

## Thornbury Court

### Residual Valuation

#### Gross Development Value

Existing 2 bed flats	£155,250		
New Premium 10%	<u>15,525</u>		
	170,775 per flat		
Penthouse flats ... say	200,000		
2 x 170,775=	341,550		
2 x 200,000=	<u>400,000</u>		
	741,550		
including car spaces GDV say...		750,000	

#### Development costs

Basic building costs (agreed)	£337,111		
Contingences 15%	<u>50,567</u>		
	387,677		
Supervision @ 10% plus VAT	45,552		
Soil survey	4,500		
Roof terrace exploratory work	1,175		
Planners fees plus VAT	8,813		
Building Control fees plus VAT	2,938		
Service Engineers fees plus VAT	1,175		
Legal costs	<u>5,875</u>		
	457,705		
Finance @ 6.5% for 6 months	£14,875		
Fees @ 2.5% for GDV plus VAT	22,031		
Profit @ 20% of GDV	<u>150,000</u>	<u>186,906</u>	<u>644,611</u>
			105,389
Less interest 2 years @ 6.5%		14,145	
Less acquisition costs 1.75%		<u>1,844</u>	<u>15,989</u>
Land value			89,400
Value payable under para 3 Schedule 6			44,700
Compensation payable under para 5 Schedule 6			22,350

**LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND) REGULATIONS  
2003**

**CORRECTION CERTIFICATE UNDER REGULATION 18(7) OF THE ABOVE  
REGULATIONS**

**Leasehold Reform, Housing and Urban Development Act 1993 Section 24**

**Thornbury Court, Church Road, Osterley, Middlesex TW7 4PP**

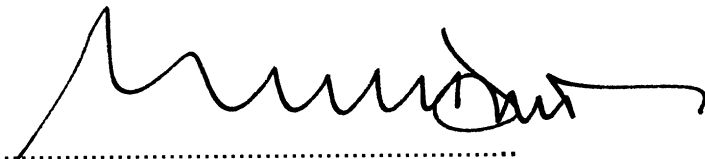
**LON/ENF/1537/05**

As Chairman of the Leasehold Valuation Tribunal which determined the above case I hereby correct an accidental error in the Decision dated 24 May 2006.

I hereby correct the accidental error construed as follows:

The price payable for the freehold is £223,648 and not £204,989 as recorded at para 39 of the Decision.

The amount payable to the intermediate landlord remains at £53696 but the amount payable to the freeholder is £169,952.

A handwritten signature in black ink, appearing to read 'Andrew Alexander Dutton', written over a dotted line.

Chairman signature  
Chairman's name - Andrew Alexander Dutton

Dated 22 August 2006

LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND)  
REGULATIONS 2003

Correction certificate under regulation 18(7) of the above Regulations.

***IN THE MATTER OF SECTION 24 OF THE LEASEHOLD REFORM  
HOUSING AND URBAN DEVELOPMENT ACT 1993  
SECTION: 24***

***PREMISES: THORNBURY COURT, CHURCH ROAD, OSTERLEY,  
MIDDLESEX, TW7 4PP***

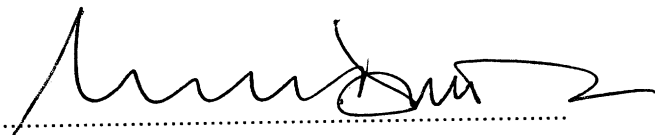
As chairman of the Leasehold Valuation Tribunal which determined the above case I  
hereby re-submit the Tribunal calculations to show the correct figures. In the decision  
of the Tribunal dated 24<sup>th</sup> May 2006.

Valuers  
Chairman's signature:.....R. A. Potter  
Valuers  
Chairman's name:.....R. A. POTTER

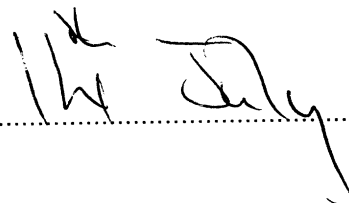
Date:.....13<sup>th</sup> July '06

Mr Shapiro's rates of interest and insofar as the various additional expenses, for example soil survey and roof terrace exploratory work which Mr Maunday Taylor has included these are of course to be found in appendices to Mr Shapiro's report and we would have expected therefore that they would have appeared in his residual valuation.

39. We have attached to the Decision a Summary showing the total sum payable which is £204,989 of which £53,696 is payable to the intermediate landlord and the balance of £151,293 payable to the freeholder.



Chairman

Dated  2006

## SUMMARY

### THORNBURY COURT

1.	Payable to Halliard as agreed in respect of Flats 1 & 8	£53696
2.	Payable to Freeholder as agreed in respect of Flats 1 & 8	£45719
3.	Payable to Freeholder in respect of Flats 2, 4, 5, 6, 7 & 16	£53810
4.	Payable to Freeholder in respect of Flat 10	£ 618
5.	Payable to Freeholder in respect of non-participating flats 3, 9, 11, 12, 12a, 14 & 15	£ 1755
6.	Payable to Freeholder under para 3 Schedule 6	£44700
7.	Payable to Freeholder under para 5 Schedule 6	£22350
8.	Payable to Freeholder as agreed in respect of appurtenant land	£ 1000
		<hr/>
		£223648

Total to Halliard	£ 53696
Total to Freeholder	<u>£169952</u>

**£223648**

## THORNBURY Court, Osterley

<b>Flat 1</b>	Type C	Valuation date	25.04.2005
3R K B/WC		Under Lease expires	27.12.2035
		Halliard Lease expires	28.09.2111

Number of years unexpired	30.67	on under lease	
Number of years unexpired	106.42	on Halliard lease	
Balance of Head lease	75.75	to	to
		26.03.2007	27.12.2035
Number of years to 1st review		1.92	28.76
Rent passing on head lease		£25.00	
Capitalisation rates		term 8.00%	8.00%
		Reversion 6.50%	

Value of share of Freehold	£155,250
Value of existing Lease	62.00% £96,255

Diminution in value of Halliard interest	S.13 notice figure accepted	£24,405
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### Diminution in value of Freehold interest

Rent reserved	£ 25.00	
YP to end of Head lease	<u>12,4965</u>	£312
Reversion to VP value	£ 155,250	
X PV of £1 to Reversion	<u>0.001228</u>	£191 £503 £ 121,163
<b>Marriage value</b>		<b>£ 34,087</b>
		<u>50%</u>
		£ 17,043
		<u>£ 24,908</u>
<b>Price for share of freehold</b>		<b><u>£ 41,952</u></b>

### Apportionments

<u>Halliard</u>					
Share of MV	£ 24,405	x	£17,043	equals	£16,699
	£ 24,908				
Diminution in value					<u>£24,405</u> 41,104
<u>Freehold</u>					
Share of MV	£ 503	x	£17,043	equals	£ 344
	£ 24,908				
Diminution in value					<u>£ 503</u> 847
					<b><u>£41,952</u></b>

# Thornbury Court, Osterley

**Flats 2,4,5,6,7 & 16**

**Valuation date  
Lease expire**

**15.04.2005  
28.09.2080**

**75.46**

**Number of years unexpired 75.46 on under lease**

**Number of years to 1<sup>st</sup> review**

<b>To</b>	<b>To</b>	<b>To</b>
<b>29.09.2014</b>	<b>29.09.2047</b>	<b>28.08.2080</b>
<b>9.46</b>	<b>33.00</b>	<b>32.91</b>

**92.5%**

			To review	1 <sup>st</sup> 2 <sup>nd</sup> review	To reversion	Share of f/H	Existing lease
Rent passing	Flat 2	Type A	£100.00	£200.00	£300.00	£197,700	£182,873
	Flat 4	Type C	£ 75.00	£150.00	£300.00	£155,250	£143,606
	Flat 5	Type A	£ 75.00	£150.00	£300.00	£197,700	£182,873
	Flat 6	Type B	£100.00	£200.00	£400.00	£212,500	£196,563
	Flat 7	Type A	£75.00	£150.00	£300.00	£197,700	£182,873
	Flat 16	Type B	£75.00	£150.00	£300.00	£212,500	£196,563
			<b>£500.00</b>	<b>£1,000.00</b>	<b>£1,900.00</b>	<b>£1,173,350</b>	<b>£1,085,351</b>

Capitalisation rates

Term

8%

Reversion

6.5%

Value of share of Freehold

£1,173,350

Value of existing lease

92.50%

£1,085,351

Diminution in value of Freehold Interest

Rent reserved

£500.00

YP to 1<sup>st</sup> review

6.190

£3095

Rent reserved

£1,000.00

YP to 2<sup>nd</sup> review 33 years

11.0514

xPV of £1 in 9.46 years

0.48320

5.5636

£5564

Rent reserved

£1,900.00

YP to reversion 32.91 years

11.507

xPV of £1 in 42.46 years

0.0379

0.4361

£829

Reversion to

1173350

X PV of £1 in 75.46 years

0.00864

£10133 £19621 £1104972

£68378

50%

Marriage value

£ 34189

£ 19621

Price for freehold

£ 53810

## THORNBURY Court, Osterley

<b>Flat 8</b>	Type B	Valuation date	25.04.2005
4R K B/WC		Under Lease expires	27.12.2035
		Halliard Lease expires	28.09.2111

Number of years unexpired	30.67	on under lease	
Number of years unexpired	106.42	on Halliard lease	
Balance of Head lease	75.75	to	to
		26.03.2007	27.12.2035
Number of years to 1st review		1.92	28.76
Rent passing on head lease		£30.00	
Capitalisation rates		term 8.00%	8.00%
		Reversion 6.50%	

Value of share of Freehold			£212,500
Value of existing Lease	60.00%	£127,500	.

**Diminution in value of Halliard interest**      *S.13 notice figure accepted*      £29,291

### **Diminution in value of Freehold interest**

Rent reserved	£ 30.00				
YP to end of Head lease	12,4965	£375			
Reversion to VP value	£ 212,500				
X PV of £1 to Reversion	0.001228	£261	£636	£ 157,427	
<b>Marriage value</b>				<b>£55,073</b>	
				50%	

### **Price for share of freehold**

£ 27,537  
£ 29,927  
**£ 57,463**

### **Apportionments**

<u>Halliard</u>					
Share of MV	£ 29,291	x	£27,537	equals	£26,951
	£ 29,927				
Diminution in value					£29,291      56,242
 <u>Freehold</u>					
Share of MV	£ 636	x	£27,537	equals	£ 585
	£29,927				
Diminution in value					£ 636      1,221
					<b><u>£57,463</u></b>



**Thornbury Court, Osterley**

<b><u>Flats 10</u></b>	<b>Valuation date</b>	<b>15.04.2005</b>	
	<b>Lease expire</b>	<b>28.09.2111</b>	<b>106.45</b>
<b>Number of years unexpired 106.45 on lease</b>			
<b>Capitalisation rates</b>	<b>term</b>	<b>8%</b>	
	<b>Reversion</b>	<b>6.5%</b>	
<b>Value of share of Freehold</b>		<b>£197,700</b>	
<b>Diminution in value of Freehold interest</b>			
	<b>Rent reserved</b>	<b>£30.00</b>	
	<b>YP for 106.45 years (perpetuity)</b>	<b><u>£12.50</u></b>	<b>375</b>
<b>Reversion to</b>		<b>£197,700</b>	
<b>X PV of £1 in</b>	<b>106.45 years</b>	<b><u>0.00123</u></b>	<b><u>243</u></b>
			<b><u>£ 618</u></b>

**Thornbury Court**  
**Residual Valuation**

**Gross Development Value**

Existing 2 bed flats	£155,250		
New Premium 10%	<u>15,525</u>		
	170,775 per flat		
Penthouse flats ... say	200,000		
2 x 170,775=	341,550		
2 x 200,000=	<u>400,000</u>		
	741,550		
including car spaces GDV say...		750,000	

**Development costs**

Basic building costs (agreed)	£337,111		
Contingences 15%	<u>50,567</u>		
	387,677		
Supervision @ 10% plus VAT	45,552		
Soil survey	4,500		
Roof terrace exploratory work	1,175		
Planners fees plus VAT	8,813		
Building Control fees plus VAT	2,938		
Service Engineers fees plus VAT	1,175		
Legal costs	<u>5,875</u>		
	457,705		
Finance @ 6.5% for 6 months	£14,875		
Fees @ 2.5% for GDV plus VAT	22,031		
Profit @ 20% of GDV	<u>150,000</u>	<u>186,906</u>	<u>644,611</u>
			105,389
Less interest 2 years @ 6.5%		14,145	
Less acquisition costs 1.75%		<u>1,844</u>	<u>15,989</u>
Land value			89,400
Value payable under para 3 Schedule 6			44,700
Compensation payable under para 5 Schedule 6			22,350

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL**

**REFERENCE NUMBER: LON/ENF/1537/05**

**LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 ("THE ACT")**

**In the matter of : Thornbury Court, Church Road, Osterley, Middlesex TW7 4PP**

**Between : Thornbury Court Limited Applicant/Landlord**

**and**

**Goldeagle Properties Limited**

**Respondent/  
Nominee Purchaser**

**Representations :**

**For the Applicant Landlord – Mr B Denyer-Green - Counsel  
Miss S Bone - Wallace LLP Solicitors  
Mr E Shapiro - BSc(ESTMAN)FRICS IRRV FCI Arb  
Mr M Armes - Chartered Architect**

**For the Respondent Mr J Robson – Counsel  
Mr A Oberoi - HPLP Solicitors  
Mr N Maunder Taylor BSc (Hons) MRICS**

**Intermediate Landlord Halliard Property Company Limited**

**Tribunal Members Mr A A Dutton Chair  
Mr R A Potter FRICS  
Mrs J E Davies FRICS**

**Hearing Date Tuesday 17 & Wednesday 18 January 2006  
and 05 May 2006**

**Decision Date 24 May 2006**

## REASONS

*Before we commence the reasons and our decision we should like to extend our apologies to all parties for the delay in issuing this Decision document. We appreciate that the hearing took place nearly four months prior to our reconvene to inspect and to consider the decision. We agree this is unacceptable but we hope the parties will forgive us in that this was caused by circumstances wholly beyond the Tribunal's control. Nonetheless we are sorry it has taken this length of time to produce the Decision in this case.*

### **A. BACKGROUND:**

1. This application was made under s24 of the Act by the Applicant Landlord, Thornbury Court Limited for a determination of the appropriate purchase price for the freehold land set out in the notice served by the Respondent under section 13 of the Act. The application was dated 11 July 2005.
2. The parties had been able to agree a number of issues and they are as follows:
  - The valuation date is 25 April 2005
  - The value of the virtual freehold of the flats known as type A was agreed at £197,700.
  - The valuation of the virtual freehold of flats known as type C was agreed at £155,250.
  - The value of the appurtenant land was agreed at £1,000.
  - The interest held by Hilliard Property Company Limited in Flat 1 was agreed at £24,405.
  - Similarly the interest of Hilliard Property Company in flat 8 was agreed at £29,291.
3. The following matters were in dispute.
  - The deferment rate for which the Applicant argued 5.5% and the Respondent 7.5%.
  - The term rate for which the Applicant sought 7% and the Respondent 9%.
  - The relativity applicable to the leases with 75.46 years unexpired of 92.5% as argued for by the Applicant and 95% as argued for by the Respondent.
  - The relativity for the shorter leases of 30.7 years unexpired of 60% from the Applicants point of view and 64% from the Respondent.
  - The virtual freehold value of the type B flats for which the Applicant suggested a figure of £216,500 and the Respondent £205,263.
  - The development value of land belonging to the Applicant for which the Applicant contended there was a value of some £238,014, but which the Respondent initially valued at nil.

4. For the record we should record that type A flats are those numbered 2, 5, 7, 10, 12a, 15. Type B flats are those numbered 3, 6, 8, 11, 14 & 16 and type C flats are those numbered 1, 4, 9 & 12.

**B. EVIDENCE:**

5. For the Applicant we had reports from Mr Shapiro and a statement by Mr Armes, both of whom attended the hearing. For the Respondent we had a report from Mr Maunder Taylor, who likewise attended the hearing.
6. In addition to the substantial initial reports, Mr Shapiro had submitted a supplemental report dated 12 January 2006. Mr Maunder Taylor, in addition to his report submitted amended valuations under cover of letter dated 20 January 2006. We also had documents evidencing a settlement in relation to 77 Westbourne Court, Orsett Terrace, London W2. At the conclusion of the hearing it was agreed that both Mr Denyer-Green and Mr Robson would submit closing submissions on a consecutive basis, which they both did, and which we found of assistance.
7. We hope the parties will forgive us if we do not recount in great detail the evidence we received save insofar as it is necessary to give the relevant background to the case.
8. Mr Shapiro's evidence. On the question of the valuation of the type B flat. In his Report he had utilised an approximate £/ square foot valuation to result in a virtual freehold value of £216,500. In evidence to the tribunal he felt that the shape of the living room did not detract from the value, contrary to Mr Maunder-Taylor's view.
9. In assessing the appropriate yield rates for this case he had taken into account the Lands Tribunal case of Arbib & The Earl of Cadogan. In the absence of what he considered to be market transaction evidence, he utilised permanent interest bearing shares (PIBS) as being a suitable investment vehicle to provide evidence as to the appropriate yield rate for the term which he considered was 7%. Insofar as the yield to the reversion was concerned, again he took into account the Arbib case and relied upon index linked National Savings certificates (10<sup>th</sup> and 38<sup>th</sup> issue) which gave a yield for a higher tax payer on a somewhere between 6.33% and 6.5%. This he further reduced to take account of hope value and in his view this gave an all risk yield of 5.5%.
10. As to the existing lease values he indicated that there were four methods by which the relativity of existing to extended lease values could be obtained. Those were evidence of market transactions, previous settlement, graphs and other LVT Decision. Using these assessment tools he adopted a ratio of 92.5% for the 75 year Lease and 60% for the 30 year Lease.

11. The real crux of the dispute in this case is the value, if any, attributable to the development potential of the premises which are the subject of the section 13 notice. In January of 2004 planning permission was granted for the erection of four additional flats to the second and third floor of the existing building. To enable this construction to take place was necessary for there to be at least three car parking spaces sited on land which was not the subject of these proceedings but which was owned by the freeholders. Mr Shapiro had prepared a schedule setting out the costs of the development which we will comment upon in more detail later in this decision. In essence his case was that the development value/potential profit to the freeholder was some £238,014. This is the amount that he felt should be paid by the Respondent, either as an addition to the freehold value or as compensation under paragraph 5 of the 6<sup>th</sup> schedule to the Act. In a supplementary report dated 12<sup>th</sup> January 2006 Mr Shapiro gave further thought to the planning permission that was obtained in January of 2004 and his opinion as to the possibility of creating car parking spaces within the land to be acquired by the Respondents. He suggested that if planning permission could not be granted then the principles set out in a Lands Tribunal case of Stokes v. Cambridge Corporation, a matter before the Tribunal in 1961, dealing with the compulsory purchase of land, should apply. In those circumstances he felt that the Respondent would be in a position to acquire the additional land upon which the car parking could be sited at a figure of some 30% of the development value and that according that should be factored into our assessment as to the value of the land.
12. Mr Murray Armes, the chartered architect for the Applicant provided evidence both in the form of a witness statement and orally to the Tribunal. He was not able to say whether it would be possible for four car parking spaces to be sited on the subject land but he did say in his report that he had received instructions to consider that possibility although no planning application had been submitted. He was of the view however, that the required car parking spaces could be located on the grass area between Thornbury Court and Osterley Road and that this would satisfy the highways department but that further discussions would be required with the planners. When pressed on this he indicated that he thought there was perhaps a 50:50 chance that the change to incorporate parking within the curtilage of the Schedule 13 land would be successful. If the planning was reduced to two flats only there would be no need for planning other than to amend the parking arrangements. He accepted that Hounslow's present parking requirement was 1.35 car parking spaces per dwelling but in his experience one parking place per dwelling was normal and achievable.

13. On behalf of the Respondent we heard from Mr Maunder-Taylor who, like Mr Shapiro, had filed a substantial and detailed report. As we did with Mr Shapiro, we will deal briefly with the issues raised.
14. As to the value of the type B flat, which was the three-bedroom property with a balcony, he concluded that the appropriate value for the virtual freehold was £195,000 based on the market evidence that he had set out in his report. In evidence to us he told us that he had taken into account lifestyle considerations in particular the odd shape of the living room which he did not think was "friendly space". Whilst he accepted that flat B should be more than flat A, his view was that it should not be more than £205,000, an uplift from the figure in his report.
15. On the question of yield rates he relied on comparable settlements or tribunal cases citing properties in Twickenham, London N14, Alperton and others. He confirmed that the various comparables he relied upon predated the Arbib's Lands Tribunal case which he confirmed had resulted in a general consequential affect of lowering rates across London. Having considered the market evidence as it was, he concluded that the appropriate yield rate for capitalising the ground rent would be 9% and following the post Arbib climate then the appropriate yield rate for deferring the reversion was 7.5%.
16. As to relativity he concluded that the use of market evidence would involve adjustments which were too subjective and that accordingly he relied on settlement evidence and Leasehold Valuation Tribunal determinations which he listed in his report. Taking these matters into account, so far as the long lease was concerned, he arrived at a relativity of 95% and in respect of the shorter lease term, again, having regard to settlement evidence, he concluded that an appropriate relativity percentage was 64.
17. With regard to the development value issue, he highlighted certain aspects of the planning permission and the directed us to the provisions of paragraph 2(1)(a) and paragraph 5 of Schedule 13. His view was that given the history of the planning at Thornbury Court, the development would be unable to take place without the additional plot of land on which to site the three additional car parking places. As the car parking land was not within the terms of acquisition he took the view that there would be no compensation payable to the freeholder under paragraph 2(1)(a). Under paragraph 5 of the 6<sup>th</sup> Schedule to the Act he took the view that the compensation related to the diminution value of the car parking land, which at the date of the valuation the Applicant Landlords had no right to develop, because they did not have possession of same. This particular suggestion was not pursued at the hearing and it is fair to say that the Respondents conceded that there was

some value to the development although not to the levels put forward by Mr Shapiro. After the hearing Mr Maunder-Taylor, through Counsel, submitted a development schedule showing what he considered to be the development value of the property which we will deal with later in this Decision document. Suffice to say that at this stage the value attributed to the loss of development potential was limited to £42,773.00 of which only half had been payable based on Mr Armes view that there was no more than a 50% chance that planning permission could be obtained on the alternative basis utilising car parking on the site.

18. Both Counsel had provided final submissions which encapsulated the evidence that we had received. Mr Robson's submission was dated 21 January 2006 and Mr Denyer-Green's, which was in response, was sent to the Tribunal under cover of a letter from his instructing solicitors dated 30 January 2006. We will deal with the submissions made in the Decision element of this document but we would like to say at this stage how helpful we found Counsels submissions in bringing together the evidence and the issues.

**C. INSPECTION:**

19. We inspected the subject premises on the 5 May 2006 and also the garage area upon which the three car parking spaces were to be sited under the original planning permission. In addition was inspected the exterior of Osterley Lodge, We were able to gain access to flats 6,11 &12a which gave us the opportunity of assessing the value of the type B flat.
20. The block is as described in the papers and comprises an "H" shape construction with the middle section being two-storey and the up-rights of the "H" being three storeys with a flat roof. The block is situated in a pleasant residential area backing on to a school playground with the front overlooking a Church. At the time of our inspection the property was undoubtedly blighted by incoming aircraft to Heathrow. The block itself was in reasonable external order.

**C. THE LAW:**

21. The application is made under s24 of the Act and Schedule 6 of the Act. Paragraph 2 of the 6<sup>th</sup> Schedule sets out the matters to be considered to determine the price payable by the nominee purchaser of the freehold being the aggregate of the value of the freeholders interest in the premises, the freeholders share of the marriage value and the amount of compensation payable.
22. In respect of the freeholders interest we were asked by Mr Robson in his submissions to bear in mind paragraph 3(2) which deals with assumptions that we can make in addition to



those contained in sub-paragraph 3(1)(a)-(d). There is no issue in respect of the marriage value. In regard to compensation under paragraph 5, it states as follows.

- (i) *Where the freeholder will suffer any loss or damage to which this paragraph applies and it should be payable to him such amount as is reasonable to compensate him for that loss or damage.*
- (ii) *This paragraphs comprised*
  - (a) *any diminution in value of any interest in the freeholder in other property resulting in the acquisition of his interest in a specified premises; and*
  - (b) *any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property.*

#### **D. DECISION**

23. We will deal firstly with the appropriate valuation to be attributed to the type B flat. Mr Maunder Taylor had reached a precise value of £205,263 and Mr Shapiro a value of £216,500. Mr Robson criticised Mr Shapiro's approach, based upon a square footage calculation, which Mr Denyer-Green said was not really challenged, and that the Respondents' valuation sat more easily with the valuations attributed to the other flats. In the hearing a figure of £212,500 had been advanced as a figure that might be capable of agreement, although not accepted as an agreed value by either side. The difference between the parties is just over £11,000. We had the chance of inspecting the interior of flat 6, which although undergoing refurbishment, nonetheless gave a clear indication of the layout. We do not agree with Mr Maunder Taylor's view that the living room had an unfriendly space and that it would therefore impact on the value. The balcony, overlooking the playing field to the rear is an asset, certainly in the evenings and at weekends. Taking the matter in the round we find that a value for the type B flat in dispute can be properly assessed at £212,500, which is the value we place upon the property for the purposes of this application,
24. We turn now to the question of yield rates. It is fair to say that since the Arbib decision was promulgated by the Lands Tribunal it has caused valuers practising in this field to review their stance on yield rates. To follow Arbib or not to follow Arbib, that is the question. In this case Mr Maunder Taylor has eschewed the Lands Tribunal's finding and stuck to settlement evidence and tribunal decisions. He accepted that there was no market evidence of transactions in this case but that the Cadogan Estate was a special market and that beyond it was possible to still rely on settlement evidence. Mr Shapiro has followed Arbib and sought to introduce financial market evidence.

25. The Arbib case dealt only with deferment rates in respect of properties largely on the prestigious Cadogan Estate. The decision also highlighted the lack of quality evidence put before the tribunal and that it is only in the absence of dependable open market transactions that recourse to other markets should be undertaken. Mr Maunder Taylor's evidence of settlements suffered from the very problems highlighted by the Lands Tribunal. We find Mr Denyer-Green's submissions on the yield evidence more persuasive than Mr Robson's. However, that is not to say that we are wholly in agreement with the rates put forward by Mr Shapiro. We did feel that he had chosen PIBS in something of blindfold/pin way and the same could be said of the National Savings certificates. They are however a starting point and one that in this case we prefer to Mr Maunder Taylor's. We accept that the Arbib case is of general application. However in starting the deferment rate at 5.5% we do not believe that Mr Shapiro has made sufficient provision for the risks associated with this property. We cannot accept that there is only  $\frac{3}{4}\%$  difference in the deferment rate for a flat on the Cadogan Estate and an architecturally somewhat unpleasing block situated beneath the flight path to Heathrow in the outer reaches of London. We are aware that there have been and may still be service charge disputes within the block and management risks associated with a property of this type has not in our view been given sufficient weight. The likelihood, or not, of growth has to be considered. We find that Mr Maunder Taylor is too high at 7.5% and Mr Shapiro too low at 5.5%. We have concluded that the appropriate deferment rate in this case is 6.5%. As to the term rate Mr Maunder Taylor applied a 9% element and Mr Shapiro 7%. For the reasons we have stated above and taking into account all that was said by the parties we find that a figure mid way between is appropriate and accordingly we find that 8% is the applicable rate in this case.
26. We turn now to relativity. The parties were initially united at 95% for the longer lease terms. Mr Shapiro went on to review his initial starting percentage against graph "evidence" and settlements as well as, to an extent, LVT decisions. We preferred this cross checking to the opinion of Mr Maunder Taylor, which was rooted in the settlement/LVT decision evidence. Accordingly we find that the relativity applicable for the long leases should be 92.5%. As to the shorter lease lengths we noted all that was said. Neither expert had any market evidence and again settlement evidence was used and, in Mr Shapiro's case, graphs. Our knowledge and experience leads us to find that the middle ground between the parties percentages sits more comfortably with the long lease percentage and accordingly we find that 62% is the relativity for the shorter leases.

27. The matter we now need to address is perhaps the most vexed element of this case being the value to be attributed to the potential development of the block. We have submissions from both Mr Shapiro and Mr Maunder Taylor as to their views and heard from Mr Armes the architect instructed by the Applicant. It is helpful to record some of the history. In January of 2004 planning permission was granted for the erection of an additional four two bedroom flats with four car parking spaces and cycle parking. The car parking was to be provided as to one space within the curtilage of the subject property and three spaces on land separated from Thornbury Court by another block of flats and upon which there are a number of garages held on leases of 125 years. This additional piece of land, owned by the Applicant, falls within the same title number as Thornbury Court but is not included within the Notice under s13 issued by the Respondent. Mr Armes in his evidence to us indicated that other alternatives had been looked at including the use of the subject premises to site all car parking but these had not been pursued to a final planning application.
28. It is right to record that Mr Robson, on behalf of the Respondent, conceded that the development of the roof did have value by virtue of the planning consent granted in January 2004. He attacked the evidence given by Mr Shapiro on the basis that he was not a planning expert and was unaware of many current planning guidelines. Equally Mr Denyer-Green attacked Mr Maunder Taylor's evidence as being illogical on the basis that initially Mr Maunder Taylor had adopted the view that there was no value attributable to the planning permission.
29. Mr Shapiro on behalf of the Applicant put forward the development value claim in three ways. First he said that all four car parking spaces could be provided within the curtilage of the s13 land or alternatively that planning permission could be obtained so that car parking was not necessary.
30. The second suggestion was that if planning could not be granted then the existence of the planning permission was such that invoking the principles contained in the Lands Tribunal case of *Stoke v. Cambridge Corporation* it would be possible for the Respondent to reach agreement with the freeholder to acquire the necessary car parking spaces at a figure of 30% of the development value of the land.
31. Finally Mr Shapiro indicated that compensation would be payable under paragraph 5 of Schedule 6 of the Act, equivalent to the development value of £238,014. It was not until the closing submissions that the Respondents conceded the development value potential. Annexed to Mr Robson's submission was a Schedule showing how the development value had been calculated at a figure of £42,773 of which it was said that only 50% was payable

as a result of a comment by Mr Armes who believe that there was a 50:50 chance that planning permission could be obtained to develop the existing land without the freeholder's garage land.

32. We shared Mr Robson's concerns as to Mr Shapiro's knowledge of planning matters. It is fair to say that he did not hold himself out as a planning expert but his supplemental report went a long way to give the impression that he was an expert. In cross-examination by Mr Robson it became clear to us that there were various elements of the planning law with which he was not familiar. He had however addressed the matter in more details than had Mr Maunder Taylor who attributed no value for the existence of the planning permission. We cannot agree with him and indeed the submission from Mr Robson indicated that some value had to be attributed. The question is, what is that value? We find that there is a value both by reference to paragraph 2(1)(a) that is to say the value of the freeholders interest in the premises determined in accordance with paragraph 3 and also compensation under paragraph 5 as a result of the diminution in value of the garage land.
33. We heard all that was said by Mr Armes and have concluded that there is perhaps a 50% chance that there would be the possibility of creating the four flats either utilising car parking within the curtilage of the land contained within the s13 Notice or persuading the local authority in the light of the off road parking that was apparent on our inspection that such parking as was required was less than one per flat. We would not however attribute a figure of more than 50% of the development value to be added to the freeholder's interest in the subject premises because of this difficulty.
34. We were not overly impressed with the suggestion that the *Stoke v. Cambridge* case was of assistance. That dealt with a compulsory purchase issue and that of course does not arise in this matter. It is not possible to guess at what level the freeholder might be prepared to sell the car parking spaces to the Respondent. However it does not seem to us that we need to follow that route as instead, in addition to the value to the freeholder we find that there is an element of compensation to be payable under paragraph 5 in respect of the diminution in value of the garage land. The garage land and the subject premises are joined as one for the purposes of the planning application. There is no more than a 50% chance that the s13 land can be developed without the garage area. The garage area clearly cannot be developed without the s13 land, at least insofar as the present planning position is concerned. It may well be that in the passage of time there will be a possibility to develop that particular plot if some arrangement can be reached with the garage holders but that is not a matter that we need to consider.

35. In attributing only 50% of the development value to the freeholder's interest, it leaves a further 50% which is unallocated. This we find should be attributed to the garage land but the reduction which we applied to the s13 land also applies to the garage land. If the s13 land alone can be developed then the garage land has no real value. There is a 50% chance that it might be possible and therefore there is an equal chance that it might not. Accordingly we therefore award compensation of 25% of the development value under paragraph 5.
36. The next matter we need to determine is the development value. We noted Mr Denyer-Green's argument that the late submission of the Schedule by the Respondent should not be allowed. We are prepared to accept this late submission as we do not believe that the Respondent has been prejudiced. Mr Denyer-Green could have submitted a response from Mr Shapiro had he chosen. It is interesting to note however that Mr Maunder-Taylor has, to a large extent, accepted the figures put forward by Mr Shapiro. In regard to the gross development value Mr Shapiro had suggested a figure of £783,950 allowing some £30,000 for the four car parking spaces. Mr Maunder-Taylor had a gross development value of £741,500 with no allowance for the parking spaces. We believe the figure of £10,000 suggested for the garages is about right but that car parking spaces would not be worth 75% of the garage space. It seems to us and we find that the appropriate gross development figures should be £750,000, to reflect the value attributable for the car parking spaces.
37. The initial development costs are agreed at £337,111. Mr Shapiro suggests contingencies and other costs at 10% and Mr Maunder-Taylor at 15%. Our own knowledge and experience would indicate that a figure of 15% is more appropriate given the nature of the proposed development. As to supervision we agree that a figure of 10% would be appropriate but we do not believe that VAT would be payable on the building costs. In our view the flats would "eligible constructions" built on top of an existing building and in those circumstances can be zero rated. It is our understanding that the relevant VAT regulations indicate that an enlargement and extension to create additional dwellings can be zero rated provided that the new dwelling is wholly within the enlargement or extension and the dwelling is designed as a dwelling.
38. For ease of reference we have attached to the Decision a Schedule showing what we consider to be the appropriate development value for the subject premises which results in an additional sum payable under paragraph 3 of Schedule 6 of £44,700 and compensation payable under paragraph 5 of Schedule 6 of £22,350. We have, as can be seen, accepted

Mr Shapiro's rates of interest and insofar as the various additional expenses, for example soil survey and roof terrace exploratory work which Mr Maunder Taylor has included these are of course to be found in appendices to Mr Shapiro's report and we would have expected therefore that they would have appeared in his residual valuation.

39. We have attached to the Decision a Summary showing the total sum payable which is £204,989 of which £53,696 is payable to the intermediate landlord and the balance of £151,293 payable to the freeholder.



Chairman

Dated 24 May 2006

## SUMMARY

### THORNBURY COURT

1.	Payable to Halliard as agreed in respect of Flats 1 & 8	£53696
2.	Payable to Freeholder as agreed in respect of Flats 1 & 8	£30372
3.	Payable to Freeholder in respect of Flats 2, 4, 5, 6, 7 & 16	£50498
4.	Payable to Freeholder in respect of Flat 10	£ 618
5.	Payable to Freeholder in respect of non-participating flats 3, 9, 11, 12, 12a, 14 & 15	£ 1755
6.	Payable to Freeholder under para 3 Schedule 6	£44700
7.	Payable to Freeholder under para 5 Schedule 6	£22350
8.	Payable to Freeholder as agreed in respect of appurtenant land	£ 1000
		<hr/>
		£204989

Total to Halliard           £ 53696  
Total to Freeholder       £151293

**£204989**

# **Thornbury Court, Osterley**

**Flats 2,4,5,6,7 & 16**

**Valuation date**

**15.04.2005**

**Lease expire**

**28.09.2080**

**75.46**

**Number of years unexpired 75.46 on under lease**

**Number of years to 1<sup>st</sup> review**

**To  
29.09.2014  
9.46**

**To  
29.09.2047  
33.00**

**To  
28.08.2080  
32.91**

**92.5%**

			To review 1 <sup>st</sup>	2 <sup>nd</sup> review	To reversion	Share of f/H	Existing lease
Rent passing	Flat 2	Type A	£100.00	£200.00	£300.00	£197,700	£182,873
	Flat 4	Type C	£ 75.00	£150.00	£300.00	£155,250	£143,606
	Flat 5	Type A	£ 75.00	£150.00	£300.00	£197,700	£182,873
	Flat 6	Type B	£100.00	£200.00	£400.00	£212,500	£196,563
	Flat 7	Type A	£75.00	£150.00	£300.00	£197,700	£182,873
	Flat 16	Type B	£75.00	£150.00	£300.00	£212,500	£196,563
			<b>£500.00</b>	<b>£1,000.00</b>	<b>£1,900.00</b>	<b>£1,173,350</b>	<b>£1,085,351</b>

Capitalisation rates

Term

8%

Reversion

6.5%

Value of share of Freehold

£1,173,350

Value of existing lease

92.50%

£1,085,351

Diminution in value of Freehold Interest

Rent reserved

£500.00

YP to 1<sup>st</sup> review

6.190

£3095

Rent reserved

£1,000.00

YP to 2<sup>nd</sup> review 33 years

11.0514

xPV of £1 in 9.46 years

0.48320

5.5636

£5564

Rent reserved

£1,900.00

YP to reversion 32.91 years

11.507

xPV of £1 in 42.46 years

0.0379

0.4361

£829

Reversion to

1173350

X PV of £1 in 75.46 years

0.00299

£.3508

£12,996 £1,098,347

£75,003

50%

Marriage value

£ 37,502

£ 12,996

Price for freehold

£ 50,498



**Thornbury Court, Osterley**

<b><u>Flats 10</u></b>	<b>Valuation date</b>	<b>15.04.2005</b>	
	<b>Lease expire</b>	<b>28.09.2111</b>	<b>106.45</b>
<b>Number of years unexpired 106.45 on lease</b>			
<b>Capitalisation rates</b>	<b>term</b>	<b>8%</b>	
	<b>Reversion</b>	<b>6.5%</b>	
<b>Value of share of Freehold</b>		<b>£197,700</b>	
<b>Diminution in value of Freehold interest</b>			
	<b>Rent reserved</b>	<b>£30.00</b>	
	<b>YP for 106.45 years (perpetuity)</b>	<b><u>£12.50</u></b>	<b>375</b>
<b>Reversion to X PV of £1 in</b>	<b>106.45 years</b>	<b>£197,700</b>	
		<b><u>0.00123</u></b>	<b><u>243</u></b>
			<b><u>£ 618</u></b>

# Thornbury Court, Osterley

## Non Participators

Valuation Date 15.04.2005

<u>Term</u>				<u>28.09.2014 F/H value</u>		
				<u>9.45</u>		
Flat 14	125 yrs from 29.09.1986	28.09.2111	£106.45	£50.00	£216,500	Halliard
Flat 15	125 yrs from 29.09.1986	28.09.2111	£106.45	<u>£50.00</u>	<u>£197,700</u>	Halliard
				<u>£100.00</u>	<u>£414,200</u>	
Flat 3	999 yrs from 29.09.1986	18.09.2985	£980.41	£0.001		Nil value
Flat 9	999 yrs from 29.09.1986	18.09.2985	£980.41	£0.001		Nil value
Flat 11	999 yrs from 29.09.1986	18.09.2985	£980.41	£0.001		Nil value
Flat 12	999 yrs from 29.09.1986	18.09.2985	£980.41	£0.001		Nil value
Flat 12A	999 yrs from 29.09.1986	18.09.2985	£980.41	£0.001		Nil value

## Flats 14 & 15

Valuation date 15.04.2005  
Lease expires 28.09.2111

Number of years unexpired 106.45  
Rent passing £100.00  
Capitalisation rates term 8.00%  
Reversion 6.5 %

Value of share of Freehold £414,200

Diminution in value of Freehold interest

Rent reserved  
YP to end of term £100.00  
£ 12.50 1250  
Reversion to  
X PV of £1 in 106.45 years £410,200  
£0.00123 505  
£1755

## Thornbury Court

### Residual Valuation

#### Gross Development Value

Existing 2 bed flats	£155,250		
New Premium 10%	<u>15,525</u>		
	170.775 per flat		
Penthouse flats ... say	200,000		
2 x 170,775=	341,550		
2 x 200,000=	<u>400,000</u>		
	741,550		
including car spaces GDV say...		750,000	

#### Development costs

Basic building costs (agreed)	£337,111		
Contingences 15%	<u>50,567</u>		
	387,677		
Supervision @ 10% plus VAT	45,552		
Soil survey	4,500		
Roof terrace exploratory work	1,175		
Planners fees plus VAT	8,813		
Building Control fees plus VAT	2,938		
Service Engineers fees plus VAT	1,175		
Legal costs	<u>5,875</u>		
	457,705		
Finance @ 6.5% for 6 months	£14,875		
Fees @ 2.5% for GDV plus VAT	22,031		
Profit @ 20% of GDV	<u>150,000</u>	186,906	<u>644,611</u>
			105,389
Less interest 2 years @ 6.5%		14,145	
Less acquisition costs 1.75%		<u>1,844</u>	<u>15,989</u>
Land value			89,400
Value payable under para 3 Schedule 6			44,700
Compensation payable under para 5 Schedule 6			22,350

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL**

**REFERENCE NUMBER: LON/ENF/1537/05**

**LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 ("THE ACT")**

**In the matter of : Thornbury Court, Church Road, Osterley, Middlesex TW7 4PP**

**Between : Thornbury Court Limited Applicant/Landlord**

**and**

**Goldeagle Properties Limited**

**Respondent/**

**Nominee Purchaser**

**Representations :**

**For the Applicant Landlord – Mr B Denyer-Green - Counsel**  
**Miss S Bone - Wallace LLP Solicitors**  
**Mr E Shapiro - BSc(ESTMAN)FRICS IRRV FCI Arb**  
**Mr M Armes - Chartered Architect**

**For the Respondent Mr J Robson – Counsel**  
**Mr A Oberoi - HPLP Solicitors**  
**Mr N Maunder Taylor BSc (Hons) MRICS**

**Intermediate Landlord Halliard Property Company Limited**

**Tribunal Members Mr A A Dutton Chair**  
**Mr R A Potter FRICS**  
**Mrs J E Davies FRICS**

**Hearing Date Tuesday 17 & Wednesday 18 January 2006**  
**and 05 May 2006**

**Decision Date 24 May 2006**

4. For the record we should record that type A flats are those numbered 2, 5, 7, 10, 12a, 15. Type B flats are those numbered 3, 6, 8, 11, 14 & 16 and type C flats are those numbered 1, 4, 9 & 12.

**B. EVIDENCE:**

5. For the Applicant we had reports from Mr Shapiro and a statement by Mr Armes, both of whom attended the hearing. For the Respondent we had a report from Mr Maunder Taylor, who likewise attended the hearing.
6. In addition to the substantial initial reports, Mr Shapiro had submitted a supplemental report dated 12 January 2006. Mr Maunder Taylor, in addition to his report submitted amended valuations under cover of letter dated 20 January 2006. We also had documents evidencing a settlement in relation to 77 Westbourne Court, Orsett Terrace, London W2. At the conclusion of the hearing it was agreed that both Mr Denyer-Green and Mr Robson would submit closing submissions on a consecutive basis, which they both did, and which we found of assistance.
7. We hope the parties will forgive us if we do not recount in great detail the evidence we received save insofar as it is necessary to give the relevant background to the case.
8. Mr Shapiro's evidence. On the question of the valuation of the type B flat. In his Report he had utilised an approximate £/ square foot valuation to result in a virtual freehold value of £216,500. In evidence to the tribunal he felt that the shape of the living room did not detract from the value, contrary to Mr Maunder-Taylor's view.
9. In assessing the appropriate yield rates for this case he had taken into account the Lands Tribunal case of Arbib & The Earl of Cadogan. In the absence of what he considered to be market transaction evidence, he utilised permanent interest bearing shares (PIBS) as being a suitable investment vehicle to provide evidence as to the appropriate yield rate for the term which he considered was 7%. Insofar as the yield to the reversion was concerned, again he took into account the Arbib case and relied upon index linked National Savings certificates (10<sup>th</sup> and 38<sup>th</sup> issue) which gave a yield for a higher tax payer on a somewhere between 6.33% and 6.5%. This he further reduced to take account of hope value and in his view this gave an all risk yield of 5.5%.
10. As to the existing lease values he indicated that there were four methods by which the relativity of existing to extended lease values could be obtained. Those were evidence of market transactions, previous settlement, graphs and other LVT Decision. Using these assessment tools he adopted a ratio of 92.5% for the 75 year Lease and 60% for the 30 year Lease.

11. The real crux of the dispute in this case is the value, if any, attributable to the development potential of the premises which are the subject of the section 13 notice. In January of 2004 planning permission was granted for the erection of four additional flats to the second and third floor of the existing building. To enable this construction to take place was necessary for there to be at least three car parking spaces sited on land which was not the subject of these proceedings but which was owned by the freeholders. Mr Shapiro had prepared a schedule setting out the costs of the development which we will comment upon in more detail later in this decision. In essence his case was that the development value/potential profit to the freeholder was some £238,014. This is the amount that he felt should be paid by the Respondent, either as an addition to the freehold value or as compensation under paragraph 5 of the 6<sup>th</sup> schedule to the Act. In a supplementary report dated 12<sup>th</sup> January 2006 Mr Shapiro gave further thought to the planning permission that was obtained in January of 2004 and his opinion as to the possibility of creating car parking spaces within the land to be acquired by the Respondents. He suggested that if planning permission could not be granted then the principles set out in a Lands Tribunal case of Stokes v. Cambridge Corporation, a matter before the Tribunal in 1961, dealing with the compulsory purchase of land, should apply. In those circumstances he felt that the Respondent would be in a position to acquire the additional land upon which the car parking could be sited at a figure of some 30% of the development value and that according that should be factored into our assessment as to the value of the land.
12. Mr Murray Armes, the chartered architect for the Applicant provided evidence both in the form of a witness statement and orally to the Tribunal. He was not able to say whether it would be possible for four car parking spaces to be sited on the subject land but he did say in his report that he had received instructions to consider that possibility although no planning application had been submitted. He was of the view however, that the required car parking spaces could be located on the grass area between Thornbury Court and Osterley Road and that this would satisfy the highways department but that further discussions would be required with the planners. When pressed on this he indicated that he thought there was perhaps a 50:50 chance that the change to incorporate parking within the curtilage of the Schedule 13 land would be successful. If the planning was reduced to two flats only there would be no need for planning other than to amend the parking arrangements. He accepted that Hounslow's present parking requirement was 1.35 car parking spaces per dwelling but in his experience one parking place per dwelling was normal and achievable.

13. On behalf of the Respondent we heard from Mr Maunder-Taylor who, like Mr Shapiro, had filed a substantial and detailed report. As we did with Mr Shapiro, we will deal briefly with the issues raised.
14. As to the value of the type B flat, which was the three-bedroom property with a balcony, he concluded that the appropriate value for the virtual freehold was £195,000 based on the market evidence that he had set out in his report. In evidence to us he told us that he had taken into account lifestyle considerations in particular the odd shape of the living room which he did not think was "friendly space". Whilst he accepted that flat B should be more than flat A, his view was that it should not be more than £205,000, an uplift from the figure in his report.
15. On the question of yield rates he relied on comparable settlements or tribunal cases citing properties in Twickenham, London N14, Alperton and others. He confirmed that the various comparables he relied upon predated the Arbib's Lands Tribunal case which he confirmed had resulted in a general consequential affect of lowering rates across London. Having considered the market evidence as it was, he concluded that the appropriate yield rate for capitalising the ground rent would be 9% and following the post Arbib climate then the appropriate yield rate for deferring the reversion was 7.5%.
16. As to relativity he concluded that the use of market evidence would involve adjustments which were too subjective and that accordingly he relied on settlement evidence and Leasehold Valuation Tribunal determinations which he listed in his report. Taking these matters into account, so far as the long lease was concerned, he arrived at a relativity of 95% and in respect of the shorter lease term, again, having regard to settlement evidence, he concluded that an appropriate relativity percentage was 64.
17. With regard to the development value issue, he highlighted certain aspects of the planning permission and the directed us to the provisions of paragraph 2(1)(a) and paragraph 5 of Schedule 13. His view was that given the history of the planning at Thornbury Court, the development would be unable to take place without the additional plot of land on which to site the three additional car parking places. As the car parking land was not within the terms of acquisition he took the view that there would be no compensation payable to the freeholder under paragraph 2(1)(a). Under paragraph 5 of the 6<sup>th</sup> Schedule to the Act he took the view that the compensation related to the diminution value of the car parking land, which at the date of the valuation the Applicant Landlords had no right to develop, because they did not have possession of same. This particular suggestion was not pursued at the hearing and it is fair to say that the Respondents conceded that there was

some value to the development although not to the levels put forward by Mr Shapiro. After the hearing Mr Maunder-Taylor, through Counsel, submitted a development schedule showing what he considered to be the development value of the property which we will deal with later in this Decision document. Suffice to say that at this stage the value attributed to the loss of development potential was limited to £42,773.00 of which only half had been payable based on Mr Armes view that there was no more than a 50% chance that planning permission could be obtained on the alternative basis utilising car parking on the site.

18. Both Counsel had provided final submissions which encapsulated the evidence that we had received. Mr Robson's submission was dated 21 January 2006 and Mr Denyer-Green's, which was in response, was sent to the Tribunal under cover of a letter from his instructing solicitors dated 30 January 2006. We will deal with the submissions made in the Decision element of this document but we would like to say at this stage how helpful we found Counsels submissions in bringing together the evidence and the issues.

**C. INSPECTION:**

19. We inspected the subject premises on the 5 May 2006 and also the garage area upon which the three car parking spaces were to be sited under the original planning permission. In addition was inspected the exterior of Osterley Lodge, We were able to gain access to flats 6,11 &12a which gave us the opportunity of assessing the value of the type B flat.
20. The block is as described in the papers and comprises an "H" shape construction with the middle section being two-storey and the up-rights of the "H" being three storeys with a flat roof. The block is situated in a pleasant residential area backing on to a school playground with the front overlooking a Church. At the time of our inspection the property was undoubtedly blighted by incoming aircraft to Heathrow. The block itself was in reasonable external order.

**C. THE LAW:**

21. The application is made under s24 of the Act and Schedule 6 of the Act. Paragraph 2 of the 6<sup>th</sup> Schedule sets out the matters to be considered to determine the price payable by the nominee purchaser of the freehold being the aggregate of the value of the freeholders interest in the premises, the freeholders share of the marriage value and the amount of compensation payable.
22. In respect of the freeholders interest we were asked by Mr Robson in his submissions to bear in mind paragraph 3(2) which deals with assumptions that we can make in addition to



those contained in sub-paragraph 3(1)(a)-(d). There is no issue in respect of the marriage value. In regard to compensation under paragraph 5, it states as follows.

- (i) *Where the freeholder will suffer any loss or damage to which this paragraph applies and it should be payable to him such amount as is reasonable to compensate him for that loss or damage.*
- (ii) *This paragraphs comprised*
  - (a) *any diminution in value of any interest in the freeholder in other property resulting in the acquisition of his interest in a specified premises; and*
  - (b) *any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property.*

#### **D. DECISION**

23. We will deal firstly with the appropriate valuation to be attributed to the type B flat. Mr Maunder Taylor had reached a precise value of £205,263 and Mr Shapiro a value of £216,500. Mr Robson criticised Mr Shapiro's approach, based upon a square footage calculation, which Mr Denyer-Green said was not really challenged, and that the Respondents' valuation sat more easily with the valuations attributed to the other flats. In the hearing a figure of £212,500 had been advanced as a figure that might be capable of agreement, although not accepted as an agreed value by either side. The difference between the parties is just over £11,000. We had the chance of inspecting the interior of flat 6, which although undergoing refurbishment, nonetheless gave a clear indication of the layout. We do not agree with Mr Maunder Taylor's view that the living room had an unfriendly space and that it would therefore impact on the value. The balcony, overlooking the playing field to the rear is an asset, certainly in the evenings and at weekends. Taking the matter in the round we find that a value for the type B flat in dispute can be properly assessed at £212,500, which is the value we place upon the property for the purposes of this application,
24. We turn now to the question of yield rates. It is fair to say that since the Arbib decision was promulgated by the Lands Tribunal it has caused valuers practising in this field to review their stance on yield rates. To follow Arbib or not to follow Arbib, that is the question. In this case Mr Maunder Taylor has eschewed the Lands Tribunal's finding and stuck to settlement evidence and tribunal decisions. He accepted that there was no market evidence of transactions in this case but that the Cadogan Estate was a special market and that beyond it was possible to still rely on settlement evidence. Mr Shapiro has followed Arbib and sought to introduce financial market evidence.

25. The Arbib case dealt only with deferment rates in respect of properties largely on the prestigious Cadogan Estate. The decision also highlighted the lack of quality evidence put before the tribunal and that it is only in the absence of dependable open market transactions that recourse to other markets should be undertaken. Mr Maunday Taylor's evidence of settlements suffered from the very problems highlighted by the Lands Tribunal. We find Mr Denyer-Green's submissions on the yield evidence more persuasive than Mr Robson's. However, that is not to say that we are wholly in agreement with the rates put forward by Mr Shapiro. We did feel that he had chosen PIBS in something of blindfold/pin way and the same could be said of the National Savings certificates. They are however a starting point and one that in this case we prefer to Mr Maunday Taylor's. We accept that the Arbib case is of general application. However in starting the deferment rate at 5.5% we do not believe that Mr Shapiro has made sufficient provision for the risks associated with this property. We cannot accept that there is only ¾% difference in the deferment rate for a flat on the Cadogan Estate and an architecturally somewhat unpleasing block situated beneath the flight path to Heathrow in the outer reaches of London. We are aware that there have been and may still be service charge disputes within the block and management risks associated with a property of this type has not in our view been given sufficient weight. The likelihood, or not, of growth has to be considered. We find that Mr Maunday Taylor is too high at 7.5% and Mr Shapiro too low at 5.5%. We have concluded that the appropriate deferment rate in this case is 6.5%. As to the term rate Mr Maunday Taylor applied a 9% element and Mr Shapiro 7%. For the reasons we have stated above and taking into account all that was said by the parties we find that a figure mid way between is appropriate and accordingly we find that 8% is the applicable rate in this case.
26. We turn now to relativity. The parties were initially united at 95% for the longer lease terms. Mr Shapiro went on to review his initial starting percentage against graph "evidence" and settlements as well as, to an extent, LVT decisions. We preferred this cross checking to the opinion of Mr Maunday Taylor, which was rooted in the settlement/LVT decision evidence. Accordingly we find that the relativity applicable for the long leases should be 92.5%. As to the shorter lease lengths we noted all that was said. Neither expert had any market evidence and again settlement evidence was used and, in Mr Shapiro's case, graphs. Our knowledge and experience leads us to find that the middle ground between the parties percentages sits more comfortably with the long lease percentage and accordingly we find that 62% is the relativity for the shorter leases.

27. The matter we now need to address is perhaps the most vexed element of this case being the value to be attributed to the potential development of the block. We have submissions from both Mr Shapiro and Mr Maunder Taylor as to their views and heard from Mr Armes the architect instructed by the Applicant. It is helpful to record some of the history. In January of 2004 planning permission was granted for the erection of an additional four two bedroom flats with four car parking spaces and cycle parking. The car parking was to be provided as to one space within the curtilage of the subject property and three spaces on land separated from Thornbury Court by another block of flats and upon which there are a number of garages held on leases of 125 years. This additional piece of land, owned by the Applicant, falls within the same title number as Thornbury Court but is not included within the Notice under s13 issued by the Respondent. Mr Armes in his evidence to us indicated that other alternatives had been looked at including the use of the subject premises to site all car parking but these had not been pursued to a final planning application.
28. It is right to record that Mr Robson, on behalf of the Respondent, conceded that the development of the roof did have value by virtue of the planning consent granted in January 2004. He attacked the evidence given by Mr Shapiro on the basis that he was not a planning expert and was unaware of many current planning guidelines. Equally Mr Denyer-Green attacked Mr Maunder Taylor's evidence as being illogical on the basis that initially Mr Maunder Taylor had adopted the view that there was no value attributable to the planning permission.
29. Mr Shapiro on behalf of the Applicant put forward the development value claim in three ways. First he said that all four car parking spaces could be provided within the curtilage of the s13 land or alternatively that planning permission could be obtained so that car parking was not necessary.
30. The second suggestion was that if planning could not be granted then the existence of the planning permission was such that invoking the principles contained in the Lands Tribunal case of *Stoke v. Cambridge Corporation* it would be possible for the Respondent to reach agreement with the freeholder to acquire the necessary car parking spaces at a figure of 30% of the development value of the land.
31. Finally Mr Shapiro indicated that compensation would be payable under paragraph 5 of Schedule 6 of the Act, equivalent to the development value of £238,014. It was not until the closing submissions that the Respondents conceded the development value potential. Annexed to Mr Robson's submission was a Schedule showing how the development value had been calculated at a figure of £42,773 of which it was said that only 50% was payable


as a result of a comment by Mr Armes who believe that there was a 50:50 chance that planning permission could be obtained to develop the existing land without the freeholder's garage land.

32. We shared Mr Robson's concerns as to Mr Shapiro's knowledge of planning matters. It is fair to say that he did not hold himself out as a planning expert but his supplemental report went a long way to give the impression that he was an expert. In cross-examination by Mr Robson it became clear to us that there were various elements of the planning law with which he was not familiar. He had however addressed the matter in more details than had Mr Maunder Taylor who attributed no value for the existence of the planning permission. We cannot agree with him and indeed the submission from Mr Robson indicated that some value had to be attributed. The question is, what is that value? We find that there is a value both by reference to paragraph 2(1)(a) that is to say the value of the freeholders interest in the premises determined in accordance with paragraph 3 and also compensation under paragraph 5 as a result of the diminution in value of the garage land.
33. We heard all that was said by Mr Armes and have concluded that there is perhaps a 50% chance that there would be the possibility of creating the four flats either utilising car parking within the curtilage of the land contained within the s13 Notice or persuading the local authority in the light of the off road parking that was apparent on our inspection that such parking as was required was less than one per flat. We would not however attribute a figure of more than 50% of the development value to be added to the freeholder's interest in the subject premises because of this difficulty.
34. We were not overly impressed with the suggestion that the *Stoke v. Cambridge* case was of assistance. That dealt with a compulsory purchase issue and that of course does not arise in this matter. It is not possible to guess at what level the freeholder might be prepared to sell the car parking spaces to the Respondent. However it does not seem to us that we need to follow that route as instead, in addition to the value to the freeholder we find that there is an element of compensation to be payable under paragraph 5 in respect of the diminution in value of the garage land. The garage land and the subject premises are joined as one for the purposes of the planning application. There is no more than a 50% chance that the s13 land can be developed without the garage area. The garage area clearly cannot be developed without the s13 land, at least insofar as the present planning position is concerned. It may well be that in the passage of time there will be a possibility to develop that particular plot if some arrangement can be reached with the garage holders but that is not a matter that we need to consider.

35. In attributing only 50% of the development value to the freeholder's interest, it leaves a further 50% which is unallocated. This we find should be attributed to the garage land but the reduction which we applied to the s13 land also applies to the garage land. If the s13 land alone can be developed then the garage land has no real value. There is a 50% chance that it might be possible and therefore there is an equal chance that it might not. Accordingly we therefore award compensation of 25% of the development value under paragraph 5.
36. The next matter we need to determine is the development value. We noted Mr Denyer-Green's argument that the late submission of the Schedule by the Respondent should not be allowed. We are prepared to accept this late submission as we do not believe that the Respondent has been prejudiced. Mr Denyer-Green could have submitted a response from Mr Shapiro had he chosen. It is interesting to note however that Mr Maunder-Taylor has, to a large extent, accepted the figures put forward by Mr Shapiro. In regard to the gross development value Mr Shapiro had suggested a figure of £783,950 allowing some £30,000 for the four car parking spaces. Mr Maunder-Taylor had a gross development value of £741,500 with no allowance for the parking spaces. We believe the figure of £10,000 suggested for the garages is about right but that car parking spaces would not be worth 75% of the garage space. It seems to us and we find that the appropriate gross development figures should be £750,000, to reflect the value attributable for the car parking spaces.
37. The initial development costs are agreed at £337,111. Mr Shapiro suggests contingencies and other costs at 10% and Mr Maunder-Taylor at 15%. Our own knowledge and experience would indicate that a figure of 15% is more appropriate given the nature of the proposed development. As to supervision we agree that a figure of 10% would be appropriate but we do not believe that VAT would be payable on the building costs. In our view the flats would "eligible constructions" built on top of an existing building and in those circumstances can be zero rated. It is our understanding that the relevant VAT regulations indicate that an enlargement and extension to create additional dwellings can be zero rated provided that the new dwelling is wholly within the enlargement or extension and the dwelling is designed as a dwelling.
38. For ease of reference we have attached to the Decision a Schedule showing what we consider to be the appropriate development value for the subject premises which results in an additional sum payable under paragraph 3 of Schedule 6 of £44,700 and compensation payable under paragraph 5 of Schedule 6 of £22,350. We have, as can be seen, accepted

Mr Shapiro's rates of interest and insofar as the various additional expenses, for example soil survey and roof terrace exploratory work which Mr Maunder Taylor has included these are of course to be found in appendices to Mr Shapiro's report and we would have expected therefore that they would have appeared in his residual valuation.

39. We have attached to the Decision a Summary showing the total sum payable which is £204,989 of which £53,696 is payable to the intermediate landlord and the balance of £151,293 payable to the freeholder.



Chairman

Dated 24<sup>th</sup> May 2006

## SUMMARY

### THORNBURY COURT

1.	Payable to Halliard as agreed in respect of Flats 1 & 8	£53696
2.	Payable to Freeholder as agreed in respect of Flats 1 & 8	£30372
3.	Payable to Freeholder in respect of Flats 2, 4, 5, 6, 7 & 16	£50498
4.	Payable to Freeholder in respect of Flat 10	£ 618
5.	Payable to Freeholder in respect of non-participating flats 3, 9, 11, 12, 12a, 14 & 15	£ 1755
6.	Payable to Freeholder under para 3 Schedule 6	£44700
7.	Payable to Freeholder under para 5 Schedule 6	£22350
8.	Payable to Freeholder as agreed in respect of appurtenant land	£ 1000
		<hr/>
		£204989

Total to Halliard	£ 53696
Total to Freeholder	<u>£151293</u>

**£204989**

# Thornbury Court, Osterley

**Flats 2,4,5,6,7 & 16**

**Valuation date**  
**Lease expire**

**15.04.2005**  
**28.09.2080**

**75.46**

**Number of years unexpired 75.46 on under lease**

	To	To	To	
	29.09.2014	29.09.2047	28.08.2080	
<b>Number of years to 1<sup>st</sup> review</b>	<b>9.46</b>	<b>33.00</b>	<b>32.91</b>	<b>92.5%</b>

			To review	1 <sup>st</sup> 2 <sup>nd</sup> review	To reversion	Share of f/H	Existing lease
Rent passing	Flat 2	Type A	£100.00	£200.00	£300.00	£197,700	£182,873
	Flat 4	Type C	£ 75.00	£150.00	£300.00	£155,250	£143,606
	Flat 5	Type A	£ 75.00	£150.00	£300.00	£197,700	£182,873
	Flat 6	Type B	£100.00	£200.00	£400.00	£212,500	£196,563
	Flat 7	Type A	£75.00	£150.00	£300.00	£197,700	£182,873
	Flat 16	Type B	£75.00	£150.00	£300.00	£212,500	£196,563
			<b>£500.00</b>	<b>£1,000.00</b>	<b>£1,900.00</b>	<b>£1,173,350</b>	<b>£1,085,351</b>

Capitalisation rates	Term	8%
	Reversion	6.5%

Value of share of Freehold £1,173,350

Value of existing lease 92.50% £1,085,351

Diminution in value of Freehold Interest

Rent reserved £500.00

YP to 1<sup>st</sup> review 6.190 £3095

Rent reserved £1,000.00

YP to 2<sup>nd</sup> review 33 years 11.0514

xPV of £1 in 9.46 years 0.48320 5.5636 £5564

Rent reserved £1,900.00

YP to reversion 32.91 years 11.507

xPV of £1 in 42.46 years 0.0379 0.4361 £829

Reversion to 1173350

X PV of £1 in 75.46 years 0.00299 £.3508 £12,996 £1,098,347

£75,003

50%

Marriage value £ 37,502

£ 12,996

Price for freehold £ 50,498



**Thornbury Court, Osterley**

<u>Flats 10</u>	Valuation date	15.04.2005	
	Lease expire	28.09.2111	106.45
Number of years unexpired 106.45 on lease			
Capitalisation rates	term	8%	
	Reversion	6.5%	
Value of share of Freehold		£197,700	
Diminution in value of Freehold interest			
	Rent reserved	£30.00	
	YP for 106.45 years (perpetuity)	<u>£12.50</u>	375
Reversion to			
X PV of £1 in	106.45 years	£197,700	
		<u>0.00123</u>	<u>243</u>
			<u>£ 618</u>

# Thornbury Court, Osterley

## Non Participators

Valuation Date 15.04.2005

<u>Term</u>				<u>28.09.2014 F/H value</u>		
				<u>9.45</u>		
Flat 14	125 yrs from 29.09.1986	28.09.2111	£106.45	£50.00	£216,500	Halliard
Flat 15	125 yrs from 29.09.1986	28.09.2111	£106.45	£50.00	£197,700	Halliard
				£100.00	£414,200	
Flat 3	999 yrs from 29.09.1986	18.09.2985	£980.41	£0.001		Nil value
Flat 9	999 yrs from 29.09.1986	18.09.2985	£980.41	£0.001		Nil value
Flat 11	999 yrs from 29.09.1986	18.09.2985	£980.41	£0.001		Nil value
Flat 12	999 yrs from 29.09.1986	18.09.2985	£980.41	£0.001		Nil value
Flat 12A	999 yrs from 29.09.1986	18.09.2985	£980.41	£0.001		Nil value

## Flats 14 & 15

Valuation date 15.04.2005  
Lease expires 28.09.2111

Number of years unexpired 106.45  
Rent passing £100.00  
Capitalisation rates term 8.00%  
Reversion 6.5 %

Value of share of Freehold £414,200

Diminution in value of Freehold interest

Rent reserved £100.00  
YP to end of term £ 12.50 1250  
Reversion to £410,200  
X PV of £1 in 106.45 years £0.00123 505  
£1755