

Ref LON/ENF/626/05

LEASEHOLD VALUATION TRIBUNAL
FOR
LONDON RENT ASSESSMENT PANEL

DETERMINATION

RE

APPLICATION UNDER SECTION 27 OF THE LEASEHOLD REFORM AND URBAN DEVELOPMENT ACT 1993

Premises. 6 & 6A Deacon Road, London NW2 5QH

Applicants: Brigitta Toth, Mark Stevens, Nathalie Cazeaux & Michael Haveru
(Qualifying Tenants)

Representative: Messrs Altermans Solicitors

Respondents: Michael Roger & Sarah Gray (*Missing Landlords*)

Meeting: Tuesday 1 November and Monday 22 November 2005

Inspection: N/A

Members of Tribunal: Professor J T Farrand QC LLd FCIArb Solicitor
Mr J R Humphrys FRICS

1. The Application to the Tribunal dated 28 September 2005 was made in pursuance of a Vesting Order dated 16 August 2005 made by Deputy District Judge Morris under s.26(1) of the Leasehold Reform, Housing and Urban Development Act 1993. That section relates to claims for collective enfranchisement where the relevant landlord cannot be found and enables his participation to be dispensed with. The effect of the Order here was to enable all four of the qualifying tenants to become, in effect, the 'nominee purchaser' for the purposes of the 1993 Act.
2. The role of the Tribunal under s.27 of the 1993 Act is twofold: *first*, to determine 'the appropriate sum' to be paid into court as the price of enfranchisement; *and second*, to approve the form and terms of transfer of the landlord's interest to the nominee purchaser.
3. In accordance with Directions dated 5 October 2005, the Application was dealt with on consideration of the documents submitted on behalf of the Applicants without any oral Hearing
4. For this purpose a bundle of documents had been supplied, including a draft Transfer (Land Registry Form TR1) for approval, together with a Proof of Evidence by Peter A H Hooper BSc MRICS.
5. This Proof constituted a detailed and explanatory valuation report by an expert witness as to the appropriate enfranchisement price for the Premises under the 1993 Act. It contained a general description of the property and its location, a summary of the accommodation of each flat, a reference to tenants' improvements, and an outline of the terms of the leases of the flats. Mr Hooper concluded by expressing his opinion of the value of the freehold interest. Correctly adopting a valuation date of 20 June 2005 (the date of the initiating application to court) but based on a yield/deferment rate of 9%, and with the capital values of the leases derived from indicated 'comparables', he calculated a price of £9,949, which he rounded to £10,000.
6. Although the Tribunal found Mr Hooper's valuation satisfactory in almost all respects, he was invited to submit further observations on yield in the light of the very recent decision of the Lands Tribunal in *Arbib v Earl Cadogan* 2005 [LRA/23/2004]. He was also informed that: "In this respect the Tribunal considers that the analysis of auction results and sales of similar properties may assist."

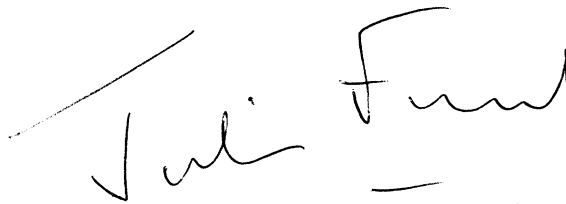
7. In response, Mr Hooper wrote a letter, dated 15 November 2005, to the Tribunal. Primarily, he stated his conclusion that the *Arbib* decision was “not helpful in the subject case” and proceeded to offer various criticisms of its reasoning. He was neither able nor willing to provide any financial market evidence or to research auction results and sales of similar properties to assist the Tribunal to determine the correct yield in the present case. Essentially, his attitude appeared to be that the *Arbib* decision could have no more than a minimal relevance to the valuation for enfranchisement purposes of a small house converted into two flats in Dollis Hill. Therefore, his stated position was that –

“I am not swayed, having considered again the implications of the *Cadogan v Arbib* case, that the “conventional” approach and the adoption of the yield of 9% that I have used within my valuation, having gained support from the direct reference to the five decided LVT cases to which I have referred in my Proof, is not the correct valuation approach.”

8. Notwithstanding a measure of sympathy with Mr Hooper’s attitude and although appreciating that large sums of money are not involved here, the Tribunal does not consider that it could properly disregard the *Arbib* decision. Not only is the Lands Tribunal the immediate appellate body for the present Tribunal and so entitled to receive due respect for its decisions but also the present proceedings concern a ‘missing landlord’ whose legitimate interests the Tribunal should take care to protect.
9. In the judgment of the Tribunal, the appropriate yield rate can no longer be supported by reference to previous LVT decisions but must be arrived at in the light of property market evidence or else financial market evidence. In the absence of any such evidence being submitted by Mr Hooper for the Applicants, the Tribunal must do the best it can to determine a yield rate which is not merely ‘conventional’ but which is compatible with its own general knowledge and experience of current markets. Small ground rents such as this sell easily in the current property market. On this basis the Tribunal has decided that the appropriate yield rate in this case is 6.75%.
10. Accordingly, the Tribunal has recalculated the enfranchisement price, using a yield rate of 6.75% and correcting the reversion value of the two flats to £410,000 but otherwise adopting Mr Hooper’s figures, at the sum of £11,664. A copy of the Tribunal's valuation is attached.

11. The Tribunal did not consider that any amounts required adding to the sum to be paid as being due to the Respondents as landlords in respect of rents or service charges given the lack of any demand for payment and of any information as to a current address for service of notices (cp s.48 of the Landlord and Tenant Act 1987).
12. The Tribunal therefore determines for the purposes of s. 27 of the 1993 Act that the appropriate sum to be paid into court by the nominee purchasers for a vesting transfer of the freehold interest is **£11,664**.
13. As to the form and terms of the transfer, the draft Transfer (Land Registry Form TR1) submitted to the Tribunal for approval was duly considered. The Tribunal is able to approve this draft *except* for two comparatively trivial points: *first*, an X needs placing in the appropriate box in section 9; *and second*, the transferor-landlords should only be expressed to give a limited title guarantee in section 10 (see para.2(2) of Schedule 7 to the 1993 Act). Also, of course, the amount of the determined consideration requires insertion. Subject to these points being attended to, the Tribunal hereby approves the draft Transfer.

CHAIRMAN

A handwritten signature in black ink, appearing to read 'Julie Funnell', written over a horizontal line.

DATE

29th Nov 2005

LEASEHOLD VALUATION TRIBUNAL'S VALUATION
in accordance with the Leasehold Reform, Housing and Urban Development Act 1993

6 AND 6A DEACON ROAD
LONDON NW2 5QH

| | | |
|----------------------|---------------|----------------|
| Ground Rent | £50 p.a. each | total £100 |
| Long Lease Value | £205,000 each | total £410,000 |
| Existing Lease Value | £195,775 each | total £391,550 |
| Yield/Deferment Rate | 6.75% | |
| Valuation Date | 20 June 2005 | |
| Unexpired Term | 74.33 years | |

| | | | |
|--|----------|-------|--------------|
| Value of Landlord's Existing Interest | £ | £ | £ |
| Total Ground Rent | 100 | | |
| YP 74.33 years @ 6.75% | 14.6916 | 1469 | |
| Reversion to freehold total | 410,000 | | |
| P V 74.33 years @ 6.75% | .0083156 | 3,409 | |
| Value of Landlord's Existing Interest | | | 4,878 |

| | | | |
|-------------------------------------|---------|---------|--------------|
| Marriage Value | | | |
| Value of tenants' proposed interest | | 410,000 | |
| less: | | | |
| Landlord's existing interest | 4,878 | | |
| Tenants' existing interest | 391,550 | | |
| | | 396,428 | |
| | | 13,572 | |
| Landlord's share @ 50% | | | 6,786 |

| | | |
|--|--|----------------|
| Total Premium payable to Freeholder | | £11,664 |
|--|--|----------------|