter-notice'	The Freeholder's (as the reversioner) Counter-notice 31 October 2005 under s.21 the Act admitting the Tenants' entitlement to collective enfranchisement.
The 'Application'	- The Applicant Purchaser's application to the this Tribunal 30 January 2006 for determinations on the five issues ((i) to (v) in the cover sheet).
The 'Date'	- The date of valuation, namely 13 June 2006.

Challenge to a 'qualifying Tenant':

- 1 Buller Jeffries (solicitors for the Freeholder) initially challenged whether the Tenant of Flat 2 was, as stated in the Notice, a qualifying tenant. By the consent order of the Birmingham County Court (claim no. 4BM79420) 4 October 2005: (a) the participating Tenants named in the Notice (including the Tenant of Flat 2) were entitled to collective enfranchisement of the specified premises; (b) the Freeholder's counter-notice 7 October 2004 shall be of no effect; and (c) the Freeholder shall give a further counter-notice by 1 November 2005. The Freeholder has given a further counter-notice (the Counter-notice) 31 October 2005.

Documents incorporated:

- 2 While not attached to this determination, all documents referred to are deemed to be incorporated on its face.

Background:

- 3 The Development is a three storey brick and tile building, converted into 8 Flats in about 1988, with
garages and grounds situated in Enville village to the west of Stourbridge.
- 4 By the Notice under s.13 the Act the participating qualifying Tenants exercise the right to collective
enfranchisement, specifying the nominee purchaser as the Purchaser. The Freeholder, as the reversioner,
has served a s.21 Counter-notice, admitting the participating Tenants' right to collective enfranchisement.
The Property, as 'the specified premises' (s.13(12) the Act) is not agreed by the parties.
- 5 The interest in the Development to be acquired is the Freeholder's freehold interest.
- 6 Each of the 8 Flats is held by a Lease for a term of 99 years from 24 March 1988; each at an initial rent of
£35 pa, rising to £75 pa from 24 March 2021 and to £105 pa from 24 March 2054.
- 7 The Purchaser applies to us, under ss.24 and 91 of the Act, to determine:
- (a) the extent of property to be acquired by the Applicant;
 - (b) the Applicant's rights to use the septic tank on adjoining property;
 - (c) contested provisions to be contained in the conveyance to the Applicant;
 - (d) the price payable by the Applicant (s.32 and Schedule 6) for the freehold interest in the specified
premises (s.13(12)); and
 - (e) the costs payable by the Applicant to which s.33 applies.

Inspections:

- 8 We inspected the exterior of the Development and the interiors of Flat nos. 1, 2, 3, 4, 6, and 8 as requested
by the parties.

The hearing, 13 June 2006:

- 9 **Mr D Readings** (Counsel for the Purchaser) called **Mr G M Thompson** the Tenant of Flat 2, a witness of
fact, and **Mr E J Rutledge** FRICS, an expert witness consistent with the approved protocols of the RICS.
Ms Y Fletcher (an employee of the Respondent and its managing agent, SM Properties (a firm))
appeared for the Respondent and **Mr R J Davis**, Solicitor of Buller Jeffries (Solicitors) gave evidence as a
witness of fact for the Respondent on the Applicant's liability for s.33 legal costs only. We thank Mr
Readings for lodging his skeleton argument prior to the hearing and Mr Thompson, Mr Rutledge and Mr
Davis for lodging their statements/report prior to the hearing. Ms Fletcher lodged her skeleton/statement
at the hearing and, while late and contrary to detailed directions 19 January 2006, Mr Readings waived
any objection. We pointed out that we would be likely to limit the weight we attach to Ms Fletcher's
evidence because it is first introduced at the hearing and has not been previously disclosed which is
contrary to the clear directions given by the Tribunal, including a guidance note that *'The purpose of these
Directions is to ensure that you have advance notice of the substance of the opposing party's case and you
are not taken by surprise at the hearing. If you seek to introduce new evidence at the hearing which has*

not been disclosed to the other party you may find that we may not admit it or attach significantly less weight to it.'

The issue of the extent of property to be acquired by the Applicant:

- 10 Clause 2 of the Notice refers to the property to be acquired as being shown 'edged green' on the plan accompanying the Notice. Included within the green edging is the Shed. The Counter-notice served by the Freeholder states that the extent of the property to be acquired is that shown edged red on the plan attached to the Counter-notice and excludes the Shed. The plans numbered 1 annexed to the copy Leases supplied in respect of Flats 1, 2, 3, 4 and 7 all show that the Shed is included within the area shown edged red on the Lease plans. Each such copy plan has been signed by 'M Ryan' who was the Lessor named in each Lease. It is standard conveyancing practice for a plan annexed to a deed to be signed (and essential when the land is about to be registered) so that the parties identify the area of land to be included both in the deed and in the registration. Thus, in the case of these Flats the Shed is included within the definition of 'the land' referred to below.
- 11 Normally, the Counterpart of the Lease would also bear a plan signed by the Lessee but the Counterpart Lease relating to Flat 1 produced by Ms Fletcher does not bear a signature. The plan on the Counterpart Lease contradicts that on the Lease itself. We hold the plan on the Lease is the one which is correct.
- 12 The copy plans numbered 1 annexed to the Leases of Flats 6 and 8 (which have also been signed by M Ryan) exclude the Shed.
- 13 The copy Lease of 1st August 1988 relating to Flat 7 (the '**Flat 7 Lease**') is said to be in the same form (with the exception of the property demised and the plans) as the Leases of the other Flats in the Building. By para 3. of The Second Schedule to the Flat 7 Lease the Lessee is granted the right to use 'for the purpose of recreation ... those parts of the gardens and common grounds laid out on the land for that purpose'. Part I of The First Schedule to the Flat 7 Lease defines the land as being shown edged red on the plan numbered 1 annexed thereto.
- 14 We agree with Mr Readings' submission that as the Shed falls within the land which the Lessee of the relevant Flat is entitled to use then the land forming the site of the Shed should be included within the extent of the property to be acquired. We hold this is consistent with subs.1(3)(b) of the Act - relating to 'property which any such tenant is entitled under the terms of the lease of his flat to use' The fact that the Shed is excluded on the plans annexed to the Leases of Flat 6 and Flat 8 is confusing but not relevant for the purpose of this issue.
- 15 We hold the Shed is included within the extent of the Freehold to be acquired by the Purchaser. We hold that Ms Fletcher's contention that the existing door into the Shed is on land over which the Tenants at present do not have any right of access is a contra-indication does not assist us; as the Purchaser could obtain access to the Shed from the remaining land which it is acquiring.

The issue of the Applicant's rights to use the septic tank on adjoining property:

- 16 Clause 3 of the Notice proposes rights to use the septic tank and of drainage through the pipes leading to it. In addition, a right of access for the purpose of maintenance and repair is stated to be necessary. The Counter-notice from the Freeholder makes no counter-proposal. In his skeleton argument Mr Readings says 'there is no express grant in the Leases of the right to use the septic tank which is situated on adjoining land not part of "the land" as defined in the Leases'. This is not correct. In para 6 of The

Second Schedule to the Flat 7 Lease reference is made to the Flat having 'Full and free right (in common with all persons having like rights) to use the septic tank situate upon the adjoining land of the Vendor (*this must mean Lessor*) and the free and uninterrupted passage of running of water and soil'. The Leases therefore grant the right to use the septic tank. In her evidence Ms Fletcher says that her objection was to the word 'free'. As used in the deeds, this relates to the meaning of the word as 'uninterrupted' rather than 'free of charge'.

- 17 Para 3(2) of Schedule 7 to the Act states that the conveyance of the land that is being acquired 'shall grant (so far as the freeholder is capable of granting them) all such easements and rights over other property as are necessary to secure as nearly as may be for the benefit of the relevant premises the same rights as exist for the benefit of those premises'.
- 18 We hold the Purchaser shall be granted the right to use the septic tank on the terms set out in clause 3 of the Notice but the words 'full and' shall be inserted before the word 'free' in each sub-clause of clause 3; to read 'a full and free right'. We find this amended wording is consistent with the wording in the Leases we have seen.

The issues of contested provisions to be contained in the conveyance to the Applicant:

- 19 For ease of reference we attach a copy of Schedule 2 (3 pages) of the Freeholder's Counter-notice.
As to para 1. Schedule 2 of the copy Counter-notice attached:
- 20 '... the qualifying tenants shall covenant - it is inappropriate for the qualifying tenants to covenant. We are considering the terms of a conveyance to the Applicant. The qualifying tenants (apart from satisfying the eligibility test) have no further status in the transaction.
- 21 Accordingly, the words 'and the qualifying tenants' shall be deleted from the conveyance/transfer to the Applicant.
As to para 1.(1) Schedule 2 of the copy Counter-notice attached:
- 22 We agree with Mr Readings that the covenant is vague. It does not refer to 'any land owned by the Respondent' because the land on which the septic tank is situate is owned by Beamsafe Limited (the '**Beamsafe Land**'). The Respondent therefore does not appear to have 'an interest' in such other land as referred to in para 5(e) of Schedule 7 to the Act. In any event, a covenant such as the one proposed by the Respondent may very well be unenforceable as it takes away from the Applicant its basic legal right of objection to any such planning application.
- 23 We hold the covenant contained in para 1(1) shall not be any part of the conveyance/transfer to the Applicant.
As to para 1.(2) Schedule 2 of the copy Counter-notice attached:
- 24 It is agreed that this indemnity covenant shall be included in the conveyance/transfer to the Applicant.
As to paras 2. and 3. Schedule 2 of the copy Counter-notice attached:
- 25 Ms Fletcher says Butler Oil owns the Oil Tank; we infer the oil in it belongs to the Respondent. We determine the Applicant's potential liability for the oil and the Oil Tank at paras 54 to 58 of this determination.
- 26 Accordingly, the whole of para 2. shall be excluded in the conveyance/transfer to the Applicant.
- 27 Para 3., with the additional words 'upon making good all damage occasioned' added at the end of the para to read '... the said fuel oil storage tank upon making good all damage occasioned.', shall be included in the conveyance/transfer to the Applicant.

As to para 4.(a)(b)(c)(d) Schedule 2 of the copy Counter-notice attached:

28 Mr Readings says these four terms are inappropriate to a conveyance/transfer and are inconsistent with the scheme of s.34(9) and Schedule 7 of the Act. We agree.

29 Sub-paras (a)(b)(c)(d) of para 4. shall be excluded in the conveyance/transfer to the Applicant.

As to para 4.(e) Schedule 2 of the copy Counter-notice attached:

30 Ms Fletcher says the Beamsafe Land was transferred by Mr Ryan (the Lessor of the Leases) to Beamsafe Limited, then to the Respondent and then back to Beamsafe Limited. The Respondent claims a pedestrian right of way over part of the Development for the purpose of access to the Beamsafe Land. The right of way is stated to exist for the benefit of Beamsafe Limited but the title deeds appear to have been lost. It also seems apparent that some time in the past the Respondent should have made an application for registration of the title to the Freehold interest in the Development. However, this is a matter outside our jurisdiction and we proceed on the basis that the Respondent owns the Development and that Beamsafe Limited owns the Beamsafe Land. When the Respondent transferred the Beamsafe Land to Beamsafe Limited it should at that time have granted to Beamsafe Limited a right of way over the relevant part of the Development. If it failed to do so then this is a defect in the title which, again, is outside our jurisdiction and is a matter for the Respondent and Beamsafe Limited. Para 4(b) of Schedule 7 of the Act states that any conveyance of the land in question (namely the Development) shall be subject to 'such provisions (if any) as the freeholder may require for the purpose of making the relevant premises subject to rights of way necessary for the reasonable enjoyment of other property, being property in which he is to retain an interest after the acquisition of the relevant premises'. The Respondent does not 'retain an interest' in the Beamsafe Land. It is Beamsafe Limited which does and so such Statutory provision does not apply. The provision contained in clause 4(e) should therefore not appear in the conveyance/transfer because no documentary evidence of such a right can be produced. The Beamsafe Land will become 'land-locked' but we can only deal with the question on the basis of the evidence before us. No legal title to the right of way has been shown.

31 Para 4.(e) shall be excluded in the conveyance/transfer to the Applicant.

As to para 5. Schedule 2 of the copy Counter-notice attached:

32 The Respondent seeks an unconditional indemnity. Mr Readings says there is no obligation on the Applicant to give such an indemnity. Mr Thompson admits 4 trees (Christmas type trees) have been cut down and one tree lopped since Enville Manor RTM Company Limited took over the management on 7 April 2005 pursuant to the LVT's confirmation 11 February 2005 of the RTM Company's right under s.84 CLR Act. We hold that the Purchaser shall not be liable for events before 7 April 2005, that the indemnity shall be provided but restricted to the period after 6 April 2005.

33 In para 5. the words 'at any time' shall be deleted and, in substitution, the words 'after 6 April 2005' shall be inserted and para 5. (amended as directed herein) shall be included in the conveyance/transfer to the Applicant.

As to para 6. Schedule 2 of the copy Counter-notice attached:

34 Mr Readings accepts that arrears of ground rent will be paid on completion but says there is no reason why the Applicant should pay arrears of service charge as the Applicant does not manage or appoint the managing agent; further, a term (in para 6.) should not override a Tenant's right to apply to this tribunal challenging liability for payment of service charge under s.27A Landlord and Tenant Act 1985. Ms Fletcher says that after the conveyance/transfer to the Applicant the Respondent's remedies to recover

service charge arrears will be limited and, as there has been a history of difficulty in recovering service charges and the appointment of the RTM Company avoids service charge arrears before its appointment, the proposed term (in para 6.) should be included.

- 35 Accepting the history of disputes on the payability of service charge, the Respondent and the Applicant would probably not be able to agree upon the relevant figure. In addition, if the LVT were to stipulate that the service charge was to be payable on completion then it would be directly going against its own jurisdiction to hear applications by the Tenants at the Development who wished to challenge the service charge on any matter. We hold that it shall be a term of the acquisition that it is only arrears of ground rent that should be discharged upon completion.
- 36 In para 6. the words 'and service charges' and 'within 14 days' shall be deleted. Para 6. (amended as directed herein) shall be included in the conveyance/transfer to the Applicant.

The issue of the price payable by the Applicant (s.32 and Schedule 6) for the freehold interest in the specified premises (s.13(12)):

The valuations and our valuation:

- 37 **Mr Rutledge** (for the Purchaser) and **Ms Fletcher** (for the Freeholder) provide written valuations of the price payable (set out below with our determination), both of which adopt the constituent parts (set out in Schedule 6 of the Act) and the route to derive the price payable. Ms Fletcher says she has prepared her valuation, relying on the opinion of Curry and Partners whose valuer is unable to appear at the hearing. To avoid unnecessary repetition and for ease of explanation we do not include their two valuations. Our Valuation (at page 12 *post*) determines the issues before us and we include numbering to the lines of it so that we can refer to the relevant part of it in our reasons for our determination. References to the numbered lines are in square brackets.

	Mr Rutledge	Ms Fletcher	Our determination
Price payable	£10,195 ¹	£25,455 ²	£10,195 ³

1 Including a £600 deduction for oil in the fuel Oil Tank for central heating, including £125 for the Pole and as amended by us to remove an arithmetic error.

2 Including a £4,347 addition for oil in the fuel oil tank for central heating and including £250 for the Pole.

3 Including a £600 deduction for oil in the fuel oil tank for central heating and including £125 for the Pole.

The valuation principles:

- 38 In the case before us the price payable is the total of: the value of the freehold interest [27]; the value of the right to receive the income from the Pole [29]; and the liability of the fuel oil and the Oil Tank [30].

Undisputed matters:

- 39 Matters agreed, as common ground, in the valuation are set out at page 12 *post*. We accept they properly reflect the principles in the Act:

The Valuation Issues:

- 40 There are two disputed issues before us, namely:
- 41 The First Valuation Issue: - The amount of the open market value of the 8 Flats to derive the value of the reversion [25]. Mr Rutledge says £1.185m; Ms Fletcher £1.525m.

42 The Second Valuation Issue: - The yield rate [8, 10, 11, 13, 14] for the valuation of the unexpired terms of the Leases and the deferment rate [26] for the reversion. Mr Rutledge says 7% for both; Ms Fletcher 6% for both.

43 The First Valuation Issue: We set out the contentions and our decision below:

	Mr Rutledge	Ms Fletcher	Our decision
Open market value of 8 Flats	£1.185m	£1.525m	£1.185m

44 Both Mr Rutledge and Ms Fletcher admit there are no truly comparable transactions for exactly similar Flats. Mr Rutledge relies on sales and asking prices of flats/apartments which have some similar characteristics: the leasehold interest in Flat 2 Enville Manor (one of the subject Flats) was sold in March 2002 and December 2003 at £60,000 and £75,000 respectively; between April and June 2006 asking prices for not dissimilar flats/apartments - but some are purpose built - range from £115,000 to £220,000. Ms Fletcher says the available evidence points to £150,000 for a one bedroom flat at Enville Manor and £215,000 for a two bedroom flat.

45 Mr Rutledge, correctly in our view, places a substantially lower value on the basement Flat (no. 8 with one bedroom at £100,000) than on the ground floor or first floor one bedroom Flat (nos 3 and 7, both at £135,000). Ms Fletcher makes no differential. We find it is obvious to a valuer and should be obvious to a lay person that the basement Flat has a substantially lower value than the ground or first floor Flat. We find Ms Fletcher's evidence is inconsistent and, in any event, we find Mr Rutledge's evidence, as a qualified valuer complying with his professional body's protocols as an expert witness, is more persuasive.

46 We find the amount of the open market value of the 8 Flats to derive the value of the reversion is £1.185m [25].

47 The Second Valuation Issue: We set out the parties' contentions and our decision below:

	Mr Rutledge	Ms Fletcher	Our decision
Yield and deferment rate	7%	6%	7%

48 It is common ground that there should no difference in the yield rate for the unexpired terms and the deferment rate for the reversion.

49 In support of 7%, Mr Rutledge says it is consistent with several of his recent negotiated settlements with experienced chartered surveyors and is not inconsistent with *Earl Cadogan and Cadogan Estates Limited v 55/57 Cadogan Square Freehold Ltd* [2005] LRA/62/2004 (LT) and *Hugo Benjamin Day and Lady Hilary Maureen Greenslade Day v 32 Rosary Gardens (Freehold) Limited* [2005] LRA/87/2004 (LT) - two collective enfranchisement cases heard together with four other cases on the issue of the deferment rate to be applied to the reversion. The Lands Tribunal determined 4.75% in *55/57 Cadogan Square* and 6.4% in *32 Rosary Gardens* and an inference may be drawn, at para 185 of the determination, that 6.4% may reasonably have been lower. Mr Rutledge distinguishes the very high value, high quality prime Central London flats (in the two LT cases) from more modest quality subject flats in the West Midlands, saying 7% reflects the difference. He does accept that, in a recent lease extension case heard by a Midland LVT regarding five flats at Redditch, the LVT determined 7% yield rate for the unexpired term and 7.5% deferment rate for the reversion but says 7% for both is appropriate in the case before us. Ms Fletcher refers us to three separate developments for which offers have been received; saying the offers point to a rate closer to 5% than 7%.

- 50 We attach very little weight to Ms Fletcher's evidence as it is not evidence of transactions and no logical analyses are provided to adduce a rate. We agree with Mr Rutledge's approach.
- 51 We find the yield rate for the valuation of the unexpired terms of the Leases and the deferment rate for the reversion is 7% [8, 10, 11, 13, 14, 26].

The issue of the value of the Pole [28,29]:

- 52 At the hearing and without prior indication, Ms Fletcher says Mrs Griffiths, a director and shareholder of the Freeholder, told Ms Fletcher she is receiving £12.51 pa for a pole on the Development. Ms Fletcher says that, reflecting a speculative prospective inflationary increase in income from the Pole, £250 is the value. She is unable to provide any evidence of a written agreement, the name of the user of the Pole nor the terms (other than payment) of an oral agreement. Mr Readings, rightly in our view, expresses concern that the question of the Pole is only introduced at the hearing and the Applicant has had no prior notice of it. He says a 10 YP is more appropriate resulting in £125.
- 53 Ms Fletcher attended our inspection and was specifically asked if there is anything we should look at to assist us. No Pole was apparent to us and Ms Fletcher made no reference to the Pole. We are surprised that Ms Fletcher did not invite us to look at it. We find that, in the absence of any helpful details of the terms of the use of the Pole, £125 [29] is a fair and just figure.

The issue of the oil in the Oil Tank [30]:

- 54 Mr Thompson says he has owned Flat 3 since 1998 and there has been a history of problems with oil in the Oil Tank and oil has not been used from it (to Tenants' oil fired central heating boilers) since March 2003. He says the oil supply system is now obsolete as it does not comply with current regulations, it is a fire hazard, the oil is contaminated, there is no prospect of the system being used, while oil remains in the Oil Tank there is potential for contamination and the Oil Tank will have to be made safe with removal of the oil and an inert filling inserted. He believes the remaining oil has no commercial value.
- 55 Mr Rutledge, relying on a quotation to empty the oil and refill with foam from Elimpic Limited (a waste oil collection company) from Wednesbury dated 18 May 2006, says the cost (including VAT) would be £3,078.50 based on 13,000 litres of oil in the Oil Tank and a capacity of 20,000 litres. However, says Mr Rutledge, some of the cost would be recoverable from Tenants as part of their service charge but it cannot be assumed that all of the cost would be readily recoverable; accordingly, 20% of the cost (say £600) should be deducted from the price payable on enfranchisement to reflect the Freeholder's liability to eliminate the problem with the oil.
- 56 Ms Fletcher says an oil company advised her it would pay between 20p and 25p per litre for the oil (less collection costs) and the oil, at today's rate of 34.5 per litre, is worth £4,347. She produces, without advance disclosure, a written faxed estimate from Direct Fuel Services Limited from Stourport-on-Severn dated 13 June 2006 which supports 34.5p per litre as today's rate but it makes no reference to the cost of filling the Oil Tank with inert material and indicates 10p per litre payment if the oil is collected from the Oil Tank and 20p per litre if the oil is delivered to the company's depot.
- 57 We find Ms Fletcher's evidence and the evidence of Direct Fuel Services Limited does not support £4,347 (included in her representation of the price payable). We accept Mr Thompson's and Mr Rutledge's evidence (supported by Elimpic Limited's quotation) as more inherently likely.
- 58 We find £600 [30] shall be deducted from the price payable on enfranchisement to reflect the presence of the oil in the Oil Tank and an obligation to make the Oil Tank safe.

Summary of our decisions on the two valuation issues, the issues of the Pole and the oil in the Oil Tank:

- 59 The First Valuation Issue - The amount of the open market value of the 8 Flats to derive the value of the reversion is £1.185m.
- 60 The Second Valuation Issue - 7% is the yield rate for the term and the deferment rate for the reversion.
- 61 The issue of the Pole - £125 is a fair and just figure as the additional value of the Freehold.
- 62 The issue of the oil in the Oil Tank - £600 shall be deducted from the price payable on enfranchisement to reflect the presence of the oil in the Oil Tank and an obligation to make the Oil Tank safe.

Conclusion on the price payable:

- 63 We determine that the price payable of collective enfranchisement by the nominee purchaser in respect of the freehold interest in the Development, pursuant to s.32 and Schedule 6 of the Act, is £10,320 (Ten thousand three hundred and twenty pounds).
- 64 Our valuation, from which we derive the price payable, is at page 12 *post*.

Costs:

- 65 VAT: All figures we refer to are exclusive of VAT. We have no jurisdiction to determine conclusively VAT matters. Therefore, we make our determination exclusive of VAT, save that VAT shall be added at the appropriate rate if applicable. Our understanding, whilst not conclusive, is that, if the Freeholder is not registered for VAT or is unable to recover the VAT element of its costs, allowed by us, as an input tax, VAT should be added to the amounts we determine.

S.33 costs:

- 66 It is not contested that, for convenience, the s.33 costs may be split into: subs.(1)(a)(b)(c) and (e) 'legal costs' and subs.(1)(d) 'valuation costs'. No 'valuation costs' are claimed.
- 67 As to subs.(1)(a) investigation costs - Mr Davis, Solicitor for the Respondent Freeholder, says he has undertaken investigation personally with some assistance from a trainee solicitor. As to subs.(1)(b)(c) and (e) conveyancing costs - this work has been carried out by a colleague in the firm.
- 68 Mr Davis says the s.33 costs incurred by the Freeholder amount to:

Subs.(1)(a)	£	662.50
Subs.(1)(b) and (c)	£	825.00
Subs.(1)(e)	£	330.00
(Subtotal	£	1,817.50 to which VAT is added (VAT £318.06)
Companies House	£	2.00
Statutory declaration	£	<u>5.00</u>
Total	£	1,824.50

- 69 His hourly rate is £175 and that of a trainee solicitor is £100. He itemises the subs.(1)(a) work:

	Hours
Letters out to client	0.3
Letters out to Purchaser's solicitor	0.4
Tel' calls to client	0.4
Tel' calls with Purchaser's solicitor	<u>0.2</u> 1.3
Perusal of documents:	
Considering initial Notice	0.3
Considering title	<u>0.6</u> 0.9
Drafting documents:	

Long report to client	0.4			
Notice requiring Tenants to deduce title	0.2			
Report to client on title	<u>0.7</u>	<u>1.3</u>		
		3.5 @ £175	£	612.50
Trainee solicitor		0.5 @ £100	£	<u>50.00</u>
Total subs.(1)(a)			£	662.50

- 70 Mr C Vernon, Mr Davis's partner, tells Mr Davis his estimate of the subs.(1)(b) and (c) costs is:

Around 5 hours at £165 per hour =	£	825.00
And his estimate of subs.(1)(e) costs (being approval of the Purchaser's draft conveyance and completion is:		
2 hours at £165 per hour =	£	330.00
Companies House	£	2.00
Statutory declaration	£	<u>5.00</u>
Total (ex VAT)	£	1,824.50

- 71 Mr Readings submits the only reasonable s.33 cost claimed is £330 for approval of the Purchaser's draft and for completion. He says all the other costs claimed are not within s.33: £662.50 was incurred in an unsuccessful attempt to challenge the Purchaser's right to enfranchise; £825 and £5, centring on investigating the history of the Freeholder's title, is in consequence of the Freeholder's recent loss of its deeds; £2 was not reasonably incurred. Mr Readings refers to a letter 7 July 2003 from SM Properties (the Freeholder's agent) to the previous Freeholder's solicitor, saying 'we would advise you that our client [the Freeholder] holds the Title Deeds'. However, in cross-examination, Mr Davis says he is advised his client does not hold the title deeds.
- 72 In making our determination we have particular regard to subs.(2) which limits the Purchaser's liability to an amount reasonable if the Freeholder was personally liable for them; and subs.(5) which excludes costs incurred in any proceedings before us. We accept Mr Reading's submission that the Purchaser is not liable for the Freeholder's costs incurred in challenging the Purchaser's rights.
- 73 As to the £662.50 - we find, on the balance of probability and in our general experience, that the high amount (for subs.(1)(a) reasonable investigation) implies some costs are in connection with litigation in the county court (attempting to challenge the Purchaser's right) which we disallow. However, we find we allow a reasonable amount for investigation reasonably undertaken; in the absence of itemised separate amounts (for the challenge and for reasonable investigation) we find, as a global sum, the amount is £525 (3 hours at £175 per hour).
- 74 As to £825 and £5 - we hold that the 'reasonable costs' do not include the cost of reconstructing the title where the deeds have been lost because of the act or omission on the part of the Respondent. We exclude the £5 for Statutory declaration because it arises from the reconstruction of the title. We exclude the £2 for Companies House, being a disbursement for obtaining copies of the Respondent's memorandum and articles of association, because we find it is not reasonable as the information could readily have been obtained from the Applicant. We find the amount of £165 (one hour at £165 per hour) is the reasonable amount for subs.(1)(b) and (c) costs.
- 75 £330 for conveyancing is not contested and we accept it is reasonable.
- 76 As our final determination on s.33 costs: in so far as s.33 costs have been incurred by the Respondent and on production of an appropriate receipted invoice from the Respondent, the Applicant is liable to

the Respondent for a sum not exceeding £1,020 (One thousand and twenty pounds) plus VAT, if appropriate, as the reasonable costs of the Respondent.

DATE

T F Cooper

Chairman

[Continued with Tribunal's valuation]

A handwritten signature in black ink, appearing to be 'T F Cooper', with a long horizontal stroke extending to the right.

Valuation of the Tribunal:

Uncontested matters in the valuation:

- 1 The Date of valuation is 13 June 2006.
- 2 On the Date the Leases had about 80.75 years unexpired.
- 3 As the unexpired terms of the Leases was, on the Date, exceeding 80 years there is no marriage value in the valuation.
- 4 The Tenants' improvements are disregarded.
- 5 All Tenants are participating Tenants.
- 6 There is no compensation payable under para 5 Part II Schedule 6 of the Act.

Diminution in value - Freehold interest

Term:

7	Current ground rents receivable (8 @ £35 pa)	£ 280 pa		
8	YP 14.75 years @ 7%		9.0173	£ 2,525
9	Increased ground rents (from 2021) (8 @ £75 pa)	£ 600 pa		
10	YP 33 years @ 7%		12.7538	
11	PV £1 in 14.75 years @ 7%		<u>0.3687</u>	
			4.7023	£ 2,821
12	Increased ground rents (from 2054) (8 @ £105 pa)	£ 840 pa		
13	YP 33 years @ 7%		12.7538	
14	PV £1 in 47.75 years @ 7%		<u>0.03955</u>	
15			.50441	£ 424
16		[Subtotal		£ 5,770]

Reversion:

Reversion to open market value (999 yr leases) of 8 Flats:

17	Flat 1	£ 160,000		
18	Flat 2	£ 160,000		
19	Flat 3	£ 135,000		
20	Flat 4	£ 160,000		
21	Flat 5	£ 160,000		
22	Flat 6	£ 175,000		
23	Flat 7	£ 135,000		
24	Flat 8	£ 100,000		
25	Total	£1,185,000		
26	PV £1 in 80.75 years @ 7%		0.0042408	£ 5,025
27			[Subtotal	£10,795]

The Pole:

28	Income	£ 12.51 pa		
29	YP in perpetuity at 10%		10	Say £ 125

The oil in the Oil Tank:

30	Deduct			[£ 600]
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31	<u>Price payable</u>			£10,320
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SCHEDULE 2

The following terms should be included in the conveyance referred to at paragraph 5 of the counternotice:

1. Enville Manor Limited and the qualifying tenants shall covenant with the reversioner that:

(1) They will not raise any objection or make any representations which would prejudice any application the reversioner or any company associated with the reversioner or their successors in title may make for planning permission in connection with any land adjoining the land hereby transferred.

(2) They will observe and perform the covenants and conditions contained or referred to in a conveyance dated the 24th October 1986 and made between:

(1) The Lord Bishop of Lichfield;

(2) The Church Commissioners of England; and

(3) Michael Ryan

and a further conveyance also dated 24th October 1986 and made between:

(1) The Lichfield Diocesan Board of Finance Incorporated; and

(2) Michael Ryan

and shall indemnify the reversioner and its successors in title in respect of any breach thereof.

2. On completion of the sale of the land hereby transferred Enville Manor Limited shall pay the reversioner £3,780 being the value of the fuel oil in the storage tank now on the land hereby transferred.

3. Enville Manor Limited shall permit the owner of the fuel storage tank now on the land hereby transferred to enter on to the property for the purpose of maintaining and repairing and if required removing the said fuel oil storage tank.

4. The land hereby transferred shall be sold subject to but with the benefit of:-

- (a) Any unregistered interests which fall within any paragraphs of Schedule 3 to the Land Registration Act 2002;
- (b) All notices served by orders made by and demands proposals and requirements of any local public or other competent authority;
- (c) All agreements charges conditions directions notices orders proposals restrictions and other matters arising under any planning acts or any other legislation;
- (d) Anything which would be revealed by all appropriate searches, enquiries and inspections a prudent buyer would undertake before entering into an agreement to purchase the land hereby transferred;
- (e) All and any existing rights of way on foot only in favour of Beamsafe Limited and its successors in title across the land hereby conveyed by way of access to adjoining land currently owned by Beamsafe Limited.

5. Enville Manor Limited will indemnify the reversioner against any liability costs claims and demands which may arise in relation to the removal at any time of any tree situated or formerly situated on the land hereby transferred.

6. Enville Manor Limited shall within 14 days pay to S M Properties (21) Limited any arrears of ground rent and service charges as are outstanding at the date of completion and due under the terms of any of the leases of flats contained in the property hereby transferred.