



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

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 24 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Ref: LON/ENF/1497/05

Applicant: The Holt (Freehold) Ltd

Respondent: Daejan Investments Ltd

Re: The Holt, London Road, Morden, Surrey

Application to Tribunal by: Nominee Purchaser dated 7 June 2005

Hearing date: 10 May 2006

Inspection date: 2 June 2006

Appearances:

Mr N Duckworth of Counsel
Mr B R Maunder Taylor FRICS MAE of Maunder Taylor
Mr A Alphonsus (Flats 3 and 37)
Mr E Llambias (Flat 14)
Miss S Goolam Hossein (Flat 11)
Mrs O Wils (Flat 46)
Mrs L Carbery (Flat 16)
Mrs L Caldera (Flat 29)
Mr and Mrs Z Khan (Flat 19)
for the Nominee Purchaser

Mr G Cowen of Counsel
Ms S Bone, Solicitor, Wallace LLP
Mr E Shapiro BSc (EstMan) FRICS IRRV FCI Arb, of
Moss Kaye Pembertons Ltd
Mr D Konviser, Trainee Solicitor, Wallace LLP
Mr B Leung, Pupil
for the Landlord

Members of the Leasehold Valuation Tribunal:

Mrs J S L Goulden JP (Chairman)
Mr C White FRICS
Mr J R Humphrys FRICS

Nominee Purchaser's Section 13 Notice dated:

31 October 2004

Landlord's Section 21 counter-notice dated:

3 March 2005

Valuation date: 10 May 2006

Date of Tribunal's decision: 18 July 2006

JG

LON/ENF/1497/05

PROPERTY: THE HOLT, LONDON ROAD, MORDEN, SURREY

1. The Tribunal was dealing with an application under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (hereinafter referred to as "the Act") to determine the price payable on a collective enfranchisement in respect of flats at The Holt, London Road, Morden, Surrey (hereinafter referred to as "the subject property").
2. The Hearing took place on 10 May 2006, and the Tribunal inspected the subject property on 2 June 2006.
3. The Nominee Purchaser, The Holt (Freehold) Ltd, was represented by Mr N Duckworth of Counsel. Expert evidence was provided by Mr B Maunder Taylor MRICS MAE of Maunder Taylor.
4. The Respondent, Daejan Investments Ltd was represented by Mr G Cowen of Counsel and Ms S Bone, Solicitor, of Wallace LLP. Expert evidence was provided by Mr E Shapiro BSc (EstMan) FRICS IRRV FCI Arb of Moss Kaye Pembertons Ltd. Also appearing on behalf of the Respondent was Mr D Konviser, Trainee Solicitor of Wallace LLP and Mr B Leung, Pupil to Mr Cowen.
5. The following matters had been agreed between the parties:-
 - (a) The valuation date is 10 May 2006
 - (b) A schedule setting out details about each flat: which lessees are participating, lease term, ground rent pattern, and summary accommodation details. The information on the schedule is agreed.
 - (c) Flats 6, 24, 26, 27, 28, 36 and 41 will be leased back to the Respondent;
 - (d) There is nil compensation payable under Paragraph 2(1)(c) of Schedule 6 of the Act.
6. The matters in issue between the parties and which required the determination of the Tribunal are as follows:-

The extent of the property to be enfranchised
Yield
Existing lease value and long lease value

INSPECTION

7. The Holt, London Road, Morden, Surrey (hereinafter referred to as "the property") was inspected on 2 June 2006 in the presence of Mr A Okafor (Flat 12), Mr Z Davis (Flat 25), Mrs L Caldara (Flat 29) and Mrs O Wils (Flat 44).

8. It was a three storey block circa 1930 of brick and concrete construction with primarily painted stucco finish under a part tiled covered pitched roof and part flat roof. The block was arranged on four sides of a square with an open colonnade at the London Road end on the ground floor only.
9. The block had internal staircases leading to flats on the first and second floors, with some of the flats accessed by open balconies to the front. At the rear there were fire escape balconies.
10. The block was situated in level communal grounds, with the front area given over to hard standing for car parking. The rear was landscaped with lawns, flowerbeds and mature trees.
11. To the left hand side of the block was a service road with flowerbeds which lead to car parking (which is not part of this enfranchisement save for one car parking space).
12. The area within the square of the block was roughly landscaped with a gated service road which appears to be used for emergency purposes only.
13. The common parts were basic and shabby, with plain concrete stairs without floor covering.
14. The Tribunal inspected the interiors of five flats in various parts of the block at the invitation, and with the consent of, the occupiers thereof. Three of the flats inspected were on the ground floor and two were on the second floor. All the flats were self-contained three-roomed purpose built flats primarily in original layout, although in two of the flats, the dividing wall between the original separate WC and bathroom had been removed.
15. The ground floor flats all had access to the rear through the kitchen, and the second floor flat had access to fire escape balconies, also through the kitchen.
16. It was clear that there were slight variations in the size of the flats, but in general terms, the flats were all similar. Some flats had tenants' improvements in relation to the installation of central heating not originally installed and double glazed windows replacing Crittal glazed windows.

The property to be enfranchised

17. The Applicant's Initial Notice dated 31 October 2004 proposed the enfranchisement both of the specified premises (i.e. the subject block) shown edged red on the plan attached to the Initial Notice and also the appurtenant property (i.e. the gardens, amenity land, drives and garage 16) showed edged green on the plan attached to the Initial Notice.
18. The Respondent's Counter Notice dated 3 March 2005 admitted the right to enfranchise the specified premises, but not the appurtenant property. The Respondent proposed rights of passage and access rights in place of enfranchisement of the appurtenant property together with proposals for covenants by the Applicant for the protection of the appurtenant property to be

retained by the Respondent. The proposals as set out in the Respondent's Counter Notice were unacceptable to the Applicant.

19. By Section 1(2)(a) of the Act the qualifying tenants "shall be entitled, subject to and in accordance with this Chapter, to have acquired" any property falling with Section 1(3). Section 1(3)(b) covers property to which any tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises.
20. The right to acquire property falling within 1(3)(b) is fettered only by Section 1(4) of the Act which provides that the right of acquisition shall be taken to be satisfied if the freeholder grants "such permanent rights as will ensure that thereafter the occupier of the flat referred to in that provision has as nearly as may be the same rights as those enjoyed in relation to that property on the relevant date by the qualifying tenant under the terms of his lease" or offers alternative property over which any such permanent rights can be enjoyed.
21. The counter-proposals in respect of the appurtenant Common Use Property contained in the Counter-Notice do not satisfy the test at Section 1(4)(a)(i) because:
 - (1) Whereas the leases contain a covenant to maintain, inter alia, the Common Use Property (Clause 5(1)), the Respondent's counter-proposal does not contain an equivalent covenant on the part of the Respondent. The qualifying tenants would not be able to force the Respondent to maintain the Common Use Property as they had previously been able to do under the leases.
 - (2) Under the leases the Respondent was liable to maintain the exterior of the building (Clause 5(1)). The Common Use Property was retained by the Respondent (subject only to the limited rights of way and use contained in Schedule 1) and accordingly the Respondent had a right to use the Common Use Property for the purpose of maintaining the building (e.g. to erect scaffolding). It follows that the lessees benefited from the Respondent's uninhabited right to use the Common Use Property for maintenance under the leases. By contrast, no such right to use the Common Use Property is conferred on the Applicant in the Respondent's counter-proposal.
 - (3) Similarly, the leases conferred rights running water, gas, electricity and drainage from and to the flats through the Common Use Property (Schedule 1). No such rights are contained in the counter-proposal.
 - (4) The rights proposed are not "permanent" as required by the section. The right to use the pathways and common gardens is expressed to exist only for so long as the Respondent chooses to make them available to the Applicant. The only permanent right proposed is the right of pedestrian access to the Specified Premises.
 - (5) The counter-proposal is expressed to confer a right of pedestrian and vehicular access to parking space 16 (which is included in the demise

in the lease of Flat 16). The right of pedestrian and vehicular access to parking space 16 is also expressed to exist for so long as the Respondent chooses to make it available. The proviso that there should always exist a right of pedestrian access to the specified premises will not assist the lessee of No 16 who requires vehicular access at all times in order to make use of the parking space.

- (6) Under the leases the qualifying tenants could not be made to contribute more than a specified percentage of the Respondent's costs of maintaining the Common Use Property (Clause 2). By contrast, the Respondent's counter-proposal gives the Respondent an unfettered right to determine the proportion payable by the Applicant and expressly excludes the possibility of challenge.
 - (7) Under the leases the obligation to contribute to the cost of maintaining the Common Use Parts was subject to the requirement of reasonableness imposed by Section 19 of the Landlord and Tenant Act 1985 ("the 1985 Act"). Furthermore, the lessees had the right to challenge the reasonableness of the contribution sought before the Leasehold Valuation Tribunal on the application under Section 27A of 1985 Act. By contrast, the Respondent's counter-proposal contains no such protection and provides that the decision of the Respondent on the proportionate costs payable by the Applicant is binding.
22. If the Respondent had made counter proposals which satisfied the test at Section 1(4), the Tribunal would have no discretion to order the transfer of property falling within Section 193(b) to the Nominee Purchaser, but if, on the other hand, the counter proposals did not satisfy the test in Section 1(4), the nominee purchaser is entitled to acquire any property falling within Section 1(3)(b) pursuant to Section 1(2)(a).
23. The Respondent had the opportunity to avail itself of the provisions of Section 1(4) of the Act when the counter notice was served. It did not do so. The Respondent sought to alter its position during the hearing but in the view of the Tribunal it is not open to the Respondent to resile at a later stage from the contents of the counter notice. The Act makes no provision for amendments of the counter notice. Under Section 21(3) and in relation to the contents of the Counter Notice, it states:

"... it must in addition –

- (a) state which (if any) of the proposals contained in the initial notice are acceptable by the Reversioner and which (if any) of those proposals are not so accepted, and specify –**
 - (i) in relation to any proposal which is not so accepted, the reversioner's counter-proposal, and**
 - (ii) any additional leaseback proposals by the reversioner;**
- (b) if (in a case where any property specified in the initial notice under section 13(3)(a)(ii) is property falling within section 1(3)(b)) any such counter-proposal relates to the**

grant of rights or the disposal of any freehold interest in pursuance of section 1(4), specify –

- (i) the nature of those rights and the property over which it is proposed to grant them, or**
- (ii) the property in respect of which it is proposed to dispose of any such interest, as the case may be; ...”**

24. Hague on Leasehold Enfranchisement (4th ed), at paragraph 26-06, refers to the care needed when preparing the counter-notice as follows:-

“A counter-notice admitting the claim ... must, in addition, state various matters. Although no form of counter-notice is prescribed, it is desirable to use a printed form sold by legal stationers, so that none of the particulars is omitted by mistake ... Since the counter-notice contains no “particulars” to show that the tenants qualify under the Act, there is no need for any saving provision to the effect that any inaccuracy in such particulars will not invalidate it. It seems likely therefore that the failure to specify any of the mandatory requirements of a counter-notice will invalidate it, with potentially serious consequences. The 1993 Act does not make provision for amendment of a counter-notice.”

25. The Respondent therefore has one opportunity only to set out its requirements.
26. Accordingly the Tribunal determines that the property to be enfranchised is the specified premises shown edged red on the plan attached to the Applicant’s Initial Notice, together with the appurtenant property shown edged green on the plan attached to the Applicant’s Initial Notice.
27. It is necessary that the Tribunal considered the price that the Applicants have to pay for the appurtenant property. In the Applicant’s notice a value of £14,000 was inserted and the Respondent in its counter-notice claimed £14,000 if its claim to retain the land was not upheld.
28. At the hearing no evidence was put forward by either side relating to the value of the land. At the inspection the Tribunal noted considerable established parking at the front of the building which they considered might have some value and so by a letter dated 16 June 2006 the Tribunal invited both parties to provide written submissions on the value of the appurtenant land.
29. By a letter dated 19 June 2006, Mr Maunder Taylor, for the Applicants, considered the value of the land and, in particular, the parking at the front of the building. He concluded that the land had no value in the market place because of the rights granted in the leases to the leaseholders which he had dealt with in detail.
30. By a letter dated 26 June 2006, Wallace & Partners for the Respondents repeated the claim for £14,000 contained in the counter-notice but provided no evidence to support that figure. Attached to their letter was a submission by Counsel solely relating to the Respondent’s claim to retain the land and

was, in effect, a repeat of the evidence at the Tribunal. As it did not address the issue of value of the appurtenant land, it was of no help to the Tribunal.

31. The Tribunal was persuaded by the arguments contained in Mr Maunder Taylor's submissions particularly in relation to the rights of the lessees over the land and, in the absence of any evidence from the Respondent, concluded that the land had no value in the marketplace and have included a nominal £1 in its valuation.

Yield

32. The Applicant contends for 9% if both the specified premises and appurtenant property are transferred. The Respondent contends for 7% as the capitalisation rate for the term and 6% as the deferment rate irrespective of whether the specified premises and appurtenant property are transferred or only the specified property.
33. Mr Maunder Taylor, for the Nominee Purchaser, said that in his experience, with properties of this age, character and location, it was normal practice to use the same rate for capitalisation and deferment.
34. To support his capitalisation and deferment rate, he referred to three cases in which he was involved, one in Eton Avenue, NW3, and two in Maida Vale, W9. These referred to capitalisation rates of between 7% and 8%. He also produced evidence to support his opinion that investors in the market place do take management risks, responsibilities and service charge problems seriously when assessing the price that investors are prepared to pay.
35. Mr Maunder Taylor also referred to evidence given by Mr Shapiro before the Tribunal in a case concerning Rosemary Court, Fortune Green Road, NW6. In that case (pre Arbib), Mr Shapiro had acted for the tenants and in the evidence in that case he had stated inter alia:-

"As will be seen from the settlement calculations given above the yield in respect of Howitt Close was agreed at 8.5%, that the yield in Westmere Drive was agreed at 9% (more suburban), and that the yield on Netherhall Gardens was agreed at 7% being in the centre of Hampstead.

For the subject property, being extremely poor in quality, I believe that the appropriate yield is 9% and I have proceeded on this basis."

36. Mr Maunder Taylor had in the Rosemary Court case contended on behalf of the Landlord for 8% and this had been adopted by the Tribunal.
37. Mr Maunder Taylor contended that all the above evidence supported a rate of 9%. He drew the Tribunal's attention to the Arbib decision.
38. Mr Shapiro, for the Landlord, said that:

"The choice of yields which are applicable to the term and reversion must now have regard to the decisions of the Lands Tribunal in what have now become

known as the Arbib cases ... Having carefully considered these decisions I believe that a number of principles have evolved.

The first is that there is no reason to capitalise the freeholder's income and defer the reversionary value at the same rate, and indeed the two should be considered separately (it should be noted that the actual decisions relate only to the deferment rate).

Although the Lands Tribunal did not consider the interest rate applicable to the term rent it is clear that regard could be had to alternative investments showing the same characteristics."

39. In order to arrive at his capitalisation rate, Mr Shapiro adopted permanent interest-bearing shares (PIBS) issued by banks and building societies. He said, *"I believe that the appropriate yield rate for the term income is 7%".*
40. As to the deferment rate, Mr Shapiro directed the Tribunal to the National Savings publication relating to inflation beating investments. He derived an equivalent yield for a higher tax payer of between 6.42% and 6.5% and thought that such a yield should be applied to the reversion excluding any considerations of the hope value. He said that the reversion is *"dynamic"*. Mr Shapiro said: *"I have selected an all risk yield of 6% which reflects a nominal hope value of only 4.86% but an all risk yield of 5.27% would not be unreasonable to reflect hope value of 15%."*
41. The Tribunal is disappointed that, notwithstanding the fact that both valuers agreed that there is an active market in suburban areas in ground rents, and this was raised specifically by the Tribunal at the hearing, neither produced any market based evidence and/or analysis to support their conclusions.
42. Mr Maunder Taylor's evidence was considered by the Tribunal to be less than persuasive in that it referred only to capitalisation and not deferment rates and none of his comparables were in a similar location to the subject property.
43. Although Mr Shapiro maintained that the Arbib case set out principles to be followed which directed him to the financial markets, it is considered that where there is a property market (which he accepted was the case here), then in the first instance he should have considered that market as laid down in the Arbib case, but he did not do so.
44. Both Mr Maunder Taylor and Mr Shapiro are experienced valuers and only last year, in the case relating to Rosemary Court, they contended for a rate of 8% and 9% respectively.
45. The Tribunal accepts that different rates for yield and deferment may sometimes be appropriate but in this case, and using its own knowledge and experience, determines a rate of 7.5% both for capitalisation and deferment to include hope value.

Existing lease and value and long lease value

46. Mr Maunder Taylor contended for £152,796 for the existing lease value after adjustment for the effect of the Act and £165,000 for the long lease value.
47. Mr Shapiro contended for the £149,600 for the existing lease value after adjustment for the effect of the Act and £170,000 for the long lease value.
48. Both valuers considered the sales evidence within the subject property adjusted as they thought appropriate. Both valuers accepted that the value of Flat 16 should be increased by £10,000 to reflect the value of a specific parking space for that flat. Mr Shapiro had also derived the short lease value from short lease sales on the Warner Estate in Walthamstow, E17, together with other properties all in N14.
49. The differences between the valuers was small and therefore it was somewhat surprising that the respective valuers were unable to reach agreement.
50. Having regard to the evidence and to the Tribunal's inspection, the Tribunal determines the short lease value at £150,000 and the long lease value of £160,000, both figures without tenants' improvements.

Enfranchisement price

51. The Tribunal determines the enfranchisement price at £280,178 and its valuation is attached as the Appendix to this Decision.

CHAIRMAN 

DATE 18 July 2006

LEASEHOLD VALUATION TRIBUNAL'S VALUATION

**The Holt
London Road
Morden**

Long Leasehold Value £165,000 each and one car space £10,000
Short Leasehold Value £150,000 each and one car space £ 9,000

To first review 3 years approximately
To second review 33 years
To revision 33 years

Capitalisation and Deferment Rate 7.5%

PARTICIPATING FLATS

Term Rent Passing	1,350	
YP 3 years @ 7.5%	<u>2.6005</u>	3,510

Reversion to	2,405	
YP 33 years @ 7.5%	12.1929	
PV in 3 years @ 7.5%	.8049	<u>9.814</u> 23,603

Reversion to	3,585	
YP 33 years @ 7.5%	12.1929	
PV 36 years @ 7.5%	.0740	<u>.9023</u> 3,235

Reversion to VP	5,445,000	
PV 69 years @ 7.5%	<u>.0068</u>	<u>37,026</u>

Value of Existing Freehold	67,374
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NON PARTICIPATING FLATS

Term Rent Passing	50	
YP as above	<u>2.6005</u>	130

Reversion to	100	
YP and PV as above	<u>9.814</u>	981

Reversion to	150	
YP and PV as above	<u>.9023</u>	135

Reversion to VP	330,000	
PV as above	<u>.0068</u>	<u>2,244</u> 3,490

MARRIAGE VALUE (for Participating Flats)

Value of Extended Leases	5,445,000	
Less		
Value of Existing Freehold	67,374	
Value of Existing Leasehold	<u>4,959,000</u>	

Marriage Value		418,626
Freeholder Share @ 50%		<u>209,313</u>

TOTAL	280,177
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Plus	
Value of Appurtenant Land	<u>1</u>

TOTAL ENFRANCHISEMENT PRICE	<u>£280,178</u>
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