

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/ENF/1725/05

**IN THE MATTER OF SECTION 26(1) OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

AND IN THE MATTER OF 2 ST JOHNS PARK, BLACKHEATH, LONDON, SE3

BETWEEN:

**MARK GLEN MENTA & DEBORAH JANE MENTA
THOMAS AUSTIN PAUL MURPHY
JACQUELINE APRIL CRAWLEY
STEPHEN HARVEY WHITFIELD
MARIA EDITH FERNANDES & ELFINA ALDONCA FERNANADES
ALEXANDRA CLAIRE PEPPER & DAVID MICHAEL DAO
JOHNATHAN VAUGHAN DAVIES
LYNNE WALLIS
NEIL JOHN THODY**

Applicants

-and-

MICHAEL MANSOOR

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is an application made the Applicants to collectively enfranchise under the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act"). The Respondent is a missing landlord. Accordingly, the Applicants

issued a claim in the Bromley County Court seeking a vesting order pursuant to s.26(1) of the Act, which was granted by District Judge Thomas on 9 December 2005. Paragraph 3 of the order remitted this matter to the Tribunal, under s.27(1)(b) of the Act, so that the purchase price to be paid by the Applicants could be determined. The Tribunal's determination is made pursuant to s.32 and Schedule 6 of the Act.

2. The Tribunal is told that the subject property is a substantial three/four storey, triple fronted property originally built as a single residence in or about 1890. It was later used as a hotel and subsequently converted into 15 self-contained one and two bedroom flats, including a detached single storey studio at the rear of the main building. Of the 15 lessees, 10 participate in this application to enfranchise.
3. The leases granted to the lessees are a standard residential lease for a term of 99 years from 24 June 1983. The relevant date for the valuation of the freehold price is 9 December 2005, being the date of the vesting order. The unexpired term was, therefore, 76 years. The initial ground rent payable for the first 33 years of the term for ten of the flats is £100 and thereafter rising to £200 and £400 respectively for each remaining third of the term of the lease. For the remaining five flats, the initial ground, payable on the same basis, is £125, £250 and £500 respectively.

The Issues

4. To determine the price for the freehold in this matter, the Tribunal must consider the following:
 - (a) the value of the freehold interest.
 - (b) the freeholder's share of the "marriage Value"; and
 - (c) the price of any other interests to be acquired.

In general terms, this will require a determination of the yield rate to be applied to the capitalised ground rent and deferment of the freehold reversion. In the absence of any market evidence, to ascertain the freeholder's 50% share of the marriage value of the short and long leasehold values, the Tribunal has to consider the "relativity" between those two values. Each of these matters is considered in turn below.

Decision

5. The Tribunal's determination took place on 5 June 2006 and is made entirely on the basis of the documentary evidence before it. The Tribunal did not inspect the subject property. The Applicant's valuation evidence is confined solely to a report prepared by their expert, Mr M Jones FRICS of Sinclair Jones, Chartered Surveyors, dated 22 May 2006.

(a) Yield & Deferment Rate

6. Mr Jones simply submitted in his report that a yield rate of 9% ought to be applied. No evidence was given by him for adopting this figure and was considered by the Tribunal to be high. The Tribunal, therefore, effectively had to rely on its own expert knowledge and experience to determine this issue.
7. The Tribunal had regard to the fact that the subject property was located in a desirable part of South London. Mr Jones states that the subject property overlooks a peripheral area of heath land. It is also located within the Blackheath Conservation Area in a well regarded residential area. All usual amenities are locally available with a wide range of shops, bars and restaurants in Blackheath Village less than a mile away. Bus, rail services and major road networks are readily accessible. All of the 15 flats are subject to a rising ground rent. In the Tribunal's judgement, taking these matters together, the subject property would prove to be an attractive for any prospective investor.
8. In the Tribunal's experience, yield rates have in recent years been falling, possibly as a result of the effect of low interest rates. Confirmation of this general trend can be found in the recent important Lands Tribunal decision of *Arbib* and other consolidated appeals heard together. These appeals have not been considered at all by Mr Jones in his report. In those appeals deferment rates of between 4.75% and 6.4% were found to be appropriate for various properties on the Cadogan Estate in central London. Clearly, the deferment rates applied in *Arbib* is limited

on its facts to prime properties located in central London, whereas the subject property is not. To reflect this, and having regard to all of the matter set out above, the Tribunal considered that the appropriate yield rate to be applied in this matter is 7%.

(b) Relativity

9. In his report, Mr Jones states that he found little or no evidence of comparable sales for both 'short' and extended leases. Indeed, his research produced no conclusive evidence. He had regard to the sale prices being achieved for similar flats in the locality. A comparison of the sale prices for four comparable properties revealed sale prices of £180,000, £250,000 and £350,000 for bed-sit and one and two bedroom flats respectively. Mr Jones did not provide any particulars about the comparable properties, when those sales took place or the unexpired terms of the leases. However, the Tribunal did not consider these capital values to be exceptional and in the absence of any other evidence, was prepared to accept these values as the best market evidence of the short leasehold values for the subject property. This provided a total figure of £1,465,000 for all of the flats.
10. Mr Jones then went on to submit that a relativity figure of 97.9% should be applied to the short leasehold value to find the total long lease value. His figure of 97.9% was arrived at by having regard to the graph produced by the college of

Estate Management Report on Relative Values. Regrettably, Mr Jones did not annex this to his report.

11. Again, in the absence of any real evidence, the Tribunal had to decided this issue on the basis of it's own expert knowledge and experience. The Tribunal considered, the relativity figure contended for Mr Jones to be high. Based on its own experience and also having regard to recent decisions in or around the same locality and in South London generally, the Tribunal considered that a relativity figure of 95% was appropriate in this matter.

(c) Price of Any Other Interest

12. The Tribunal was mindful that there were 5 non-participating lessees, all of whom had had leases with an unexpired term of 76 years. It was of the view that although these lessees were not participating at the present time, there was a very real likelihood or prospect that they would seek a long extension to their leases for two reasons. Firstly, that they could achieve a significantly higher sale price for their respective flats if they were subject to a long lease. Secondly, the guidelines of the Council of Mortgage Lenders provide that a lender was very unlikely to lend against a leasehold property where the unexpired term was less than 70 years. It was, therefore, almost inevitable that in the near foreseeable future, the non-participating lessees would seek an extension to their leases to be able to market their flats. By the Applicants enfranchising now, the Respondent would

effectively lose the benefit of the premiums payable to him in that event. This is often expressed as the “no hope” value.

13. In his report, Mr Jones makes no mention of this issue. There is no way of knowing if he considered and discounted it or he did not consider it at all. As this is as case of a missing landlord, the Tribunal is under a duty to consider this matter as part of its determination. Indeed, in the decision of *Shulem B Association Ltd* dated 6 December 2000, the Lands Tribunal took exactly the same approach. That case also concerned a missing landlord and the Lands Tribunal found that the “no hope” value for one non-participating tenant was 15% of the marriage value. In the present case, there are five non-participating lessees. For the reasons set out in the preceding paragraph, the Tribunal also considered that there was a very real prospect of those lessees seeking an extension to their existing leases in the foreseeable future. The “no hope” value to the Respondent was, therefore, significant. Accordingly, the Tribunal determines that this ought properly to be reflected in a finding of 10% of the marriage value.
14. There were no further matter for the Tribunal to consider as it was told that no ground rent had been demanded from any of the lessees during their ownership of the respective flats and that no service charges were payable as the lessees had formed a residents association to manage the property in the early 1990s. They have since insured and maintained the property themselves.

15. Accordingly, for the reasons stated above, the Tribunal determines that the price to be paid by the Applicants for the freehold interest is **£116,000**. The Tribunal's valuation is set out in Appendix 1 annexed to this Decision.

Dated the 22 day of June 2006

CHAIRMAN..... I. Mohabir
Mr I Mohabir LLB (Hons)

Appendix 1

Leasehold Valuation Tribunal's Valuation

Diminution in the Value of the Freehold Interest

As Existing

Term 1 Rent	£1,625	
YP 10 Yrs @ 7%	<u>7.024</u>	£11,414
Term 2 Rent	£3,250	
YP 33 yrs @ 7% 12.754		
PV 10 yrs @7% 0.508	<u>6.479</u>	£21,057
Term 3 Rent	£6,500	
YP 33 yrs @ 7% 12.754		
PV 43 yrs @ 7% 0.0545	<u>0.697</u>	£4,517
Reversion to Capital Value	£4,100,000	
PV 76 yrs @ 7%	<u>0.00585</u>	<u>£23,985</u>
Existing Freehold Interest		£60,973

Marriage Value

Value of Participating Flats After Enfranchisement

£2,635,000

Plus

Investment Value of Non- Participating Tenants

Term 1 Rent	£575	
YP 10 Yrs @ 7%	<u>7.024</u>	£4,039
Term 2 Rent	£1,150	
YP 33 yrs @ 7% 12.754		
PV 10 yrs @7% 0.508	<u>6.479</u>	£7,451
Term 3 Rent	£2,300	
YP 33 yrs @ 7% 12.754		
PV 43 yrs @ 7% 0.0545	<u>0.698</u>	£1,601

Reversion to Capital Value £1,465,000

PV 76 yrs @ 7% 0.00585

£8,570

£21,661

Leaseholder's Proposed Interest

£2,656,661

Freeholder's Proposed Interest

Nil

£2,656,661

Less

Leaseholder's Existing Interest

£2,635,000 @ 95% relativity £2,503,250

Freeholder's Existing Interest £60,973

£2,564,223

Marriage value

£92,438

50:50 Split

£46,219

Marriage Value Attributable to the Freeholder

£46,219

Hope Value of Non-Participating Flats

Proposed Value of Non Participating Flats £1,465,000

Freeholders interest after grant £0

Total value of proposed interests

£1,465,000

Present interest in Non Participating Flats

£1,465,000 95% relativity £1,391,750

Freeholders present interest

£21,661

Total value of current interests

£1,371,411

Hence marriage value

£93,589

Hope Value of Marriage Value 10%

£9,359

Premium

£116,551

Say £116,000