

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Subject Property: Flats 9-81 (Odd numbers only) Burns Drive, Hemel Hempstead, Hertfordshire (the Premises)

**Applicant
Nominee Purchaser:** Burns Drive Associates Limited, 2 Linfields Little Chalfont, Amersham, Buckinghamshire HP7 9QH

Applicant's Solicitor: Graham White and Company Solicitors (ref: SF/CG/Golton) 94, High Street, Bushey, Hertfordshire WD23 3HD

Applicant's Surveyor: Mr BR Maunder Taylor FRICS, MAE

**Respondent:
Freeholder/Landlord:** Orchidbase Limited, 101 Uphill Road, London NW7 4QD

Respondent's Surveyor: Mr LA Nesbitt BSc (Hons) FRICS, MCI Arb

Case Number: CAM/26UC/OCE/2005/0025

Application: An application to the Tribunal under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (the 1993 Act) to determine matters in dispute in respect of the exercising of the right to a collective enfranchisement

Tribunal: Mr JR Morris (Chairman)
Mr JR Humphrys FRICS
Mrs S Redmond BSc (Econ), MRICS

Valuation Date: 7th January 2005

Hearing Date: 12th September 2005

Persons Attending: Mr Maunder Taylor, Applicant's Surveyor
Dr I Galton, Participating Tenant
Ms L Feldman of Graham White & Co
Mr L Nesbitt, Respondent's Surveyor
Mr Bloch of Orchidbase Ltd
Participating Tenants:
Mrs Milton, Flat 19
Mr and Mrs Tasker, Flat 21
Mr Brian and Mr Neil Weyman, Flat 39

The Application

1. This is an application to the Tribunal under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (1993 Act) to determine matters in dispute in respect of the exercising of the right to a collective enfranchisement.
2. The Applicant as Nominee Purchaser served on the Respondent an Initial Notice on the 28th October 2004 claiming the right of collective enfranchisement of the Subject Property for the sum of £55,700.00 by the participating Tenants all of whom appear to be qualifying.
3. The Respondent served a Counter Notice dated 7th January 2005 admitting the Tenants' right but counter proposing the price of £236,000.00. In addition the Respondent requires the retention of certain specified rights of access and for the passage of services and that the Applicant will, following enfranchisement, observe the covenants in the leases and the covenants and restrictions affecting the premises and indemnify the Respondent from all actions and proceedings arising thereof.

Identification of Matters Agreed and in Dispute

4. The matters agreed are as follows:
 - a) The Leases are for 99 years from the 25th December 1973
A copy of a lease was provided which was agreed to be applicable to all flats
 - b) The Valuation Date is 7th January 2005
 - c) Value of a long lease - The value of a Lease after enfranchisement was agreed as being £110,000
5. The matters in dispute regarding the terms of transfer are set out in paragraph 15 of this Statement.
6. The matters in dispute regarding the valuation are as follows:
 - a) The Yield Rate for capitalisation of the ground rent

Applicant	9%
Respondent	8%
 - b) Yield Rate for deferment of reversions

Applicant (including hope value)	9%
Respondent	8%
 - c) Value of flats subject to existing leases

Applicant	97.5%
Respondent	90%
 - d) Hope value of extended leases for non-participating tenants

Applicant	Included in the deferment rate
Respondent	15% of marriage value

The Law

7. The provisions for Application to the Tribunal are under section 24 of the 1993 Act. The provisions for the determination of price are under section 32 and Schedule 6 of the 1993 Act.

The Subject Property

8. The Subject Property comprises a three-storey purpose built block of 36 flats with brick elevations beneath a pitched tile roof. There are three communal entrances with stairs to the upper floors. To the front of the block there is a small triangular area of land, which is included in the transfer and provided storage for refuse. To the rear of the block there are communal grounds laid to grass, which are part of the Subject Property. These grounds give access to further communal areas and a children's play area, which are not part of the Subject Property.
9. There are garages and two parking areas adjacent but not belonging to the Subject Property. The garages and presumably the parking may be rented and street parking is available.

Inspection

10. An inspection of the exterior of the whole Property and of the interior of three of the flats was made on the 19th September 2005. The subsequent hearing was attended by the Applicant's and the Respondent's Surveyors
11. Externally the Property was in fair to poor condition. There was a mixture of plastic and wooden windows and the bargeboards needed redecoration. The rainwater goods did not appear to be leaking. Where windows had been replaced there was no consistency of design or finish. Some flats had replaced the wooden cladding below certain windows with either brick or plastic cladding. Again there was no consistency of design and the quality of finish, particularly of the new infill brickwork was variable. The grass of the grounds was not well kept. The interior common parts were utilitarian and basic and in need of re-decoration. There was no door entry system. There was a lack of a holistic approach to alterations and the overall appearance of neglect indicated the Property was not well managed. In addition there were problems of access for maintenance as neighbouring property abutted the Subject Property. Although there are parking areas next to the Subject Property these do not belong to the Subject Property and are in a neglected condition. The Applicant's and Respondent's Surveyors stated in written representations that there is a dispute regarding the parking arrangements. The Tribunal noted that relatively few cars were parked in the areas either side of the Subject Property but that the roads leading to the Subject Property were congested due to street parking. The private parking had signs warning of clamping, tow-away and fines. The footpaths around the Subject Property are narrow and cannot be widened, as they abut the Building on the one side and appear to abut the boundary on the other.
12. The Tribunal viewed the interior of the following flats:
No. 35, which is a ground floor flat comprising a hall with store, bathroom, living room, kitchen and two bedrooms (one single one double). The bathroom was dated, as was the kitchen although not original.
No. 15, which is a first floor flat comprising a hall with store, bathroom that had borrowed light from the kitchen, living room, kitchen dated and two bedrooms (one single one double). Both the bathroom and kitchen appeared to be original.
No 81, which is a third floor flat comprising a hall with store, bathroom, living room, kitchen and two bedrooms (one single one double). The bathroom appeared to be

dated and original although the kitchen had been modernised and the flat had plastic windows.

The Terms of the Transfer

Applicant's Case

13. The Applicant's Surveyor stated in written representations and confirmed at the Hearing that:
The Respondent's counter notice claims a right to retain rights over the 'specified premises' on the grounds that they are necessary for the proper management or maintenance of property in which the Reversioner is to retain a freehold or leasehold interest.
 - a) It was submitted that the specified premises are the buildings themselves; it is possible that the Respondents intended to refer to the appurtenant property and not the specified premises.
 - b) The Reversioner had not identified that property which it is retaining and for which it claims the benefit from these rights.
 - c) The Respondents have not identified any gas, water, electricity, soil and utility pipes, wires, cables, drains and sewers at present lying under the specified premises, and the Applicants believe that there are no such services. The Applicants challenged the Respondents' claim for services, which, to the best of the Applicant's knowledge, do not exist.
14. The Applicant's Surveyor stated in written representations confirmed at the Hearing that the Respondent's counter notice claims covenants and indemnification. It was submitted that the 1993 Act makes no provision for such covenants and indemnity, and that the Tribunal should approve the transfer without such covenant or indemnity.

Respondent's Case

15. The Respondent's Surveyor said that it was not known what services might be under the Subject Property that might serve adjacent premises as none was marked on any plans and it was common to include a covenant or indemnity.

Tribunal's Determination on the Term's of the Transfer

16. The parties had agreed that the extent of the Subject Property to be transferred was all that comprised in Title Number HD169775 at the Land Registry. The Tribunal noted that the Entry at Title Number HD169775 includes:
 - In the Property Register the grant of a right of way to the Transferee over the garage accessways serving the Property and reservation of a right to enter upon the Property for the laying out and completing of the Transferor's adjoining land subject to the Transferor making good all damage caused by a Transfer dated 6 July 1979 made between (1) Fairview Estates (Housing) Limited and (2) Property Reinstatement Repairs & Management Limited.
 - In the Charges Register it is stated that:
 - The footpaths are subject to rights of way

- The play areas are subject to rights of way on foot only
 - The land is subject to rights of drainage and rights in respect of water and electricity supply
 - The land is subject to rights of entry for the purpose of repairing maintaining painting and rebuilding houses and garages constructed on the boundaries of adjoining land and to rights of support therefrom
 - An Agreement dated 16 February 1977 between (1) Rickmansworth and Uxbridge Valley Water Company and (2) Fairview Estates (Enfield) Limited relating to the laying of water mains includes the grant of an easement to maintaining the water mains and a restrictive undertaking not to erect a building or plant shrubs or trees under which the mains are placed which may make access to the mains less easy or convenient.
17. The Tribunal found that the rights granted and reserved referred to on the Register satisfactorily dealt with the matters that the Respondent sought to have covered by the term of the transfer they proposed. The Tribunal therefore determined that the Transfer should include all rights granted and reserved in the current Entry of Title Number HD169775.
18. The Tribunal found that section 24 of the 1993 Act referred to in paragraph 8 of this Statement gave it jurisdiction to determine whether or not the indemnity clause proposed should be included in the Transfer.
19. The Tribunal found that the Proprietorship Register of the Entry at Title Number HD169775 stated that the Transfer to the Respondent contained a covenant to observe and perform the covenants on the part of the Lessor and the conditions contained in the Leases as set out in the Schedule of Leases and of indemnity in respect thereof.
20. The Tribunal found that no satisfactory reason had been given by the Applicant to break the chain of indemnity. The Tribunal therefore determined that the indemnity clause proposed by the Respondent in the Counter Notice should be included.

The Valuation of the freehold

Applicant's Case

Yield (Capitalisation)

21. In written representations confirmed in oral evidence at the Hearing the Applicant's Surveyor stated that he would normally look at the market place and auction results to assess a capitalisation yield for the ground rent. However there were particular problems with auction results:
- a) Before the Act a landlord had no method of calculation by which to assess how much to charge for a lease extension and tenants had no way of assessing whether the amount claimed was fair and reasonable. The Act provides considerable certainty by providing a method of calculation, which has meant that more investors have come into the ground rent investment market and this has increased the prices achieved for freehold ground rents.

- b) Prices achieved at auction for properties with similar ground rents achieve very different results, with the best prices being as much as three times the lowest prices achieved. Therefore different investors come to different conclusions as to prospects of making a profit for different buildings and bid accordingly. The auction market is both sophisticated and complex and, to interpret what influences a price, a valuer needs to have an understanding of the particular circumstances.
- c) Un-researched auction results has been criticised by the Lands Tribunal in *Sinclair Gardens Investments (Kensington) Ltd v TE Franks* (LRA/19/1996)

Therefore the auction result only gives a general idea of what is in an investor's mind when buying a ground rent investment but direct comparisons with auction results should not be made.

- 22. Freehold ground rent investors tend to be experienced and knowledgeable and will be informed by the property press and bank managers. When putting forward a proposition for a loan they will be quoted a margin over the bank base rate. The Base Rate at the valuation date was 4.75%. Banks will tend to offer a loan that is up to two thirds of the value of the security for an investment of this type at 2%-3% over Base Rate plus a commitment fee, plus valuation and security fees. Therefore the investor will be left with the least safe one third subject to a personal guarantee. Therefore the investor requires a yield, which reflects the level of risk for his own money and the personal guarantee. In the Applicant's Surveyors' opinion the yield rate reflecting the lender's slice would be 6.75%-7.75% and the investor would want a margin over that for his level of risk and to cover bank charges and transaction costs which would give a total of 10%. This would have been trimmed to take account of competition, which would have been significant in the boom years of 1996-2000, but to reflect the current relatively flat market conditions and with modest inflationary growth a 9% per annum yield rate for capitalisation of the ground rent would be appropriate.
- 23. The Applicant's Surveyor noted in written representations and oral evidence that the Respondent's Surveyor had referred to auction results which showed an average yield of 6.25% which is significantly lower than the 8% that the Respondent claims. The Applicants' Surveyor said that it seemed the Respondent's Surveyor was suggesting that there is something else, which the auction results do not take into account and he questioned whether the Respondent's Surveyor had taken enough account of the factor that is missing from the auction results by his 8%.
- 24. The Applicant's Surveyor added that there are a wide range of lenders who are, since the Act, more prepared to lend and investors who are now able to assess what they will receive from lease extensions. Although auctions may indicate a yield of say 6.25%, investors at auction do not undertake a 'term and reversion' calculation, as would be done for a lease extension under the 1993 Act. Caution is needed in assuming that a yield analysis of auction results has anything to do with the way investors value the return on a property. Investors buy for a range of reasons such as insurance, management or development value. Unless each auction result is looked at the fact that an analysis gives an average yield of 6.25% is not helpful.
- 25. In cross-examination the Applicant's Surveyor agreed that it is necessary to value the Property in the post not pre-Act world. Although before the Act there were difficulties

in that offers could only be accepted or rejected and rights were limited nevertheless after the Act the procedures incur costs, which offset the increased value that may be derived from the existence of the rights under the Act.

Yield (Deferment Rate)

26. The Applicant's Surveyor pointed out in written representations that the investor buying this particular block will look at the local market place when considering the prospect of selling lease extensions. Having carried out Internet research it is apparent that very few sales have required lease extensions and that buyers and mortgage lenders are all happy to accept leases of a little below or above 70 years unexpired. Lease extensions are normally only purchased with a view to sale where the market requires longer leases. There is only one flat that has bought a lease extension so far, which further indicates that the market does not appear to require longer leases than the current unexpired term. Therefore an investor in relation to this Property is likely to have the opinion that the prospects of selling lease extensions are not good from the point of view of achieving his prospects of making a capital gain in the early future and a 9% per annum deferment yield would be appropriate.
27. The Applicant's Surveyor, in answer to a question by the Tribunal, said that he had not taken account of the parking or difficult access for maintenance in the yield but on reflection considered that perhaps he should have done so.

Marriage Value

28. The Applicant's Surveyor stated in written representations which were confirmed in oral evidence at the Hearing that he looked to the market place to assess marriage value and referred to a number of blocks of flats in the area, which he indicated on a map provided. He submitted that in a case in which there are few comparables and a wide spread of prices achieved, detail would be important, however the properties referred were within a relatively limited range and so he provided a schedule he considered should be adequate.
29. The Applicant's Surveyor referred to the following properties noted in the schedule and in respect of which sample Land Registry entries were provided:
- The enfranchised flats at Perry Green demonstrated a higher price but it should be noted that the common parts were carpeted, there was an entry phone, it was only a two-storey block and it was generally better managed.
 - There are two blocks at Chenies Court one of which is enfranchised and the other is not. The prices achieved for the enfranchised block are lower than for the un-enfranchised block.
 - Roydon Court is an enfranchised block and the prices of flats are similar to those achieved at Burns Court.
 - The flats at Valley Green command a higher price but this is attributable to them being newer, in a better location and not having the same parking problems as the Subject Property.
 - Arkley Court, Milton Dene and Ashby Court had no comparison differentials other than parking.

The Applicant's Surveyor submitted that overall this market evidence showed that there was no discernible difference between the subject leases with 68 years unexpired and much longer leases that may be granted after enfranchisement.

30. The Applicant's Surveyor stated that some tribunal decisions refer to the effect of the Act and make a subsequent adjustment. It was suggested that no such adjustment should be made in this case because:
- a) Before the Act in the Surveyor's experience flats in suburban areas with unexpired terms of 68 years sold without any particular difficulty and for no discernable discount to a long lease value
 - b) Estate agents do not state the unexpired term of the lease in agency details and rarely did re-negotiation of price take place when it was found that the term was 68 years unexpired rather than a longer term.
 - c) Mortgage valuers make no particular differential in their valuation between a 68-year and a longer unexpired term.
 - d) An owner of a short lease exercising his rights under the Act received 50% of the marriage value, against which must be set the tenant's costs which tend to outweigh the marriage value. The post Act costs are higher than the pre Act costs and so the pre and post Act position is financially balanced.
 - e) Since the Act, purchasers who would have been happy with a 68 years unexpired term before the Act, are advised to request the seller to exercise their rights to extend the lease under the Act a) because the seller can, b) because the advisers feel they feel it part of their duty of care to give the advice rather than because the value is increased.
31. The Applicant's Surveyor submitted that in 25-31 Bowman's Green there were 65 years unexpired and when the matter came before the Leasehold Valuation Tribunal market evidence was put forward which showed there was no discernable difference between flats with 65 years unexpired and those with much longer leases. That tribunal accepted that market evidence did not show the same relatively which would be supported by settlement schedules and graphs. The Applicant's Surveyor submitted that settlement evidence is not reliable as a valuation method and although it may be justified where there is no credible market evidence nevertheless it should not be used where there is.
32. The Applicant's Surveyor reaffirmed his view that in this case there was no discernible difference between the subject leases with 68 years unexpired and much longer leases after enfranchisement and stated that the calculations should be based on 97.5% relativity.
33. In cross examination the Respondent's Surveyor suggested that the Applicant's Surveyor had been selective and that the schedule produced was not as comprehensive as suggested in that a recent sale of 83 Burn's Drive had not figured. The Respondent's Surveyor also questioned the Applicant's Surveyor's submission that there was no discernable difference between a long or short lease as it appeared that he was suggesting that he would advise a client with a long lease to sell a flat at the same price or only marginally more than a short lease. The Applicant's Surveyor stated that if that were the market position then that would have to be his advice. He said that when the unexpired term was 65 years tenants do not expect to see the end of the lease.

Hope Value

34. The Applicant's Surveyor noted that the Respondent's Surveyor contended that an additional sum should be included for the "hope value" that the Applicant might have of selling lease extensions to non-participating tenants. It was submitted by the Applicant in written representations and confirmed at the Hearing that the amount that such "hope value" might add to the purchase price was already accounted for in the 'term and reversion' method of valuation and is part of the reversionary calculation. It was submitted that no separate and additional sum was payable for the following reasons:
- a) In the "no act world" it is not possible to distinguish between those participating under the Act from those not participating and that the capital gain, which the investor expects to realise from selling lease extensions, is what is reflected in the figure paid for the investment for all flats.
 - b) There is double counting in any valuation which calculates one figure on the assumption that the leases will run to reversion, plus an additional figure for the hope of selling a lease extension and therefore on the assumption that the leases will not run to reversion.
 - c) When a lease extension is sold the investor receives in cash a reversion value calculated on the basis of the full, unimproved, vacant possession of the flat. If the valuation was genuinely calculated to the reversion then it would be assessed on the basis that the investor would receive a block of flats with a risk that: not all of them would be vacant, some would be in disrepair and that the building might require redevelopment. In addition to realise cash the investor would have to let the flats and carry the risks and costs of marketing.
 - d) It is not credible for a valuer to suggest that an investor in the market place would pay more for flats where lessees are least likely to want an early lease extension (equivalent to the non-participators) than would be paid where the lessees do want an early lease extension (equivalent to the participators).
35. The Applicant's Surveyor's calculations are set out in **Appendix 1** of these Reasons. The Applicant's Surveyor calculated that the price payable for the enfranchisement of the freehold interest is **£66,000**.

Respondent's Case

Yield

36. The Respondent's Surveyor assessed the value of the freeholder's interest by a capitalisation of 8% however he now felt that based on the latest market evidence this appears to be on the high side. The market evidence was derived from the sale of a number of freehold blocks of converted flats in London sold on the 27th October 2004 at auction at Andrews and Robertson Auction. The results were analysed and the results were as follows:

	Property	Price	Overall Multiplier	Yield
1	41 Solon Court, SW2	£7,000	17.5	7.25%
2	3 Hubert Grove, SW9	£7,100	17.5	6.75%
3	230 Cavendish Road, SW12	£11,400	19	6.5%
4	151 Gleneagle Road, SW16	£5,300	53	6.25%
5	31 West Ella Road, NW10	£7,000	20	6.25%
6	79 Purves Road, NW 10	£7,000	20	6.5%
7	46 Townmeade Road SW6	£8,500	21.25	6.75%
		Average	24	6.60%

37. In addition the Respondents' Surveyor had analysed the sale of a freehold block of 43 flats in Waltham Cross Hertfordshire sold at Strettons Auction on 11th July 2005. The auctioneers confirmed that the sale was to an investor and not the lessees and the transaction showed a yield of 6.9%

Marriage Value

38. The Respondent's Surveyor stated in written representations that there are two precedents for the degree of marriage value applicable to the Woodhall Farm Estate. The first was determined by the Lands Tribunal and related to a block of flats at Perry Green where the leases had 79 years unexpired and 5% uplift was applied to the existing lease values to assess marriage value. The second was determined by a Leasehold Valuation Tribunal and related to a block known as 22-44 Chenies Court where the leases had 76 years unexpired and again 5% uplift was applied.
39. Recent sales on the estate of two bedroom flats show a range of values for various reasons. However the actual amount is not the significant factor in the assessment of the price for enfranchisement. It is rather the actual differential between the freehold value and the existing leasehold value based upon the assumptions set out in the legislation, which requires the valuer to assess a price in a "no Act world". It is therefore impossible to find market evidence of such a value since all transactions are now conducted with the benefit of the rights conferred by the 1993 Act. Leasehold Valuation Tribunals have considered the adjustment of market evidence to disregard the effect of the 1993 Act. The Respondent's Surveyor submitted:

- A schedule of decisions and the percentage deduction applied in each matter in relation to short lease sales:

Ref		Term unexpired	1993 Deduction
LON/NL/734/99	7, Clunie House, SW1	43 years	5%
LON/NL/1128/00	31 Lennox Gardens SW1	14 years	20%
LON/NL/1320	2, 5, 7 Harrowby Court W1	24 years	10%
LON/NL1386/01	34-36 Maida Vale W9	48 years	7.5%
LON/ENF/755	63/65 Hamilton Terrace NW8	49.6 years	10%
LON/NL1727/00	9 Sloane Court SW3	12.9 years	10%
LON/NL/1743	26b Trinity Church Square SE1	78.3 years	10%
LON/NL/2192	6 Trinity Church Square SE1	54 years	10%
CHI/43UF/OLR/2004/0043	66 Courtlands Crescent, Banstead	55.44 years	5%

- A schedule of all Leasehold Valuation Tribunal decisions from January 2004 up to the latest decision to be published on the Lease Website together with a list of those decisions, which relate to matters where the lease term unexpired, is within two years of the lease term of the Property. Attention was drawn particularly to the decisions, which concerned the three properties closest geographically to the subject Property as follows:
 - Lincoln Court, Berkhamstead where the lease term was 70 years and an uplift of 10% and 11% was determined
 - Chiltern Road, Hitchin where the lease term was 68 years and an uplift of 11% was determined
 - Flats 1-6 Elizabeth House, High Street, Stotfold where the lease term was 67 years and an uplift of 17% was determined
 In these cases the average uplift was 13% or relativity of 88.5%.

40. In addition the Respondent's Surveyor submitted a relativity graph produced by Peter Hale the Chief Executive of LEASE which showed a relativity of 90.5% where the lease length is 68 years. The value of this was doubted by the Applicant's Surveyor on the basis that graphs merely show a trend in that the line is drawn where most points are plotted but may not actually pass through any of the points.
41. The Respondent's Surveyor submitted that in his experience market evidence in demonstrating relativity is not helpful. He referred to two sales in June 2005 within the Property one of which was at a price of £115,000 and the other was at a price of £86,000. Both were flats on the first floor having the benefit of double-glazing. The difference in price is £25,500. With this spread it is impossible to determine an uplift of just 10% between sales of flats with existing leases and those with either extended leases or a share of the freehold. There are so many factors that cause a wide range of value and these have the effect of masking the differential that logically applies for the different tenure.
42. It is clear that differential does apply in that many lessees of flats on the estate have applied for and paid premiums to have leases extended. If there were no difference there would be no reason why a lessee would pay a premium and an increased ground rent to have the lease extended. Copy deeds and details of sample flats where leases have been extended were provided and summarised.
43. In addition the respondent's Surveyor pointed out that there is a defect in that the management company no longer exists and so the tenants have required the freeholder to take over the management responsibilities. Some tenants have obtained a deed of variation for which they pay £2,500 together with an increased ground rent of £200 per annum rising after each period of 25 years to £300 and £400 respectively to cover the additional obligations. This has a depressing effect on the value of the existing leases.
44. Based upon this evidence the Respondent's Surveyor submitted a relativity of 90% as appropriate.

Hope Value

45. The Respondent's Surveyor stated that in the Lands Tribunal case of *Shulem B Association Limited* [LRA/47/2000] it was held to be correct to include hope value to account for the prospect of the purchaser of the reversion being able to grant extended leases. A schedule was provided of decisions where hope value was considered and a percentage allowed.
46. The Tribunal said that it understood Mr Shapiro who had submitted the argument as to hope value in the *Shulem B* case appeared to have changed his view in that he had argued that hope values for the sale of extensions was reflected in the yield. The Respondent's Surveyor stated that he understood that Mr Shapiro had not said that hope value was included in the yield but that if hope value was to be expressed in the yield instead of as a separate calculation then the yield should be reduced to take account of such value.
47. The Respondent's Surveyor submitted that it was fair to apply 15% of the marriage value in the non-participating flats to represent hope value.
48. The Respondent's Surveyor's calculations are set out in **Appendix 2** of these Reasons. The Respondent's Surveyor calculated that the price payable for the enfranchisement of the freehold interest is **£201,637**.

The Calculations

49. The Valuation of the Respondent's Surveyor set out separate calculations for the ground rent for flats 31, 41, 51 and 81 as participating tenants and for flats 17 and 67 as non-participating tenants as these had been varied as mentioned in paragraph 44 of this Statement. The Respondent's Surveyor was able to provide evidence of the variation by producing copies of the deeds for flats 31 and 81. At the Hearing the Respondent's Surveyor produced by way of evidence of the variation receipts for ground rent for flats 17, 41, 51 and 67. This evidence was not considered adequate as the receipts alone are open to challenge and the Respondent's Surveyor was required to produce to the Applicant's Surveyor the Deeds of Variation for the outstanding flats. A letter from the Applicant's Surveyor dated 2nd October stated that the Applicant's Solicitor has been able to obtain copies of the Deeds of Variation for flats 17 and 67 from the Land Registry but not 41 and 51. The Applicant's Surveyor therefore submitted revised valuation with amended calculations to take account of the increased ground rents for flats 17 and 67 only. No amended valuation was received from the Respondent's Surveyor.
50. It was agreed that the valuation for the lease of flat 33 should be calculated separately as the lease had been extended.

Determination of the Market Value of the Freehold Interest in the Flats

Yield and Deferment Rate

51. Both experts used the same figure for yield and deferment rate. The Applicant's Surveyor submitted 9% and The Respondent's Surveyor submitted 8%.

52. The Applicant's Surveyor based his figure on the cost of borrowing money adjusted for risk. The Tribunal did not consider this to be a reliable method of assessing deferment yield in the present case as there was some market evidence, be it as it may limited.
53. The Respondent's Surveyor submitted evidence of auction results in London sold on the 27th October 2004. These properties were not in a similar location nor were they of a similar type, being smaller conversions with a different level of value and with quite different management arrangements. Therefore the Tribunal found them of little assistance.
54. The Respondent's Surveyor also submitted evidence of an auction sale of a block of 43 flats in Waltham Cross at Strettons on 11th July 2005. This indicated on his analysis a yield of 6.9%. However, he felt the figure required some adjustment and adopted 8% based on his experience and knowledge of past agreements although he expressed a view at the Hearing that 8% might be too high. Notwithstanding the lack of information surrounding the sale, the Tribunal found this market evidence to be of assistance as a starting point. The Tribunal accepted the Applicant's Surveyor's observation that the evidence, being limited, should be treated with some caution. Nevertheless, noting other blocks of flats of this type in the vicinity, the Tribunal considered that at the valuation date a rate of 8% was correct. However the Subject Property differed from similar blocks of flats in the area in that, from the inspection and the evidence presented, originally the parking area and garages adjacent to the Subject Property were to provide off-street parking for the tenants. At some point the owners have divided the site up separating the parking and garages, which are now only available at additional rent. This appears to have resulted in cars parked on pavements in the narrow surrounding roads and the car park being almost empty. In addition, from a management point of view, access to the building for maintenance and storage of materials will be difficult and probably require negotiation with the adjoining landowner.
55. The Tribunal is of the opinion that these factors will affect the future rate of growth of the Subject Property when compared with those nearby with parking and make the Subject Property a less attractive and riskier investment. The Tribunal therefore adopts a yield of 9%.

Hope Value

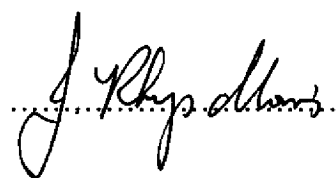
56. The Applicant's Surveyor reflected hope value in his deferment rate. The Respondent's Surveyor made a separate calculation and added that if it should be in the deferment rate then the rate should be lower. This seems to the Tribunal to be at odds with the Respondent Surveyor's analysis of auction results. In the Tribunal's view analysis of transactions must reflect, as the market does, hope. The Act then specifically allows marriage value for the participating tenants to be added. Accordingly, the Tribunal makes no such addition, which in its view is properly reflected, in this case, in the deferment rate.

Relativity

57. The Applicant's Surveyor provided comparables, which the Tribunal inspected, in order to demonstrate that there was no difference between long and shorter leases in this location. He allowed 97.5%. The Respondent's Surveyor disliked the comparables and preferred decisions of the Tribunal and evidence of what people pay when selling when they have served no notice. He allowed 90%. The Tribunal considered the Applicant's Surveyor's market approach and the comparables he produced to be better evidence in the circumstances. Nevertheless, the Tribunal considered it necessary to make a small adjustment for the 'no Act world' and accordingly adopted 95%.

Valuation

58. The Tribunal therefore adopted the Applicant's Surveyor's valuation except for the relativity, in respect of which 95% is applied. The Tribunal determined that the price payable for the Freehold interest in the property is **£108,365** in accordance with the valuation attached at **Appendix 3**.
59. Leave is granted to either party to refer back to the Tribunal in respect of costs under section 60(1) if they cannot be agreed

.....JR Morris (Chairman)

Appendices

Appendix 1 - Applicant's Surveyor's Valuation

Appendix 2 - Respondent's Surveyor's Valuation

Appendix 3 - Tribunal's Valuation

Valuation Date: 7 January 2005

REVISED 30/09/07

Paragraph 2(1)(a): the value of the landlord(s) interest in the premises as determined in accordance with Paragraph 3			
<u>Income</u>			
27 PARTICIPATING FLATS (excluding Flat 81 - separately calculated)			
Ground rents annually: 27 x £40 until 24/12/2006		£1,080	
Capitalised at 9% p.a. for 2 years		1.759	
		£1,900	£1,900
Rising to: 27 x £80 until 24/12/2039		£2,160	
Capitalised at 9% p.a. for 33 years	10.464		
Deferred 2 years @ 9% p.a.	0.8416800		
	8.80734	8.80734	
		£19,024	£19,024
Rising to: 27 x £120 until 24/12/2072		£3,240	
Capitalised at 9% p.a. for 33 years	10.464		
Deferred 35 years at 9% p.a.	0.0489861		
	0.51259	0.51259	
		£1,661	£1,661
<u>Prospect of Capital Gain</u>			
Calculated by reference to reversionary value		£2,970,000	
Deferred 68 years at 9% p.a.		0.0028510	
		£8,467	£8,467
TOTAL PAYABLE			£32,713
Note: marriage value calculated separately			
81 BURNS DRIVE			
Ground rent annually until 03/01/2027		£150	
Capitalised at 9% p.a. for 22 years		9.442	
		£1,416	£1,416
Rising to: until 03/01/2052		£200	
Capitalised at 9% p.a. for 25 years	9.823		
Deferred 22 years at 9% p.a.	0.1501817		
	1.47523	1.47523	
		£295	£295
Rising to: until 24/12/2072		£250	
Capitalised at 9% p.a. for 24 years	9.707		
Deferred 47 years at 9% p.a.	0.0174162		
	0.16906	0.16906	
		£42	£42
<u>Prospect of Capital Gain</u>			
Calculated by reference to reversionary value		£110,000	
Deferred 68 years at 9% p.a.		0.0028510	
		£314	£314
TOTAL PAYABLE			£2,067
Note: marriage value calculated separately			

Valuation Date: 7 January 2005

REVISED 30/09/07

Paragraph 2(1)(a): the value of the landlord(s) interest in the premises as determined in accordance with Paragraph 3			
<u>Income</u>			
7 NON-PARTICIPATING FLATS (excluding Flat 33 – separately calculated) (No Number 13)			
Ground rents annually: 5 x £40 + £150 + £125		£475	
Capitalised at 9% p.a. for 2 years		1.759	
		£836	£836
Rising to: 5 x £80 + £300 + £250		£950	
Capitalised at 9% p.a. for 33 years	10.464		
Deferred 2 years @ 9% p.a.	0.8416800		
	8.80734	8.80734	
		£8,367	£8,367
Rising to: 5 x £120 + 2 x £500		£1,600	
Capitalised at 9% p.a. for 33 years	10.464		
Deferred 35 years at 9% p.a.	0.0489861		
	0.51259	0.51259	
		£820	£820
<u>Prospect of Capital Gain</u>			
Calculated by reference to reversionary value:		£770,000	
7 x £110,000			
Deferred 68 years at 9% p.a.		0.0028510	
		£2,195	£2,195
TOTAL PAYABLE			£12,218
Note: marriage value calculated separately			

Valuation Date: 7 January 2005
REVISED 30/09/07

Paragraph 2(1)(a): the value of the landlord(s) interest in the premises as determined in accordance with Paragraph 3			
<u>Income</u>			
33 BURNS DRIVE (Non-participating)			
Ground rent annually		£150	
Capitalised at 9% p.a. until 24/06/2027: 22.5 years		9.511	
		£1,427	£1,427
Rising to: until 03/01/2052		£200	
Capitalised at 9% p.a. until 24/06/2052: 25 years	9.823		
Deferred 22.5 years at 9% p.a.	0.1439815		
	1.41433	1.41433	
		£283	£283
Rising to		£250	
Capitalised at 9% p.a. until 24/06/2077: 25 years	9.823		
Deferred 47.5 years at 9% p.a.	0.0166972		
	0.16402	0.16402	
		£41	£41
Rising to		£300	
Capitalised at 9% p.a. until 24/06/2101: 24 years	9.707		
Deferred 72.5 years at 9% p.a.	0.0019363		
	0.01880	0.01880	
		£6	£6
<u>Prospect of Capital Gain</u>			
Calculated by reference to reversionary value: too remote for expectation of capital gain			
TOTAL PAYABLE			
			£1,757
Note: marriage value calculated separately			

Valuation Date: 7 January 2005

REVISED 30/09/07

<i>Paragraph 2(1)(b): the landlord(s) share @ 50% of the marriage value as determined in accordance with Paragraph 4.</i>		
<u>28 PARTICIPATING FLATS</u>		
Long lease values: 28 X £110,000	£3,080,000	
<u>Less</u>		
Existing lease values at 97.5%	(£3,003,000)	
Ground rent values and reversion: 27 flats	(£32,713)	
Flat 81	(£2,067)	
Marriage value	£42,220	
50% of marriage value		£21,110
<u>Brought Forward</u>		
27 participating flats		£32,713
Flat 81		£2,067
7 non-participating flats		£12,218
Flat 33		£1,757
TOTAL PAYABLE		£69,865

9-81 Burns Drive, Hemel Hempstead						
PARTICIPATING FLATS						
Flat No. 31						
Lease details						
Number of years unexpired	68					
Number of yrs. to 1st review		23.25	to 2nd review	25	to 3rd review	19.75
Ground rent to 1st review		200	to 2nd review	300	to 3rd review	400
Capitalisation Rates		8		8		8
		0.08		0.08		0.08
Average Flat Value with share F/H						£110,000
Value of Freeholder's Interest						
Ground rent Reserved			200			
YP to 1st review			10.4116		2082	
Reversion to 1st review			300			
YP to 2nd review		10.6748				
x PV of £1 until 1st review		0.16707	1.7834		535	
Reversion to 2nd review			400			
YP to 3rd review		9.7660				
x PV of £1 until 2nd review		0.0244	0.2382		95	
Reversion to VP value			£110,000			
x PV of £1 until end of term			0.005336		587	3300
Flats No. 41 and 51						
Lease details						
Number of years unexpired	68					
Ground rent		250				
Capitalisation Rates		8				
		0.08				
Average Flat Value with share F/H						£110,000
Value of Freeholder's Interest						
Ground rent Reserved			250			
YP			12.4333		3108	
Reversion to VP value			£220,000			
x PV of £1 until end of term			0.005336		1174	4282
Flat No. 81						
Lease details						
Number of years unexpired	68					
Number of yrs. to 1st review		22	to 2nd review	25	to 3rd review	21
Ground rent to 1st review		150	to 2nd review	200	to 3rd review	250
Capitalisation Rates		8		8		8
		0.08		0.08		0.08
Average Flat Value with share F/H						£110,000
Value of Freeholder's Interest						
Ground rent Reserved			150			
YP to 1st review			10.2007		1530	
Reversion to 1st review			200			

YP to 2nd review x PV of £1 until 1st review		10.6748 0.18394	1.9635		393	
Reversion to 2nd review YP to 3rd review x PV of £1 until 2nd review		10.0168 0.0269	250 0.2690		67	
Reversion to VP value x PV of £1 until end of term			£110,000 0.005336		587	2577
Flats No. 11,15,19,21,23,25,27,29,35,37,39,43,45,47,57,59,61,63,69,71,73,75,77,79						
Lease details						
Number of years unexpired	68					
Number of yrs. to 1st review		2	to 2nd review	33	to 3rd review	33
Ground rent to 1st review		960	to 2nd review	1920	to 3rd review	2880
Capitalisation Rates		8 0.08		8 0.08		8 0.08
Average Flat Value with share F/H						
						£110,000
Value of Freeholder's Interest						
Ground rent Reserved YP to 1st review			960 1.7833		1712	
Reversion to 1st review YP to 2nd review x PV of £1 until 1st review		11.5139 0.85734	1920 9.8713		18953	
Reversion to 2nd review YP to 3rd review x PV of £1 until 2nd review		11.5139 0.0676	2880 0.7787		2243	
Reversion to VP value x PV of £1 until end of term			£2,640,000 0.005336		14086	36994
TOTAL						£47,152
Non - Participating Flats						
Flat No. 33						
Lease details						
Number of years unexpired	96.5					
Number of yrs. to 1st review		22.5	to 2nd review	25	to 3rd review	25 to 4th review
Ground rent to 1st review		150	to 2nd review	200	to 3rd review	250 to 4th review
Capitalisation Rates		8 0.08		8 0.08		8 0.08
Average Flat Value with share F/H						
						£110,000
Value of Freeholder's Interest						
Ground rent Reserved YP to 1st review			150 10.2875		1543	
Reversion to 1st review YP to 2nd review x PV of £1 until 1st review		10.6748 0.177	200 1.8894		378	
Reversion to 2nd review YP to 3rd review x PV of £1 until 2nd review		10.6748 0.0258	250 0.2759		69	
Reversion to 3rd review			300			

YP to 4th review x PV of £1 until 3rd review		10.5288 0.0038	0.0397		12	
Reversion to VP value x PV of £1 until end of term			£110,000 0.000595		65	2055
Flats No. 17 and 67						
Lease details						
Number of years unexpired	68					
Ground rent		275				
Capitalisation Rates		8 0.08				
Average Flat Value with share F/H						£110,000
Value of Freeholder's Interest						
Ground rent Reserved			275			
YP			12.4333		3419	
Reversion to VP value x PV of £1 until end of term			£220,000 0.005336		1174	4593
Flats No. 9,49,53,55,65						
Lease details						
Number of years unexpired	68					
Number of yrs. to 1st review		2 to 2nd review		33 to 3rd review	33	
Ground rent to 1st review		200 to 2nd review		400 to 3rd review	600	
Capitalisation Rates		8 0.08		8 0.08	8 0.08	
Average Flat Value with share F/H						£110,000
Value of Freeholder's Interest						
Ground rent Reserved			200			
YP to 1st review			1.7833		357	
Reversion to 1st review			400			
YP to 2nd review		11.5139				
x PV of £1 until 1st review		0.85734	9.8713		3949	
Reversion to 2nd review			600			
YP to 3rd review		11.5139				
x PV of £1 until 2nd review		0.0676	0.7787		467	
Reversion to VP value x PV of £1 until end of term			£550,000 0.005336		2935	7707
TOTAL						£14,355
Calculation Of Marriage Value						
Participating Flats						
After Marriage						
Freeholders Interest			£0			
Lessees Interest	28 @	110,000	£3,080,000			
Less					£3,080,000	
Before Marriage						
Freeholders Interest			£47,152			
Lessees Interest	28 @	99000	£2,772,000			
Marriage Value					£2,819,152	
Freeholder's share	@	50%			£260,848	
					£130,424	

Calculation Of Hope Value					
Non Participating Flats (excluding No. 33)					
After Marriage					
Freeholders Interest				£0	
Lessees Interest	7	@	110,000	£770,000	
Less					£770,000
Before Marriage					
Freeholders Interest				£12,300	
Lessees Interest	7	@	99000	£693,000	
					£705,300
Marriage Value					£64,700
Hope Value	@	15%	Marriage Value		£9,705
Enfranchisement Price					
Total value of Freeholder Interest					£61,508
Landlord Share of Marriage Value					£130,424
Hope Value					£9,705
Total Enfranchisement Price					£201,637

Appendix 3

VALUATION TRIBUNAL'S VALUATION
Valuation date: 7 January 2005

28 Participating Flats	£	£
Long lease values: 28 x £110,000	3,080,000	
<u>less</u>		
Existing lease values at 95%	2,926,000	
Ground rent values and reversion: 27 flats	32,713	
Flat 81	<u>2,067</u>	
 Marriage value	 119,220	
50% of marriage value		59,610
 Brought Forward		
27 participating flats		32,713
Flat 81		2,067
7 non-participating flats		12,218
Flat 33		<u>1,757</u>
 TOTAL PAYABLE		 <u>£108,365</u>