RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Properties	:	**(1) 57 High Street** **(2) 59 High Street** **(3) St. Mary's House** **High Street,** **Burnham-on-Crouch,** **Essex CM0 8AH**
Applicants	:	**(1) Andrew John Chudley & Frances Mary Chudley** **(2) John Christopher Devenish James & Yvonne James** **(3) Richard Paul Cumming & Mary Alison Cumming (nominee purchasers)**
Respondent	:	**Grenville Wilson Developments Ltd.**
Representatives and experts	:	**Mr. Edward Peters (counsel) and Mr. David Gillespie MSc FRICS for the Applicants** **Ms. Jenny Branscome FRICS for the Respondent**
Case number	:	**(1) CAM/22UK/OAF/2005/0009** **(2) CAM/22UK/OAF/2005/0010** **(3) CAM/22UK/OCE/2005/0047**
Dates of Applications:		**(1) 19th October 2005** **(2) 12th October 2005** **(3) 1st November 2005**
Type of Applications:		**To determine terms of enfranchisement and costs**
The Tribunal	:	**Mr. Bruce Edgington (lawyer Chair)** **Mr. Frank James FRICS** **Mr. David Jennings FRICS**

DECISION FOLLOWING HEARING ON 26th JANUARY 2006

Decision

1. Given the agreements reached by the parties, the decisions of the Tribunal on the various oustanding issues before it are:-

(a) The yield rate at which the rental income should be valued and the reversion deferred in respect of St. Mary's House is 7%.

(b) The Respondent's interest in that property described in paragraph 2 of the Initial Notice as having been served on the 24th June 2005 shall be transferred to the nominee purchaser of St. Mary's House for the price of £3,000.00

(c) The Respondent's interest in garage 5 shall be transferred to the nominee purchaser of St. Mary's House for the price of £12,500.00

(d) For the avoidance of doubt the Respondent's freehold interest in Flat 1 shall be transferred to the nominee purchaser on the basis that the Respondent is granted a long leasehold interest. If, and only if, HM Land Registry accepts that the freehold and long leasehold interest have merged in the name of the Respondent, as claimed on behalf of the Respondent, then the Respondent's interest in Flat 1 is to be severed and excluded from the transfer to the nominee purchaser

(e) The total reasonable amount of solicitors' costs for investigating all three titles, providing evidence of title to the purchasers and completing the conveyancing formalities is assessed at £2,500.00 plus VAT and the expenses of the Respondent are assessed at £120.00

(f) The remaining part of the application relating to the terms of the transfers is adjourned generally with liberty to either party to apply to re-list this matter for hearing. If no such application is made by 4.00pm on the 27th March 2006, the application will be treated as having been withdrawn.

The reasons for these decisions are as follows.

Introduction

2. One of these 3 applications is made by the nominee purchaser of 5 out of the 9 registered long leases and relates to St. Mary's House, a mid-19th century Grade II listed building of brick construction under tiled roofs. It adjoins 3 terraced houses (55 to 59 High Street) of similar construction and age and 2 of those (57 and 59) form the subject matter of the other 2 applications. St. Mary's House was originally a school house and converted in the late 1970's to provide several units of residential accommodation around an enclosed courtyard. The entrance is via a timber gated archway under a clock tower which covers part of the pavement and is a feature of Burnham-on-Crouch. To the rear of the site is a car park and outbuildings.

3. These applications follow previous proceedings for the appointment of a manager including arguments about reasonableness of service charges. Such proceedings were acrimonious and heavily contested with hearings over a

number of days. A history of the properties, the leases and the parties is set out in the decisions. They will not be repeated here.

4. In view of clear advice from the higher courts as to the desirability of continuity of judiciary, the members of this Tribunal are the same as in the previous applications. This has the advantage that they have previously inspected the properties and are reasonably familiar with them and the surrounding district.

5. A further advantage has been that this Tribunal was aware from the last applications that Mr. John Wilson, the chairman and managing director of the Respondent company has a propensity to seek last minute adjournments relying, at various times, and in no particular order, upon his age, his poor health, the age and poor health of his wife and his inability to obtain advice quickly enough. He also has a propensity to ignore Tribunal directions and to attempt to perform what is sometimes described as 'trial by ambush'. At the appointment of manager hearing, he had several suitcases full of documents which he refused to disclose until the Applicants had closed their case. He is an educated and articulate man who said that he had all his present and, indeed, other health problems, when he conducted a previous case for the Respondent over several days.

6. In this case, after an initial review of the papers on the 7th November 2005, this case was timetabled and parties were asked for dates to avoid for the final hearing. The hearing was booked for 26th January 2006 after having taken Mr. Wilson's January business and other commitments into account.

7. On the 7th December, he wrote to the Tribunal office asking for a general extension of time. At the same time he wrote another letter confirming that he would be representing the Respondent at the hearing fixed for the 26th January.

8. Mr. Wilson decided to instruct 2 firms of solicitors and an experienced surveyor. He instructed solicitors Adcocks of Lichfield to deal with 57 and 59 High Street and Withers of central London to deal with St. Mary's House. On the 24th January, Adcocks wrote to the Tribunal saying that the price for 57 and 59 High Street had been agreed, that the Applicants had agreed to negotiate on the other matters and that "Neither our client nor us propose to attend the hearing on 26 January." On the same day, a copy of a letter from Mr. Wilson's GP arrived saying "In my opinion, he (Mr. Wilson) is not able to conduct his case at the Tribunal". The letter refers to severe anxiety, insomnia and diarrhoea and gives no indication as to when Mr. Wilson was likely to be fit. Another letter appeared from Mr. Wilson's surgeon stating that at some indeterminate date in the future, it was "highly probable" that back pain and sciatica would have to be investigated.

9. At that time, no application for an adjournment had actually been made. However, on the 25th January, a large number of e-mails arrived from Mr. Wilson. In fairness some of these were dated 24th January. The messages were varied. One said that the Respondent did not wish to sell the car park; another said that Mr. Wilson is too ill to attend and referred to doctor's

certificates sent "yesterday"; one asked for a temporary adjournment on health grounds and 2 referred to an understanding that the case had been settled.

10. On the same day (25th January) a letter arrived from Withers stating that they had been instructed not to attend the hearing and their expert witness, Miss. Branscombe was also not attending.

11. The Tribunal assembled on the 26th January. The Applicants assembled with their legal team and their surveyor. They objected to any adjournment. The Tribunal refused the application to adjourn and decided to hear the case. The reasons for the refusal are:-

(a) Although Mr. Wilson is the chairman and managing director of the Respondent, it is difficult to see how he could be described as a witness who was going to be able to help the Tribunal to any great extent on the remaining issues. He makes 3 controversial points in his witness statement namely (i) that the Respondents are the freehold owners of Flat 1 (ii) that Flat 9 had not been properly assigned and (iii) that there were breaches of the terms of leases which prevented the Applicants having any rights. No documents had been produced to substantiate these assertions which were contradicted by the evidence from HM Land Registry which his lawyers had seen.

(b) This application had followed the pattern of a number of similar applications in the previous proceedings. They were made at the last minute with vague medical evidence and no suggestion of when Mr. Wilson was going to be fit to attend any adjourned hearing. The Applicants' view has always been that Mr. Wilson always sets out to thwart them at every move. The evidence would suggest that perhaps this is not an unreasonable inference to make.

(c) His late assertion that the Respondent should retain the car park directly contradicts the Respondent's counter notice which specifically requires the Applicants to purchase the car park etc.

(d) The Respondent agreed that the Applicants could enfranchise and required the Applicants to purchase the car park, Garage 5 etc. and the only matters for the Tribunal to consider were technical valuation matters and the reasonable level of costs. Mr. Wilson does not profess to have any expertise in these matters.

(e) As the price for 57 and 59 High had been agreed in the sum of over £18,000.00 and there was a reasonable likelihood of substantial further monies being available from the acquisition of St. Mary's House, the Respondent clearly has the money to be legally represented at the hearing and the evidence was that Mr. Wilson had instructed the Respondent's solicitors not to attend.

(f) Mr. Wilson is clearly willing and able to write letters and statements and had every opportunity, and was directed, to put the Respondent's case in writing before the hearing.

12. All parties have had the benefit of advice from solicitors and surveyors. It is accepted by the Respondent that the Applicants are entitled to enfranchise. As one would expect from experienced and well qualified surveyors, there has been a large measure of agreement on matters of valuation and valuation costs and a joint statement by the surveyors setting out the agreed and disputed matters is set out at pages 129-131 in the 'houses' bundle. It should be noted here that despite the terms of the Direction as to a bundle, 2 bundles were prepared with duplicated pagination i.e. the bundle for the houses at 57 and 59 High Street and the bundle for St. Mary's House.

13. Just before the hearing the Tribunal was told that the price of 57 and 59 High Street had been agreed.

14. The only remaining valuation dispute on the experts' list relates to the yield rate at which the rental income should be valued and the reversion deferred. Even though 57 and 59 High Street have been agreed, St. Mary's House remains an issue. The Tribunal, having decided on this outstanding matter of yield, enables the parties to make the final calculations of the price to be paid.

15. There are also disputes about the terms of the transfers, the extent of the property to be transferred, Flat 1 and the costs of investigating title etc.

The Law

16. It is agreed that the enfranchisements of 57 and 59 High Street are pursuant to the **Leasehold Reform Act 1967** ("the 1967 Act") and in respect of St. Mary's House, the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act"). These Statutes, as amended, give a Leasehold Valuation Tribunal the jurisdiction to decide the terms of transfer of any interest in the properties and also to determine the costs incurred by the Respondent in investigating title etc. and preparing a valuation. The basis for valuation of St. Mary's House is Section 32 and Schedule 6 of the 1993 Act.

17. Reference has been made in the papers to the recent Lands Tribunal's decision in **Arbib v. Earl of Cadogan** ("*Arbib*") decided in 2005 which is now widely quoted as being a departure from earlier methods of calculating yield. In fact this case changed very little in the sense that it confirmed that market evidence should always be used where possible. *Arbib* involved very expensive central London properties where there was no market evidence and the Tribunal accepted representations made that an LVT could, in those circumstances, look at evidence of the financial market as being one of any number of factors in considering the yield figure.

The Titles - Freehold

18. The freehold title appears to remain unregistered although it will have to be registered upon completion of these transfers in view of the compulsory registration requirements. There are copies of the title deeds in the bundle.

19. It seems that St. Mary's House, the car park and outbuildings at the rear together with 57 High Street were conveyed to Southweald Properties Ltd. on the 18th October 1974. A 6 foot right of way over the rear of 55 High Street was granted for the benefit of 57. St. Mary's House was said to be transferred subject to and with the benefit of a Deed dated 30th October 1969 and made between the then vendors (1) and Burnham District Council (2). The Tribunal was not shown a copy of this Deed.

20. There is then a copy of a conveyance dated 15th August 1978 from which it appears that St. Mary's House and 59 High Street were conveyed by South Weald (2 words) Properties Ltd. to Northover Brothers (Developments) Ltd. A 10 foot right of way at the rear of 55 High Street was granted together with various rights and reservations which one would expect to see in the sale of attached properties. Once again mention is made of the 1969 Deed.

21. There is then a conveyance of 57 High Street dated 18th April 1979 from South Weald Properties Ltd. to Northover Brothers (Developments) Ltd. and a change of name certificate dated 8th December 1982 wherein Northover Brothers (Developments) Ltd. changed its name to Grenville Wilson Developments Ltd i.e. the Respondents in this case.

The Titles – Leasehold

22. It appears that all the structure, roofs, foundations, car park and garages (except no. 5 and any garage already let to anyone else) on the site were leased by the Respondents to St. Mary's Residents Association Ltd. on the 30th December 1985 for a term of 199 years less one day from 25th March 1979.

23. As far as St. Mary's House is concerned all the various Flats or maisonettes have been let on long leases for terms of 199 years from 25th March 1979 and the leasehold titles appear to be registered. The grounds rents start at £150 per annum and then double every 25 years. All tenants have the right to park a car at the rear. In respect of maisonette no.1, Mr. Wilson says, at page 35 in the 'houses' bundle, that the original lease was in fact surrendered and he is presently sorting this out with HM Land Registry because he thinks that the Respondent's title should be freehold and not leasehold.

24. On the 25th October 1983, a Deed was entered into between the Respondent, the management company and the then tenant of maisonette 8. The recitals state that the parties intend that the tenant shall have a lease of garage 1, but the body of the Deed only contains a surrender of the right to park on the

parking area at the rear. However it is noted that HM Land Registry appears to have accepted this as a valid lease of garage 1.

The Applicants' Written Cases on Yield Value

25. The Applicants' expert witness is Mr. Gillespie. As has been said both experts are very well qualified to give an expert opinion in this matter and the Tribunal was greatly assisted by both of their reports.

26. In his report of 6th December 2005, at pages 42 and 43 in the 'houses' bundle he expresses the opinion that the appropriate yield would have been 7% but in view of the uncertainties over the terms of the leases as to future rent, it should be 8%. This comment is strange because despite paragraph 5.2 in his report, there does not appear to have been any valid enforceable amendment to any of the leases to bring the ground rent down to a figure referable to rateable values.

27. Mr. Gillespie prepared a second report dated 20th December 2005 wherein he seeks to elaborate his arguments in respect of yield and deferment rate. He refers to No's 1-6 Hartington Court, Hartington Road, Southend-on-Sea which are 6 modern purpose built flats sold at auction on 6th July 2005. The similarities to the current properties were that the flats were let on long leases with ground rents that double every 25 years. His calculation of the equivalent all risks yield was 7.25%. Mr. Gillespie says that as the leases are so long, any hope value in respect of possible lease extensions would be discounted by any investor.

28. It is Mr. Gillespie's case that this is a good comparable and in view of his analysis, does not invalidate what is known as the "no Act world". He says that as compared with modern purpose built units, St. Mary's House and the houses are old, Grade II listed with more onerous maintenance and management problems.

29. He also refers to an LVT decision in respect of 8a Islingword Street, Brighton, to support his contention that if there is market evidence, this should be taken in preference to evidence of financial markets as mentioned in Arbib.

30. In his view, therefore, the appropriate yield and deferment rate are as stated in his original report.

The Respondent's Written Case on Yield Value

31. Ms. Branscombe's analysis of yield and deferment rate starts at page 61 in the 'houses' bundle. Her view is that the full rent is recoverable and that this would be an attractive investment. The yield, in her view, should be 6%.

32. She accepts, at page 62 that other cases in the Eastern and Southern Tribunal areas has been at a constant level between 7% and 8%. However, she says that in her experience, returns available on freehold ground rent investments are at a level well below this. Further, she says that after the *Arbib* decision,

at least one LVT has reduced a yield figure from 9% to 6.75% because, so it is said, *Arbib* had not been taken into account.

33. Ms. Branscombe refers to her experience in saying that settlements since *Arbib* have involved lower yield levels and she has 3 landlord clients who are expecting to have their investments valued to reflect a lower yield "available in the market place".

34. She refers to the fact that the Respondent uses this investment as a pension fund and therefore is keen to ensure that he is able to replace this investment with another. The Tribunal does not consider that this is at all relevant. Not only is the Respondent a limited company, but this does not constitute any sort of relevant evidence.

35. Finally, she says that she is not asking for the rate to be reduced as much as by the Lands Tribunal in the *Arbib* case. She finishes with a rather odd statement that whilst her original valuation was 7%, her view now, based on the market, is that it should be 6%. The statement is odd because she produces no market evidence.

The Hearing

36. Mr. Gillespie gave evidence to support his 2 reports and confirmed the terms of the agreement relating to 57 and 59 High Street. He said that the agreement on yield for those properties had been made without prejudice to the decision on St. Mary's House.

37. He stood by his starting point of 7% adjusted as to .25% because of his analysis of the yield he thought applied to his comparable of Hartington Court plus .75% to reflect the well known management problems with this property and the inherent management problems with converted buildings as compared with the purpose built block at Hartington Court.

38. He said that he was not told the yield value for Hartington Court by the auctioneers even though he had obtained other information from them.

39. As far as yield is concerned, the decision of the Tribunal is that the appropriate figure is 7%. This figure takes hope value into account. The Tribunal broadly accepted that the hope value of the non participating leases would be minimal. Basically the Tribunal accepted the evidence of Mr. Gillespie. He was able to provide comparable market evidence. However his analysis of the difference between Hartington Court and the subject property was not accepted. Indeed, the Tribunal considered that investors may well be prepared to pay more for properties with manageable management problems because these would tend to attract more in management fees.

40. In addition to Mr. Gillespie's evidence the Tribunal used it's own members' considerable experience and expertise in this subject.

41. The Tribunal did not accept the view of Ms. Branscombe as to the effect of *Arbib*, particularly in the provinces. She also referred to a subsequent LVT decision. What she fails to address is the clear guidance given by *Arbib* (a) that the most important evidence must always be market evidence, of which she could produce none, and (b) that LVT decisions are not evidence of value.

The Remaining Terms of Transfer

42. In his submissions, Mr. Peters, counsel for the Applicants dealt with the question of the car park to include garages 1,3 and 4, the store, the structure etc. He referred to the Respondent's own counter notice which made it a requirement for agreement to the enfranchisement that the nominee purchaser acquire these areas at the suggested price of £3,000.00 .

43. He then referred to the 1993 Act and submitted that this was clearly property used by the tenants "...in common with the occupiers of other premises (whether those premises are contained within the relevant premises or not)". Looked at as a whole, this property was properly contained within the Initial Notice, was accepted by the Respondent and should be included within the enfranchisement transaction. The Tribunal agrees and accepts the agreed price of £3,000.00

44. As far as garage 5 is concerned, this again forms the basis of the agreement set out in the Initial Notice and the counter notice. Mr. Gillespie's view is that the price should be £10,000.00. He acknowledged that he had no local evidence to support this, but relied on evidence obtained from transactions in, for example, east London to provide the range of £7,500.00 to £12,500.00. He also sought to persuade the Tribunal that this was an awkwardly shaped garage and one would have difficulty in getting an average family car into it.

45. The Tribunal's decision based, once again, on it's own expertise and relying to some extent on Mr. Gillespie is that this is a larger than normal garage in a town where there are a large number of properties without garages. This would be a readily sellable or lettable garage and the correct price is £12,500.00

46. The parties have been negotiating on the remaining terms of the 3 draft transfers but terms have not yet been agreed. At the hearing the Applicants' solicitor told the Tribunal that he was confident that the remaining terms could be agreed by negotiation and that issue was, with his agreement, adjourned generally with liberty to restore. If no application is made to restore by the 26th March 2006, the remaining part of this application will be deemed to have been withdrawn.

Costs

47. The Tribunal was told that an agreement had been made with regard to the legal costs incurred by the Respondent in respect of 57 and 59 High Street at £675 plus VAT each. However, as there were arguments about duplication of

work, it is still necessary for the Tribunal to look at the questions of costs as a whole.

48. The law in respect of 57 and 59 High Street is governed by Section 9(4) of the 1967 Act. The Applicants have to pay the landlord's reasonable costs of and incidental to investigating the right to enfranchise; deducing, evidencing and verifying title; furnishing copies of the title and preparing the transfer.

49. The law in respect of St. Mary's House is governed by Section 33 of the 1993 Act which says that the nominee purchaser has to pay basically the same. The wording is slightly different but the effect is the same.

50. In both cases, the indemnity rule applies i.e. if the Respondent employs a lawyer then it is not able to claim any more than it would be liable to pay such lawyer.

51. The Tribunal's directions ordered the parties to deal with the issue of costs as if this were a detailed assessment in the courts. Sufficient details of the costs were supplied but not of the fee earners. The objections raised did not comply with CPR as they did not leave room for the Respondent's comments. The Tribunal has therefore had to waste time on this matter trying to marry up objections with comments.

52. Adcocks, solicitors, deal with 57 and 59 High Street whereas Withers deal with St. Mary's House. Quite why the Respondent felt it necessary to employ 2 solicitors is not clear. Withers make the point that the Applicants cannot chose the solicitors employed by the Respondent which is true. However, the question for this Tribunal is whether it was reasonable to employ 2 solicitors which is bound to lead to duplication and, incidentally, increased costs for the Applicants who, sensibly, all used the same solicitors.

53. As to the fee earners, Adcocks have used a fee earner charging £135 per hour. Gepps, on behalf of the Applicants say that a solicitor of less than 4 years admission should have been used i.e. a Grade B fee earner. It is then suggested that £121 per hour is the level appropriate to a Grade C fee earner. This objection is therefore not understood.

54. As far as Withers is concerned it seems that they have charged no more than £200 per hour. The point is made that the Applicants should not have to pay central London Rates. There is some authority on this point which is quoted by the Applicant's solicitors. This case involved a personal injury claim and the court held that as personal injury work was undertaken, at that time, by most High Street solicitors' firms, it was not reasonable to use a city firm with its higher overheads.

55. This Tribunal is satisfied that the indemnity principle has not been breached. Unlike personal injury claims, enfranchisement under either Act is a specialised field and the conveyancing process was complex particularly as it involved unregistered titles which are unusual nowadays. The Tribunal

therefore has no hesitation in saying that the charging rates of both firms are reasonable.

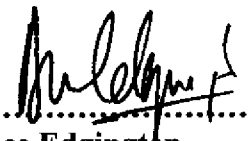
56. Some of the points raised on behalf of the Applicants are reasonable. Additionally, Withers should know that charging for incoming letters is something that solicitors have not been able to recover on detailed assessment for some years. Charging 2 hours 36 minutes on the 25th August seems to be excessive and may display inexperience in dealing with enfranchisement cases. The titles, although unregistered, are straightforward.

57. The main argument that the overall costs incurred by the Respondent in solicitors' fees are unreasonable is upheld by the Tribunal. A significant proportion of the cost could have been avoided by using one firm of solicitors.

58. The work on considering the notices, and dealing with counter notices would have been no different but there would have been savings in taking instructions, corresponding with the Applicants' solicitors, researching the law, deducing title and dealing with the draft transfers, which were in similar terms. Doing the best it can from the limited information available, the Tribunal considers that an overall figure of £2,500.00 plus VAT is reasonable. Obviously the Tribunal is in no position to start apportioning this between the solicitors.

59. There is, in addition, a claim from Mr. Wilson for time spent in instructing lawyers etc. on behalf of the Respondent company. He has claimed travel expenses and time at £20 per hour. There is no calculation or evidence as to how £20 per hour is arrived at. The total claim is £326. The Tribunal finds that the travel expenses and some money for telephone calls and other out of pocket expenses is reasonable and allows an additional £120 for these. No award is made in respect of Mr. Wilson's time as there is no evidence of the justification for the figure claimed.

60. The surveyor's fees have been agreed.



Bruce Edgington
Chair
31st January 2006