

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UK/OCE/2006/0011

**IN THE MATTER OF ASHBROOK HOUSE, VINE COURT ROAD,
SEVENOAKS, KENT, TN13 3UU**

**AND IN THE MATTER OF THE LEASEHOLD REFORM, HOUSING AND
URBAN DEVELOPMENT ACT 1993**

BETWEEN:

ASHBROOK VINE LIMITED

Applicant

-and-

**(1) THOMAS J RABAN
(2) NICKY D RABAN**

Respondents

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant, as nominee purchaser, pursuant to s.24 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") for a determination of the purchase price to be paid to acquire the freehold interest and appurtenant property in the subject property by way of collective enfranchisement.
2. By an initial notice dated 4 October 2005 served pursuant to s.13 of the Act, five of the seven qualifying tenants in the subject property exercised their right

to collectively enfranchise and acquire the freehold interest. The notice proposed a purchase price of £29,000 for the freehold interest and £100 for appurtenant property, namely, the garden, bin store, passageways, parking spaces, communal grounds and all other communal areas enjoyed by the qualifying tenants under the terms of their respective leases (“the appurtenant property”).

3. By a counter notice dated 18 November 2005 served pursuant to s.21 of the Act, the Respondents admitted the participating tenants right to acquire the freehold interest. The counter notice proposed a purchase price of £47,614 for the freehold interest in the subject property and £5,000 for the appurtenant property.
4. It appears that the parties were unable to agree the purchase price to be paid for the freehold interest and, on 19 January 2005, the Applicant applied to the Tribunal for that determination to be made. In the statement of agreed facts, the parties agreed that the valuation date was 4 October 2005, that the total value of the flats with the benefit of extended leases was £1,156,000 and that Flats 4 and 6 were not participating. The matters that remained in dispute were:
 - (a) the yield rate to capitalise the ground rent and for the deferment of the landlord’s reversion.
 - (b) uplift to reflect the increased value of freehold ownership.
 - (c) the relativity.
 - (d) hope value for the two non-participating lessees.

- (e) the value of the appurtenant land.

These matters are each considered in turn below by the Tribunal. It is not necessary to set out here the basis on which the Tribunal's determination of these issues is made because the relevant valuation assumptions are set out under Part II of Schedule 6 of the Act and both parties were familiar with those statutory provisions.

Inspection

5. The Tribunal inspected the subject property on 19 April 2006. It is a substantial detached period house on 3 floors, including a semi-basement and an attic. The property is of solid brick and stone construction under pitched slated roofs incorporating dormers. There is a further entrance at semi-basement level to the rear. The property has been converted into 7 flats. It is located at the junction of the main Dartford Road and Vine Court Road with access from the latter. The garden area is laid out to lawns and shrubbery with a gravelled communal parking area to the front.

Hearing

6. The hearing in this matter also took place on 19 April 2006. The Applicant was represented by Mr Innis, a Chartered Surveyor, from the firm of South East Surveys. Mr Shamash, the father of the Second Respondent, appeared on behalf of both Respondents.
7. Both Mr Innis and Mr Shamash had, helpfully, set out their respective positions in writing prior to the hearing. Mr Innis had prepared a report dated

22 March 2006. Mr Shamash had prepared a written submission dated 29 March 2006.

(a) Yield

8. Mr Innis contended that a yield rate of 8% should be adopted. He did so mainly on the basis of the agreements reached by his firm in the Southern Tribunal area and also earlier decisions made by the Southern Leasehold Valuation Tribunal. These were set out in Appendix E of his report. In both cases, yield rates between 7.5% to 9% had been adopted. Mr Innis also placed some reliance on the decision of the London Leasehold Valuation Tribunal in October 2005 regarding 54 and 54A Burnbury Road, where a yield of 8% was adopted. However, it should be said that this decision concerned a property that was significantly different from the subject property both as to type and location and also with a fixed ground rent. The decision perhaps lends Mr Innis greater assistance with the approach taken by Tribunals in relation to yields for properties located away from central London after the Lands Tribunal decision in *Arbib*. This matter is considered further below.
9. Mr Shamash's primary argument was that this Tribunal should adopt the same general guidance on valuation principles and procedures when determining the yield as the Lands Tribunal had in *Arbib*. Indeed, Mr Shamash submitted that one of the properties considered in the *Arbib* consolidated appeals was 55/57 Cadogan Square where the circumstances, apart from the location, were very similar to this matter and a yield of 6% was adopted. Mr Shamash accepted that prior to *Arbib* the appropriate yield for the subject property would have

been 8%. In *Arbib*, the Lands Tribunal effectively had reduced a historical yield rate of 6% by 1.25%.

10. Mr Shamash also relied on earlier post *Arbib* decisions made by London and Southern Leasehold Valuation Tribunals where the approach recommended by the Lands Tribunal to determine yields had been adopted to find for yields of between 6.5% to 7%. He further contended that under the headlease of the subject property the ground rent was only collected once a year, which made it a more attractive proposition to any investor. Taking all of these matters together, Mr Shamash submitted that the appropriate yield to be adopted in this matter was 7%.
11. It is clear that, as a Lands Tribunal decision, Leasehold Valuation Tribunals must have regard to the valuation approach to yields advocated in *Arbib*. That is, in the first instance, Tribunals should have regard to any market evidence as to yields and only in the absence of such evidence should have regard to the money markets and in particular gilt rates. *Arbib* is not authority for the general proposition, since advocated by landlords, that similar yields adopted in that case should also be adopted in most other cases. It is not a landlord's charter in relation to yields. It is quite clear that in *Arbib* there was no market evidence of yields before the Lands Tribunal and, therefore, regard was paid to the prevailing gilt rates. The yield adopted in *Arbib* was considered to be the appropriate yield for the prime central London properties that were the subject matter of those appeals. In this Tribunal's judgement, it cannot be correct nor

can the Land Tribunal intended that similar yields should be adopted for properties located outside central London or London itself.

12. In the present matter, there was no *direct* market evidence before the Tribunal as to the appropriate yield to be adopted. The decisions and agreements relied on by Mr Innis shows yield rates falling from 9% to 7.5% or 8.5% between 2002-2004. This indicated that the general trend for yields was downwards and this is generally the commonly held view. However, the evidence relied on by Mr Innis was out of date. His argument would have had greater force if he had adduced evidence of yields, which was less than 18 months old. The Tribunal was satisfied that in the intervening 18 month period, yield rates had fallen further and was not as high as 8% proposed by Mr Innis.

13. Nevertheless, there was sufficient market evidence before the Tribunal to determine the yield. The best evidence was provided by the matter of White Hart Court, North Parade, Horsham (2003), where a yield rate of 7% was agreed by the parties. The Tribunal found support for the figure of 7% having regard to the outer London decisions in 8 Priory Place, Gloucester, Grand Avenue Mansions, Hove and Coniston Court, Hove. It was, therefore, not necessary for the Tribunal to go on to consider gilt rates. Accordingly, the Tribunal finds that the appropriate yield to be adopted in this matter is 7%.

(b) Uplift for Freehold

14. Mr Shamash submitted that there should be an uplift of 2% in the value of the reversion to a freehold compared with the sum of the extended lease values.

This reflected the added value of the freedom achieved by owning a share of the freehold in addition to having an extended lease. He referred the Tribunal to three earlier decisions made by Tribunals where uplifts of 2% and 5% had been granted.

15. The Tribunal accepted, the submission made by Mr Innis that there is no evidence that purchasers pay anymore for a share of the freehold compared with a lease over 80 years. The decided cases relied on by Mr Shamash, at their highest, only support the proposition that a Tribunal *may* make such an award where such relevant evidence had been adduced and this had not been done by him. Accordingly, the Tribunal makes no award in this regard.

(c) Relativity

16. As Mr Innis correctly stated at paragraph 15.1 in his report, the marriage value, if any, is shared equally between the parties. This is effectively the difference in value of the flats with the existing leases and the value of the flats in the control of the lessees with the benefit of being able to grant 999 year leases at peppercorn ground rents.
17. As stated above, the total value of the flats with the benefit of extended lease had been agreed by the parties at £1,156,000. The unexpired term of the leases was 73.5 years. Mr Innis conceded that there was no direct open market evidence. The College of Estate Management report suggested a relativity range outside London of 94.66% to 97.5% with an unexpired term of 73 years. He contended for a relativity of 95% based simply on his experience when

acting for freeholders or lessees with an unexpired term of between 71 and 79 years.

18. Mr Shamash contended for a relativity figure of 93% primarily on a statistical analysis of the graph produced by Matthew Haler of LEASE. The graph had analysed all Tribunal decisions between 1994 to 2003. Mr Shamash also relied on three earlier Tribunal decisions, which supported his figure of 93%. In particular, he relied on the decision regarding 54 and 54A Burnbury Road, where he appeared for his son. In that case a finding of 95% for an unexpired term of 77.25 years was reached, whereas in this matter the leases are four years shorter.

19. In the Tribunal's view, the arguments advanced by both parties on this issue were ultimately self-serving and provided it with little or no assistance. The evidence adduced was not conclusive either way. There were no compelling reasons for the figures contended for by the parties should be adopted. The Tribunal, therefore, took an average of the relativities of the decided cases and agreements reached set out at Appendix E of Mr Innis' report. This produced an average relativity of 94% and this is the figure the Tribunal found to be appropriate in this matter.

(d) Hope Value

20. Mr Shamash contended that the Respondents should receive 15% of the marriage value in respect of the two non-participating flats. He submitted that although a non-participating lessee did not at the relevant time require a lease

extension, that possibility could not be excluded entirely in the future. This was especially so when the flat was for sale and the lessee realised that a higher sale price could be achieved if the lease was first extended. A lease extension only cost half the increase in the value of the flat it produces. In his experience, flats changed hands every 6 to 7 years, which was not long to receive half of the marriage value. In support of his contention, Mr Shamash relied on four earlier Tribunal decisions where awards of 10% and 15% had been made for hope value. In particular, Mr Shamash relied on the Lands Tribunal decision in *Shulem B* handed down on 21 December 2000 where an award of 15% of the marriage value was made for hope value.

21. Mr Innis argued that the addition of hope value conflicted with the intention of the Act, which specifically excluded marriage value for non-participating lessees. However, he conceded that the Lands Tribunal has in certain cases made an additional award for hope value and he set out the relevant cases in Appendix F of his report. He submitted, in this instance, the yield is derived from an analysis of open market transaction which included any hope value as an 'all risks yield'. If hope value was taken into account again, there was a risk of double counting. If a tenant did not want to participate at the relevant time, then the chance of participating in the future was too remote. Mr Innis urged the Tribunal to treat the *Shulem B* decision with some caution as it concerned an absentee landlord.
22. This issue only concerned the non-participating lessees of Flats 4 and 6 in the subject property, both of whom have an unexpired term of 73.5 years

remaining on their respective leases. Mr Innis told the Tribunal that one of the guidelines of the Council of Mortgage Lenders was to lend against leases with unexpired terms of at least 70 years. From this it can be inferred that both Flats 4 and 6 will require lease extensions when they next came on to the market. The Tribunal accepted Mr Shamash' argument that the average property was sold every 6 to 7 years. There was a high likelihood that lease extensions would be required by the lessees of both flats in the foreseeable future. The likelihood of this occurring increased once the threshold of 7 years had been exceeded. The Tribunal, therefore, did not accept Mr Innis' submission that this possibility was too remote. As to the matter of double counting by not also adjusting the yield rate if an award for hope value was made, it seems that this possibility was discounted by the Lands Tribunal in *Shulem B* by awarding a percentage of the marriage value rather than adjusting the yield further. Based on its own expert knowledge and experience, the Tribunal determined that the appropriate figure to be placed on the hope value was 5% of the marriage value.

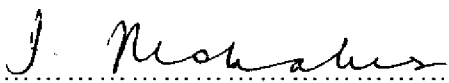
(e) Appurtenant Land

23. Mr Shamash claimed an additional sum of £5,000, which he quantified as the loss to the Respondents to develop the small garden area to the rear of the property. He argued that once the freehold had been acquired anything could be done to this area by either extending the parking facilities or further development.

24. The Tribunal rejected the arguments advanced by Mr Shamash out of hand. On any view, it cannot be correct to say that the freeholder could do anything to the area concerned. It is subject to the rights granted by the existing leases, especially those of the non-participating tenants, which would bind the freeholder. In any event, there was no evidence before the Tribunal that Mr Shamash or the Respondents had carried out any proper investigation regarding the development of the garden area, for example, by applying for planning permission.

25. Accordingly, based on the findings made in this Decision, the Tribunal determines that the premium payable by the Applicant, as nominee purchaser, to acquire the freehold interest in the subject property is **£35,150**. The Tribunal's valuation is annexed to this Decision.

Dated the 7 day of June 2006

CHAIRMAN.....

Mr I Mohabir LLB (Hons)

DECISION

Yield Adopted

7.0%

VALUE OF FREEHOLD INTEREST

Ground Rents at	£	280							
YP at yield Rate for 7.5 years		7.0%	5.6803	£	1,590				
Ground Rents at	£	560							
YP Yield Rate for 33 yrs		33	12.7538						
PV of £1 At Yield Rate in 7.5 yrs		7.0%	0.6023794						
			<u>7.682626392</u>	£	4,302				
Ground Rents at	£	1,120							
YP Yield Rate for period		33	12.7538						
PV of £1 At Yield Rate in (7.5+ 33=) 40.5yrs		7%	0.0645960						
			<u>0.823844465</u>	£	923				
Reversion to	£	1,156,000							
Reversion To Freehold with VP		100%	£ 1,156,000						
PV of £1 At Yield Rate in (7.5+33+33=) 73.5 yrs		7%	0.0069270	£	8,008	£	14,823		

VALUE OF INTERMEDIATE LEASE

£ -

MARRIAGE VALUE

Value of Participating Flats with Freehold

£ 828,000

less

Value before Enfranchisement

Value of landlords interest (5/7 X value of freehold interest)

£ 10,588

Value of Leasehold interest (94%)

94% £ 778,320 £ 788,908

Marriage Value

£ 39,092

Freeholders Share

50% £ 19,546

HOPE VALUE

Flats 4 & 6

£ 328,000

Value after Enfranchisement

less

Value before Enfranchisement

Value of Landlords Interest (2/7 X value of freehold interest)

£ 4,235

Value of Leasehold Interest (94%)

94% £ 308,320 £ 312,555

£ 15,445

Hope Value at 5%

5% £ 772

APPURTENANT PREMISES

£ -

COMPENSATION

£ -

TOTAL£ 35,141**PRICE TO BE PAID**

SAY

£ 35,150