

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT  
COMMITTEE**

**LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993 SECTION  
24**

**Ref** : **CAM/26UF/OCE/2005/0007**

**Property** : **29-35 Bowmans Avenue Hitchin  
Hertfordshire SG4 9QD**

**Parties** : **Bowmans Associates Limited** **Applicant**  
**Fable Estates Limited** **Respondent**

**Representation** : **Mr B R Maunder Taylor FRICS** **Applicant**  
**Mr L A Nesbitt BSc(HON)FRICS MCI Arb** **Respondent**

**Tribunal** : **Mr A A Dutton** **Chair**  
**Miss M Krisko** **BSc(EST MAN)FRICS**  
**Mr J Dinwiddy** **FRICS**

**Hearing** : **04 May 2005**

**Decision** : **20<sup>th</sup> May 2005**

## **DECISION**

### **A. BACKGROUND:**

1. This application was made by three of the four lessees of the property at 29-35 Bowmans Avenue Hitchen namely Lesley Ann Hankin the lessee of 29 Bowmans Avenue, Mr Richard Anderson the lessee of 33 Bowmans Avenue and Mr & Mrs Blundell, the lessees 35 Bowmans Avenue. Collectively they have formed the Company, Bowmans Associates Limited which was the nominee purchaser. Mr Mark Bambridge, the lessee of 31 Bowmans Avenue was not participating. The Initial Notice gave the Respondent Landlord until 18 October 2004 to respond.
2. The Landlord's Counter Notice under s21 of the Act was dated 14 October 2004 and admitted the applicants right to collective enfranchisement but contended that the Initial Notice was invalid as the premium offered was unrealistic. Without prejudice to that assertion the Notice went on to put forward counter proposals. The argument as to invalidity was not pursued by the Respondent Landlord at the hearing. The Surveyors for the parties had agreed the following:
  - Each of the four maisonettes have a lease of 99 years from the 25 December 1970 paying an annual ground rent of £16.00.
  - The valuation date is 14 October 2004
  - The yield for capitalising the ground rent and deferring the reversion is 9%
  - There was no compensation payable under paragraph 2(1)(c) of Schedule 6 of the Act.
3. The Following issues were for determination by the Tribunal.
  - The long lease value after enfranchisement. The Applicant contended for a figure of £120,000.00 for each maisonette and the Respondent £130,000.00.
  - The value of the existing leases for which the Applicant contended a figure of £115,000.00 for each maisonette and the Respondent intended to apply an 88% relatively to the long lease value.
  - The Applicant contended that there was no hope value for the non-participating maisonette whereas the Respondent contended hope value at 15% of the marriage value.

**B. INSPECTION:**

4. The Tribunal inspected the subject premises on the morning of 4 May 2005. The subject premises comprised a two-story purpose built block housing four maisonettes under a tile roof in a reasonably quiet and pleasant residential area. Each maisonette had a garage, two of which were situated in a block some distance from the subject premises and the ground floor maisonettes having the use of two garages, which were in close proximity. All maisonettes had sole use of a garden area, the ground floor immediately adjoining, the first floor property having ownership of the rear part of the garden.
5. We were able to inspect three of the four flats being unable to gain access to the non-participating property. All were two-bedroom accommodation with living room and kitchen as well as a bathroom with full suite. Some had been the subject of more modernisation work than others and we noted the position in respect thereof.

**C. EVIDENCE:**

The Applicants case.

6. Mr MaunderTaylor presented the evidence on behalf of the Applicants and had provided us with two reports, one dated 1 March 2005 and a supplemental report dated the 4 April 2005. At the hearing Mr Maunder Taylor took us through his reports and in particular the comparable properties, upon which he relied for the purposes of determining the extended lease value and the existing lease value of the subject properties. He also expanded upon the reasons why he felt that there was no hope value in relation to which he referred us to a number of Lands Tribunal cases, which were detailed in his second report. This second report also made further comments on the question of relativity, which he felt was the end product of assessing the long lease and existing lease values and not a method by which those values should be found. His view was that market evidence took priority over relativity tables and that the market evidence he provided in respect of the various comparable properties was compelling.

7. Returning the question of hope value, he indicated that this was not, in his view, an issue of law as it was not mentioned in Schedule 6 of the Act. It is a question of valuation evidence and judgment he said. His suggestion was, relying on Lands Tribunal authority, that an all risks yield would take into account any hope value. If we do not agree with that submission then in this particular case there was no hope value as a result of the circumstances and the remoteness of the non-participating tenant requiring a lease extension which did not seem to have been a concern at the time when he purchased which was in July of last year. His final position in submissions to us on the question of hope value was that the figure of 5% was the maximum that should be awarded which he felt was a figure supported by authority (see the Lands Tribunal cases of Blendcrown and Tynedale).

The Respondents Case:

8. Mr Nesbitt, on behalf of the Respondent had also submitted a written report which was dated 17 March 2005. An addendum to this had been prepared on the 11 April 2005. As with Mr Maunders Taylor he took us through the report expanding as necessary on various points. The essence of his evidence was that he was of the opinion that the average value of the maisonette and garage, disregarding improvements but after enfranchisement, was £130,000.00. To that figure of £130,000.00 he had applied a relativity of 88%. This relativity figure was based on a number of leasehold valuation tribunal cases, which he cited and also a graph produced by LEASE, a body set up for the purposes of assisting, in particular Lessees, in connection with enfranchisement generally. On the question of hope value he cited Lands Tribunal authority and concluded that a figure of 15% of the marriage value would be applicable in respect of the non-participating flat. In evidence to the Tribunal he accepted that his long lease values had been obtained without inspecting the property or in checking on the improvements, although he had made adjustments for those and did not reflect the differing location of the various comparable properties some of which were very close to a main line railway. He also put before us some evidence of costs in

connection with lease extensions based upon correspondence that various Lessees had had with the Respondent Landlord.

9. Mr Maunder Taylor relying upon his figures and evidence had concluded that the correct price for the freehold would be £8,500.00. Mr Nesbitt had concluded that a figure of £27,300.00 would be appropriate.

**D. THE LAW:**

10. The valuation provisions in respect of the acquisition of the freehold by a nominee purchaser are contained in Schedule 6 to the 1993 Act. Paragraph 2.1 of the Schedule sets out the basis upon which the price for the freehold is to be ascertained. It is the aggregate of
  - (a) the value of the freeholders interest in the premises as determined in accordance with paragraph 3.
  - (b) the freeholders share of the marriage value as determined in accordance with paragraph 4 and in this case agreed at 50%.
  - (c) Any amount of compensation payable to the freeholder under paragraph 5 which again has been agreed as nil.
11. In paragraph 3 of the Schedule the basis of the assessment of the freeholders interest is set out which includes amongst other things an assumption that there is no right to acquire any interest under the terms of the Act (commonly called "the No Act World") and that the value of the flat is assessed without regard to any improvements carried out by the tenant or his or her predecessor in title.
12. Paragraph 4 of the Schedule then deals with the elements that are to form the marriage value which is divisible equally between the Landlord and Lessee.

**E. DECISION:**

13. Following our inspection of the subject premises and having heard all that was said by both valuers at the hearing and considering their written submissions to us, we are satisfied that the proper value for the extended lease would be

£120,000.00 to which however some allowance should be made for the apparent increase in ground rent that had been negotiated in respect of other lease extensions granted by the Lessor to Lessees. Ground rent appeared to vary from between £200.00-250.00 per annum and certainly those were the rent levels sought in connection for example with the lease extension to 8 Holdbrook in Hitchin, 31 Bowmans Avenue in Hitchin and we understand 26 Halsey Drive. These were all comparable properties relied upon by the parties. We would therefore make an allowance for that liability which would affect the extended lease value by the extent shown on the attached schedule giving a figure of £122,500.

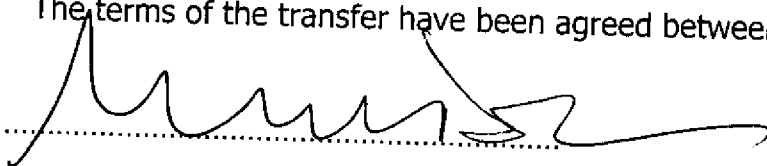
14. Insofar as the current lease value is concerned we heard all that was said. The relativity provisions applied by Mr Nesbitt did not seem to be as helpful in this case as the market evidence provided by Mr Maunder Taylor which we preferred. We conclude that the existing lease value should be recorded at £115,000.00 for the purposes of this application.
15. The only other matter we need to address is that of hope value. We are satisfied that in this case it does apply. The lease lengths are some 65 years and it is we believe accepted that building societies perhaps at best will allow the term of the mortgage together with 30 years as being the minimum period for which they would be prepared to lend. Some have more stringent lending obligations than that. We are therefore persuaded that within a reasonable period of time the non-participating tenant is likely to seek a lease extension. We understood in comments made to the Tribunal at the hearing by Mr Blundell, that the non-participating Lessee for various reasons felt unable to participate in the acquisition of the freehold. We are not however persuaded that the correct percentage to apply to the marriage value would be 15%. Mr Nesbitt relied upon a somewhat dated case of Shulem B Association Limited which was a Lands Tribunal matter. Mr Maunder Taylor had put forward a number of tribunal cases where either no hope value applied or a figure of 5% was attributed to this element. Mr Maunder Taylor had been somewhat critical of the method by which hope value had been

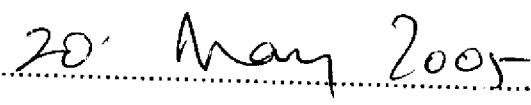
incorporated in previous Tribunal Decisions. He relied upon a recent Decision of the Lands Tribunal in Gesso Properties (BVI) Limited v SCMLLA Limited. He sought to, we believe, put greater emphasis on a recounting by the Tribunal of evidence given by Miss Ellis in that case who had opined the usual way to deal with hope value was to adjust the all risks yield. However that was dismissed by the Tribunal member for the reason stated in the Decision who went on to indicate that in principle he had no objection to Mr Asburys method of calculating same which was by reference to a share of the tenants half share of the marriage value. It is fair to say there is no particular consistency in approach. We find that in this case the appropriate method of calculating this aspect is as set out on the attached schedule.

16. In finding that there is hope value attributable to this case we find that the maximum sum should be 5% based upon the length of the remaining term and the fact that lessees have sought to strike a deal with the landlord in respect of other properties.

17. The price payable for the freehold is as set that out in the Decision Schedule which shows the calculation by which we have reached the assessment of the sum payable for the freehold of £13,200.00.

18. The terms of the transfer have been agreed between the parties.

  
.....  
Chairman

  
.....  
Date

**Nos 29 to 35 Bowmans Avenue, Hitchin Herts SG4 9QD**

**Leasehold Valuation Tribunal's Valuation**

**as at 14 October 2004**

<b>Value of - unimproved flats with garages</b>	<b>No. flats</b>	<b>Current Lease</b>	<b>Extended Lease</b>
	<b>4</b>	<b>£ 115,000</b>	<b>£ 122,500</b>
<b>Value of Freeholder's Interest</b>			
<b><u>Value of Ground Rents</u></b>			
Total of Ground rents	4	£ 16	£ 64.00
YP for 65 years @ 9%			11.07 £ 708
<b><u>Value of Reversion</u></b>			
unimproved flats with garages	4	£ 122,500	£ 490,000
PV £ deferred 65 years @ 9%			0.003692 £ 1,809 £ 2,518
<b><u>Hope value on Non-Participating Flat</u></b>			
Extended Lease	1	£ 122,500	£ 122,500
<b><u>Less Value of Reversion</u></b>			
Current Lease	1	£ 122,500	
PV £ deferred 65 years @ 9%		0.003692 £ 452	
<b><u>LESS Value of Ground Rent</u></b>			
Ground rent	1	£ 16.00	
YP for 65 years @ 9%		11.07 £ 177	
<b><u>LESS Value of Current Lease</u></b>			
Current Lease	1	£ 115,000	£ 115,000
			-£ 115,629
			£ 6,871
<b><u>Hope value on Non-Participating Flat - at</u></b>		<b>5%</b>	<b>of £ 6,871 £ 344</b>
<b><u>Marriage value - Participating Flats</u></b>			
<b><u>Value of Reversion</u></b>			
Extended Leases	3	£ 122,500	£ 367,500
<b><u>Less Value of Reversion</u></b>			
Extended Leases	3	£ 122,500	£ 367,500
PV £ deferred 65 years @ 9%		0.003692 £ 1,357	
<b><u>LESS Value of Ground Rent</u></b>			
Ground rents	3	£ 16.00	£ 48.00
YP for 65 years @ 9%		11.07 £ 531	
<b><u>LESS Value of Current Lease</u></b>			
Current Leases	3	£ 115,000	£ 345,000
			-£ 346,888
			£ 20,612
<b><u>Marriage value on Participating Flats</u></b>		<b>50%</b>	<b>of £ 20,612 £ 10,306</b>
<b>Total</b>			<b>£ 13,167</b>
		<b>but say</b>	<b>£ 13,200</b>