

LEASEHOLD VALUATION TRIBUNAL

MIDLAND RENT ASSESSMENT PANEL

BIR/00CN/OLR/2006/0078

**DETERMINATION OF THE PREMIUM PAYABLE BY THE TENANT TO
THE LANDLORD IN RESPECT OF THE GRANT OF A NEW LEASE AT A
PEPPERCORN RENT FOR A TERM EXPIRING 90 YEARS AFTER THE
TERM DATE OF THE EXISTING LEASE OF THE FLAT**

**Sections 48 and 91 and Schedule 13 of the Leasehold Reform Housing and
Urban Development Act 1993**

THE PROPERTY

55 Overton Close, Hall Green, Birmingham B28 9NA

THE PARTIES

Tenant

Stephen Paul Abbotts

Landlord

Allmid Limited (MIA Properties)

THE TRIBUNAL

Mr WMS Tildesley OBE (Chairman)

Mr J Avery

Mrs K Bentley

Sitting in public in Birmingham on 14 September 2006

The tenant appeared in person

Alan Peter Herbert FRICS of Pennycuik Collins, Chartered Surveyors for the landlord

DECISION

The Application

1. On 1 May 2006 the tenant claimed by notice under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (hereinafter referred to as the 1993 Act) to exercise the right to acquire a new lease of the property.
2. The tenant proposed to pay a premium of £4,500 in respect of the new lease, which would be at a peppercorn rent for a term of 90 years expiring after the term date of the existing lease of the property. The remaining terms of the new lease would be the same as the previous lease.
3. On 26 June 2006 the landlord served a counter notice under section 45 of the 1993 Act admitting that the tenant had on the relevant date the right to acquire a new lease of the property. The landlord accepted the tenant's proposals except the proposed premium. The landlord counter proposal was for a premium of £8,745. The landlord also made application for its valuation costs of £395 plus VAT and its legal costs of £395 plus VAT and disbursements.

The Issues in Dispute

4. The principal issue in dispute was the quantum for the premium. The contentious issues regarding the premium were as follows:

- (1) The appropriate yield rate for calculating the value of the landlord's interest.
- (2) The existing leasehold value of the property.
- (3) The extended leasehold value of the property.
- (4) The weight to be attached to evidence of past settlements.

5. The tenant also challenged the valuation and legal costs claimed by the landlord.

The Law

6. Under section 91 of the 1993 Act the Leasehold Valuation Tribunal has the jurisdiction to determine the premium payable by the tenant in respect of the grant of a new lease and the costs incurred in connection with the new lease to be paid by the tenant.
7. Paragraph 2 of Schedule 13 of the 1993 Act provides that the premium payable by the tenant shall be the aggregate of:
 - a) The diminution in the value of the landlord's interest in the tenant's flat;
 - b) the landlord's share of the marriage value, and
 - c) an amount of compensation payable to the landlord.

8. The question of compensation was not an issue in this Application.

9. Paragraph 3(1) of Schedule 13 of the 1993 Act defines the diminution in the value of the landlord's interest as the difference between the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and the value of the landlord's interest in the flat once the lease is granted.

10. Paragraph 3(2) of Schedule 13 of the 1993 Act establishes the guiding principle for valuing the landlord's interest, which is the amount at the valuation date that interest might be expected to realise if sold on the open market by a willing seller subject to the following assumptions:

10 (1) The vendor is selling for an estate in fee simple or such other interest as is held by the landlord subject to the relevant lease.

(2) There is no right to acquire any interest or a new lease under the Act ("No Act" world)

15 (3) Any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded.

(4) The vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect subject to the "No Act" world assumption.

20 11. The diminution in the value of the landlord's interest comprises two elements which by convention are valued separately. They are:

(1) The loss of the income from the ground rent for the remainder of the original term (as the whole term of the new lease will be at a peppercorn rent)

25 (2) The loss due to the additional 90 years wait for the reversion.

12. The disputed issue of the yield rate in this Application will have an impact upon both elements: the capitalised rental income and the value of the reversion deferred over the unexpired term of the lease.

13. Paragraph 4 of Schedule 13 defines marriage value as the difference between:

30 the aggregate of the values of the interests of the tenant and the landlord before the grant of the new lease,

and

the aggregate of the values of the interest to be held by the tenant and the landlord's interest after the grant of the new lease

35 14. The value of the landlord's interest after the grant of a new lease, however, will be nil. The landlord's share of the marriage value is 50 per cent.

15. Section 60(1) of the 1993 Act makes the tenant liable to the reasonable costs incurred by the landlord in connection with any valuation of the tenant's flat obtained

for the purpose of fixing the premium and the grant of a new lease. Section 60(2) defines reasonableness as:

5 “any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs”.

10 16. Section 60(2) effectively means that the landlord is not required to find the cheapest nor even cheaper valuers or solicitors. The test of reasonableness is best summed up as “what would he have paid out of his own pocket”.

The Hearing

15 17. We carried out an internal and external inspection of the property on the morning of the hearing on the 14 September 2006. At the hearing the tenant appeared in person, Mr Herbert FRICS represented the landlord. We received trial bundles from each of the parties and heard their representations on the disputed matters.

The Evidence

The Property

20 18. The property was a first floor maisonette in a two storey building with its own separate front door with stairs leading to the flat, which comprised a lounge, two bedrooms, kitchen and bathroom. The maisonette had the benefit of a rear garden (68 square yards) and a single garage located in a block some distance away from the property. Access to the rear garden was not direct from the property but via an alley running alongside the property.

25 19. The property was positioned at the end of a block of three two storey buildings. The ground floor maisonette had the same internal layout but enjoyed the benefit of a front garden and a rear garden with direct access from the property.

30 20. The present tenant of the property had refurbished the property internally. He also put plastic cappings on the roof eaves and re-designed the garden. The original property when built in 1969 had single glazing with no central heating and a very basic kitchen consisting of a sink with cupboards underneath and a formica table.

35 21. The property was situated in a small residential estate comprising maisonettes at one end with detached and semi-detached properties at the other end. There was a good range of shops nearby with easy access to the centre of Birmingham and to the motorways. The postal address for the property was Hall Green, which was one of the more favoured established residential suburbs for Birmingham.

The Lease

22. The lease for the property was made on 17 November 1969 for a term of 99 years from 25 March 1969 with a ground rent of £30 per annum. Under the lease the tenant

was responsible, amongst other things, for the external repair and insurance of the property.

23. The unexpired term at date of valuation was agreed at 62 years.

Sales Evidence

5 24. The parties supplied sales evidence of neighbouring maisonettes of the same design and internal layout of the subject property. The evidence is summarised in the table below:

House Number	Sale Price/ Offer Price (£)	Date of Sale	Extra Information
47	120,000	4 November 2005	First floor maisonette sold with extended lease with an escalating ground rent of £120. Tenant's improvements included central heating, double glazing and kitchen.
49	113,000	18 January 2006	Ground floor end maisonette, sold with existing lease, in an unimproved condition except for double glazing.
43	120,000	10 February 2006	First floor end maisonette sold with an existing lease but with the benefit of a section 42 notice. Tenant's improvements included central heating, double glazing and kitchen.
25	Offered for sale at 123,950		First floor maisonette, which benefits from a 90 year lease extension at a peppercorn rent. Tenant's improvements included central heating, double glazing and kitchen.
51	Offered for sale at 124,950		First floor end maisonette, which benefits from a 90 year lease extension at a peppercorn rent. Tenant's improvements included central heating, double glazing and kitchen.
59	Offered for sale at 124,950		Owner's son indicated that his mother has accepted an offer of £118,000. First floor maisonette, which benefits from a 90 year lease extension at a peppercorn rent. Tenant's improvement included central heating, double glazing and kitchen

25. Mr Abbotts, the tenant, pointed out that the maximum price achieved for a sale of a maisonette in Overton Close was £120,000. The prices advertised by the estate agents were higher than the price realised on sale, for example 43 Overton Close was advertised at £123,950 but sold for £120,000; 49 Overton Close was advertised at £121,950 but sold for £113,000.

26. Mr Abbotts and Mr Herbert FRICS submitted that the valuation of the maisonette was not affected by whether it was an end or middle maisonette. Their submission was supported by the recent sales evidence for 43 and 49 Overton Close. We agree with their submission.

27. Mr Abbotts and Mr Herbert FRICS, however, disagreed on whether a ground floor maisonette would be valued higher than a first floor maisonette. Mr Abbotts informed the Tribunal that he was told by a local estate agent that a ground floor flat would be valued at about £2,000 more than a first floor flat. The information from the local estate agent was not confirmed in writing. Mr Herbert was of the view that the convenience of a ground floor maisonette would be balanced by the lack of security and noise so as to produce a neutral impact on the respective valuations of a ground floor and first floor maisonette. He also referred to two previous Tribunal decisions BIR/00CT/OLR/2005/0035, 380 Rowood Drive, Solihull and 2005/0034, 63 Walsgrave Drive, Solihull where the Tribunal held that there was no material difference between the valuation of ground and first floor maisonettes.

28. We note that the market evidence supplied related to first floor maisonettes except for 49 Overton Close, which was a ground floor flat but in an unimproved condition. Although Mr Abbotts' account of his conversation with a local estate agent was not corroborated in writing, we consider that it has force when viewed against the particular facts of this Application. The ground floor maisonette enjoyed the benefits of a front garden and access direct from the flat to the rear garden. The first floor tenants gained access to their rear garden via an alley way which ran alongside the end of each block of maisonettes. We are satisfied that these benefits attached to the ground floor maisonette would result in a material difference between the valuation of ground and first floor maisonettes in the region of £1,000.

Valuation of Tenant's Improvements

29. Mr Abbotts and Mr Herbert FRICS disagreed on what constituted an improvement and its valuation. The identity and valuation of tenant's improvements were relevant issues in this Application because of the statutory disregard when determining the premium payable by the tenant for the long lease.

30. Mr Abbotts was of the view that central heating, double glazing and newly fitted bathroom and kitchen constituted improvements with an estimated value of £10,000. Mr Herbert FRICS contended that central heating was an improvement, whereas double glazing was part improvement and part repair. Mr Herbert was less convinced about the case for a newly fitted bathroom and kitchen, which he considered to be subject to the vagaries of fashion and more a repair rather than an improvement. However, he did concede that a kitchen, which if fitted, amounted to part improvement and part repair with a value of £1,500 for the part improvement element

for the kitchen. The £1,500 represented 50 per cent of the estimated value for a new kitchen. Mr Herbert assigned values of £2,500 for central heating and £1,000 for the part improvement aspect of the double glazing.

5 31. We were referred to the approach adopted by the Tribunal in BIR/00CT/OLR/2005/0035, 380 Rowood Drive, which considered the Court of Appeal decision in *Morcom v Campbell-Johnson* [1955] 3 All ER 264 (CA) where Denning LJ at 266 said:

10 " I find great difficulty in framing a definition of what is an improvement as distinct from a repair It seems to me that the test, so far as one can give any test in these matters is this: if the work which is done is the provision of something new for the benefit of the occupier, that is, properly speaking, an improvement; but if it is only a replacement of something already there, which has become dilapidated or worn out, albeit that it is a replacement by its modern equivalent, it comes within the category of repairs and not improvements".

15 32. Applying Lord Denning's definition we find that central heating was an improvement and that double glazing was part improvement/part repair. We consider that a re-fitted bathroom in the circumstances of this Application was a repair, as the original bathroom comprised the essential fittings of a bath, sink and toilet. The kitchen, however, was in our view a different proposition. The original kitchen was spartan consisting of a sink with cupboards underneath. On those facts we are satisfied that a refitted kitchen amounted to an improvement with a proportionate discount for the replacement of the sink and cupboard.

20 33. Mr Abbotts carried out works on the roof eaves to limit the effects of exposure to adverse weather. We consider that these works were repairs not improvements.

25 34. We determine the following valuations for tenant's improvements:

- (1) Central heating: £2,500
- (2) Double glazing: £1,000 (50 per cent of total estimated cost, representing part improvement/part repair status).
- 30 (3) Fully fitted kitchen: £2,500 (83.33 per cent of total estimated cost representing its effective status as an improvement).

Disputed Issues

The Yield

35 35. Mr Abbotts proposed a yield of 7.5 per cent which was based on the yield adopted in the Tribunal decision in BIR/00CT/OLR/2005/0035, 380 Rowood Drive, which was heard on 26 July 2005 in relation to a tenant's claim made on 25 October 2004.

40 36. Mr Herbert FRICS advocated a yield of 7 per cent. He was mindful of recent Tribunal decisions where the capitalisation and deferment yields have been fixed at 7 per cent following the Land Tribunal decision in *Arbib v Earl Cadogan* (LRA/62/2004). He referred in particular to the Tribunal decision of

BIR/00CN/OLR/2005/0055, 1 Crophorne Court, Calthorpe Road, Edgbaston, where the Tribunal adopted a yield of 7 per cent. Mr Herbert FRICS did not have any market evidence of investments in freehold reversions. The Tribunal enquired whether the recent purchase of the freehold reversions for the maisonettes in Overton Close by the landlord would provide market evidence. Mr Herbert FRICS advised the Tribunal that no analysis had been carried out on the landlord's purchase.

37. The Lands Tribunal in the *Arbib* decision gave a clear ruling that the yield rate should not be established by convention. At paragraphs 115 and 116 the Tribunal ruled that

“LVT decisions on questions of fact or opinion are indirect or secondary evidence and should be given little or no weight in other LVT proceedings ... a decision of the Lands Tribunal may be referred to when general guidance has been given on valuation principles or procedure”.

38. In *Arbib* the Lands Tribunal adopted as its starting point the yield on index linked gilts at 2 per cent to which it added:

(1) 1 per cent for the comparative illiquidity of investments in freehold reversions;

(2) 1.5 per cent for the management costs of property investments which made a total of 4.5 per cent.

39. The Lands Tribunal, however, recognised that it may be necessary to make further adjustments to have regard to factors which make the investment particularly attractive or more risky than some notional norm. The 4.5 per cent rate adopted by the Lands Tribunal in the *Arbib* case applied to large properties in a prime location in Central London. We consider that the location, size and age of this property in Overton Close together with the fact that it was a maisonette makes the investment a significantly higher risk than an investment in the properties considered in the *Arbib* decision. We conclude that a yield rate of 7 per cent accurately reflected the risks involved with the investment in the subject property of this Application. Further, the rate of 7 per cent applied equally to the value of the rental stream, as well as to the value of the reversion deferred over the unexpired term of the lease.

Existing Leasehold Value

40. Mr Abbotts proposed an existing leasehold value of £110,000 derived from deducting £10,000 for tenant's improvements from a figure of £120,000 which represented the highest value realised on the sale of a maisonette in Overton Close.

41. Mr Herbert FRICS based his valuation of £112,000 on the sales evidence for 49 Overton Close, an end ground floor maisonette in an unimproved condition except for double glazing.

42. We preferred Mr Herbert's approach of basing the valuation on recent sales evidence for specific properties. We agree with him that 49 Overton Close represented the best evidence of the value of an unimproved maisonette at the valuation date for this Application.

43. The sale of 49 Overton Close was completed on 18 January 2006 for a price of £113,000 from which Mr Herbert FRICS disregarded £1,000 for tenant's improvements, namely double glazing. We would, however, make two additional adjustments to the sale price of £113,000. The first is for the additional value attached to a ground floor maisonette, which we found to be material on the facts of this Application (see paragraph 28 above). The second is the value associated with the tenant's right to claim an extended lease, in order to reflect the statutory assumption of the "No Act" world. Mr Herbert FRICS opined that the benefit of a Section 42 Notice served and assigned would be valued at 4 per cent of the purchase price of an unimproved maisonette. We consider that the value of a potential right to claim would be considerably less than the 4 per cent attributed to a Section 42 Notice served and assigned. After making these two further adjustments, we find that the existing leasehold value for the property is £110,000.

44. We have cross-referenced our valuation of £110,000 against the sales evidence for 43 Overton Close, end first floor maisonette, which was sold for £120,000 in February 2006. We have disregarded £6,000 for tenant's improvements of central heating, double glazing and fully fitted kitchen and £4,560 (4 per cent) for the benefit of a Section 42 Notice served and assigned producing a valuation of £109,440 which we consider to be sufficient corroboration of our valuation of £110,000 for the existing leasehold for the property.

Extended Leasehold Value

45. Mr Abbotts applied a percentage uplift of 5.7 per cent to an existing leasehold value of £110,000 to arrive at a figure of £116,270 for the extended leasehold value. The percentage uplift of 5.7 per cent was not based upon the evidence. Mr Abbotts simply adopted the same percentage uplift as used by the Tribunal in the decision, BIR/00CT/OLR/2005/0035, 380 Rowood Drive, Solihull.

46. Mr Herbert FRICS submitted that the value of the extended leasehold should be determined by the market evidence rather than by the method of percentage uplift on the existing leasehold value. We agreed with Mr Herbert's submission.

47. Mr Herbert FRICS relied upon the sales evidence for 47 Overton Close which was sold for £120,000 in November 2005 with the benefit of an extended lease of 90 years with an escalating ground rent of £120 per annum. Mr Herbert FRICS gave his expert opinion that the value of this extended lease with a peppercorn rent would be £122,000. We accept Mr Herbert's expert opinion. From the valuation of £122,000 we disregarded £6,000 for tenant's improvements: central heating, double glazing and a fully fitted kitchen, producing a valuation of £116,000 for the extended leasehold.

Evidence of Past Settlements

48. Mr Herbert FRICS supplied evidence of five negotiated settlements of the premium for an extended lease of neighbouring maisonettes. The settlements ranged from £5,000 to £8,200 during the period October 2004 to August 2006. In the interests of transparency we declare that two of those settlements were negotiated by a Valuer member of the Midland Rent Assessment Committee, who was not sitting on this Application.

49. Three main criticisms can be levelled at settlement evidence.

(1) They are evidence only of the price agreed, not of the component parts of that price.

5 (2) They may be affected by the "Delaforce" effect, that is to say the anxiety on the part of the tenant or the landlord to reach an agreement at a figure above or below the proper price without the anxiety and expense of tribunal proceedings.

(3) They tend to become self perpetuating and a substitute for proper consideration and valuation in the particular case.

10 50. In this Application we had reliable sales evidence which obviated the need to evaluate the settlement evidence. Thus we attached no weight to the settlement evidence.

Summary of Our Findings on the Disputed Issues

51. We made the following findings on the disputed issues:

- 15 (1) The yield for capitalisation and deferment was 7 per cent.
(2) The valuation for the existing leasehold was £110,000
(3) The valuation for the extended leasehold was £116,000
(4) No weight was attached to the settlement evidence.

Decision

20 52. We determine that the premium payable by the tenant to the landlord for the grant of a new lease at a peppercorn rent for a term expiring 90 years after the term date of the existing lease is £4,087 (Four thousand and eight seven pounds).

53. Our valuation from which we derive the premium payable by the tenant is attached as Appendix One.

25 **The Costs**

54. Mr Herbert FRICS applied for costs of £395 plus VAT for valuation fees and of an amount not less than £395 plus VAT and disbursements for solicitors' fees in connection with the preparation of the counter notice and the extended lease.

30 55. Mr Abbotts submitted that he was not legally liable for the valuation fees. He accepted that he was liable for the solicitors' costs but at an amount of £350. He relied on the Tribunal decision in BIR/00CT/OLR/2005/0035, 380 Rowood Drive.

35 56. The Tribunal in *Rowood Drive* did not order the valuation fees claimed because they had no evidence to support the claim. In this Application we heard from Mr Herbert FRICS that he inspected the property, sought comparables and prepared a valuation. His normal hourly rate was £190 exclusive of VAT. We consider the amounts claimed for valuation fees and solicitors' costs reasonable.

57. We, therefore, order the tenant to pay the landlord's costs of £395 plus VAT in respect of valuation fees incurred and legal costs of £395 plus VAT and disbursements.

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Michael Tildesley
MICHAEL TILDESLEY OBE
CHAIRMAN

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RELEASE DATE: 16 OCT 2006

APPENDIX ONE

OUR VALUATION TO DETERMINE THE PREMIUM PAYABLE

Valuation of 55 Overton Close, Hall Green, Birmingham B28 9NA

Date of valuation	1-May-06	
Expiry of leases	25-Mar-68	
Term unexpired at date of valuation	61.90	say 62
Appropriate yield for term	7.0%	
Appropriate yield for reversion	7.0%	
Multiplier for 62 years (YP single rate)	14.070	
PV in 62 years	0.015	
Lessor's share of marriage value	50%	
Ground rent	£30	
Value of unimproved extended lease	£116,000	
Value of existing lease	£110,000	

Calculation

Value of unimproved extended lease £116,000

Lessee's interest

(a) Value of existing short leasehold interest £110,000

Freeholder's interest

Present ground rent			£30
YP	62.00	7.0%	<u>14.070</u>

(b) Value of term £422

Value of unimproved extended lease	£116,000
PV in	62.00 7.0%
	<u>0.0151</u>

(c) Value of reversion £1,752

(d) Value of freeholder's interest (b) + (c) £2,174

Marriage value

Deduct Total of existing interests (a) + (d) £112,174

Marriage value £3,826

Freeholder's share 50%

£1,913

Add value of Freehold interest £2,174

Enfranchisement price £4,087