

**LEASEHOLD VALUATION TRIBUNAL FOR  
EASTERN RENT ASSESSMENT PANEL**

**File Ref No: CAM/11UB/OCE/2006/0014**

**Leasehold Valuation Tribunal: Decision**

**Leasehold Reform, Housing and Urban Development Act 1993 ("the  
Act")**

**The Tribunal Members were:**

Mrs Helen Bowers BSc (Econ) MSc MRICS

Mrs Sarah Redmond BSc (Econ) MRICS

Mr J J Sims LL.M MPhil

**The Premises:**

The Perrys, 133 Aylesbury Road, Wendover, HP22 6JN

**The Applicant:**

Perrys Management Services Ltd

**The Respondent:**

Elmbirch Properties Plc

**Date of Inspection and Hearing:** Tuesday 5<sup>th</sup> September 2006

**Initial Notice:** 20<sup>th</sup> September 2005

**Counter-Notice:** 22<sup>nd</sup> November 2005

**Application:** 13<sup>th</sup> April 2006

**Valuation Date:** 20<sup>th</sup> September 2005

**Appearances:**

**Expert Witnesses – Valuers**

Mr D R Buller FRICS for the Applicants

Mr P A Church FCA for the Respondent

## **1. Introduction**

- 1.1 This matter relates to The Perrys, 133 Aylesbury Road, Wendover, (the subject property) and an application pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").
- 1.2 On 20<sup>th</sup> September 2005, Perrys Management Services Ltd served a notice on the landlords, Elmbridge Properties Ltd under section 13 of the Act. The premium proposed in the initial notice was £17,250. A counter-notice was dated 22<sup>nd</sup> November 2005 by Elmbridge Properties Ltd that recognised the Applicant's right to collectively enfranchise and proposing a premium of £37,771. An application was made on the 13<sup>th</sup> April 2006 to the Tribunal to determine the terms of acquisition that were in dispute between the parties.

## **2. The Law**

- 2.1 Chapter I of the Act sets out the provisions for the collective enfranchisement of a property. Schedule 6 of the Act sets out the provisions for the calculation of the premium that is payable in respect of the freehold interest of the property.
- 2.2 In this matter, Section 33 of the Act needs to be considered in relation to costs incurred in connection with the enfranchisement that are payable by the tenant.

## **3. The Premises**

- 3.1 Prior to the hearing the Tribunal had the opportunity to carry out an inspection of the property. Both Mr Buller, the representative for the Applicants and Mr Church the representative for the Respondent were present at the property during our inspection.

- 3.2 The subject property is a two storey purpose built block of flats, dating from the 1980's. The block is of brick and tiled construction with some decorative rendering. There is a small communal entrance hall, stairs and landing that provides access to five of the six flats in the development. Flat 3 has a separate access from the side road. Each flat comprises of a living room with a kitchen or kitchenette, two bedrooms and a bathroom. The flats differ in size and in respect of their layout, aspect and natural light. The flats have the benefit of central heating and double glazed hardwood windows. There has been some refurbishment carried out to the flats in respect of replacement kitchens and bathrooms. In general the block appears to be in good repair.
- 3.3 At the front of the property there is a small, communal garden area. At the rear of the block there is car parking for the flats and a limited number of visitors' spaces; there is a bin store and some limited planting. The side of the block abuts directly onto the public footpath. Aylesbury Road is quite a busy road. The outlook at the front of the block is onto a Texaco garage with fields beyond.
- 3.5 The Tribunal also took the opportunity to make an external inspection of Russell Court which is situated on the Aylesbury Road a few hundred metres from the subject block This property was referred to by both Valuers in their reports.

#### **4 The Leases**

- 4.1 In the papers submitted to the Tribunal was a copy of the lease for Flat 6 and extracts for the leases relating to Flats 1-5. In addition we were also provided with the Deed of Variation for 1. It appears that the leases are generally in the same format, but there are some differences relating to the recovery of service charges in respect of some of the common parts. The leases are for a term of 99 years from Michaelmas 1988 at an initial rent of £100 per annum Each lease is

subject to a rent review after 33 and 66 years and the review is linked to the capital value of the flat at the time of the review and with reference to the initial relationship between the "total initial sale value" and the original ground rent.

## **5 The Agreed Matters**

5.1 The following matters were confirmed to be agreed by both representatives:

Marriage Value: The unexpired term is in excess of 80 years and therefore no marriage value to be calculated as part of the premium.

Valuation Date: 20<sup>th</sup> September 2005.

The Estimated Value of the transfer fees: £582 per annum

Rent Review: 2021 and to be based on 0.12861% of the capital value of the flats at that time.

## **6. Matters Outstanding**

6.1 Given that the above matters had been agreed, the matters that were still outstanding and requiring determination by the tribunal were:

- The appropriate yield to be applied to the current rent, reviewed rent, deferred capital value and the transfer fees.
- The freehold value of the block.
- The existing leasehold value of the block.
- The reviewed rent.
- Costs under Section 33 of the Act.

## **7. Hearing**

7.1 Both Valuers had submitted their reports and the following is a brief summary of their reports, the evidence given at the hearing and their answers to questions asked by the other Valuer and by the Tribunal.

7.2 Applicant's Case

Capital Values.

In respect of the capital values of the flats, advice had been obtained in January 2005 that the flats ranged in value between £153,000 and £167,500. The residential market in the area had been "flat" in 2005 and in fact the Nationwide House Price index had shown that the price of flats in the region had fallen by 4.2% in the 12 months to the end of the third quarter in 2005. This situation was confirmed by sales evidence in Russell Court that indicated that 10 Russell Court sold for £186,000 in September 2004 and Flat 3 Russell Court had sold for £185,000 in September 2005. A valuation of Flat 5 The Perrys had been carried out by Messrs Martin Kemp in 2006 and this indicated a value of £165,000. From these sources of information, Mr Buller concluded that the average value of the Flats at the valuation date was £160,000 providing a total of £960,000. Russell Court can be distinguished from the subject property and in the view of Mr Buller, Russell Court is a superior development. Mr Buller makes no differential between the freehold interest in the block and the value of the existing leases with term of 82 years unexpired.

7.3 Yields

Mr Buller felt that given the term of 82 years unexpired that there should be no differential between the rates used for the capitalisation of the rent and the deferment of the capital value at the end of the term. In order to determine the appropriate rate Mr Buller adopted the same approach as used in Arbib. He started with an initial risk free investment derived from index linked gilts at 2%. To this figure he added 1% to reflect the degree of illiquidity recognized with property assets, 0.75% for management issues and 3% to reflect the location of the subject property in relation to Central London properties.

Consequently this produced a yield of 6.75% which Mr Buller used for the term, reversion and the valuation of the registration fees.

#### 7.4 Rent Review

It is Mr Buller's opinion that as the rent review in 49 years is too speculative, then it would be more appropriate to determine the level of rent review given the capital values as at the valuation date, rather than to speculate what future capital values may be. Given Mr Buller's assessment of the total capital value of £960,000, the estimated reviewed rent on the valuation date would be £1,230

#### 7.5 Transfer Fees

Mr Buller suggests that as Flats 5 and 6 are investment properties, then the prospect of a landlord receiving transfer fees for these flats are remote. As such there should be no differential made between valuing this income potential against the valuation of the ground rents.

Given all these factors Mr Buller concluded that the premium for the freehold interest in this subject block should be £23,368. The supporting valuation is reproduced in Appendix 1.

#### 7.6 Costs

Mr Buller explained that in his opinion that as most of the work undertaken by Mr Church occurred after the counter notice that under the provisions of Section 33 these costs would not be recoverable. Mr Buller made reference to previous LVT decisions which supported his opinion. In these circumstances he consider that a total of 3.5 hours of Mr Church's time was recoverable and he accepted that the hourly rate of £162 was reasonable, this would give a total fee of £567 for the valuation work. In respect of disbursements Mr Buller felt that 270 miles from Salisbury to Wendover and return was excessive and that the journey would be in the region of 202 miles.

## 7.7 Respondent's Case

### Capital Values

Following the inspection of the flats prior to the hearing and after some discussion with Mr Buller, Mr Church amended his appraisal of the existing lease value of the six flats and the figure he proposed were:

Flat 1	£171,624
Flat 2	£162,000
Flat 3	£176,000
Flat 4	£176,000
Flat 5	£168,000
Flat 6	<u>£171,624</u>
Total	£1,025,000

These values are taken from the sales prices in The Perrys and Russell Court and indexed using the Nationwide House Price Index for Outer South East. It was acknowledged that Russell Court was not directly comparable but this was the only useful sales comparables in the area. Mr Church takes the view that the freehold value of the flats would be more valuable than the existing lease interest. In his first report he used an uplift of 2%, but in light of Mr Buller's evidence he altered this to £5,000 for each flat. This produces a total value of £1,055,000 for the freehold interest of the flats.

## 7.8 Yields

Mr Church stated that it was not appropriate to use the same rate for the capitalisation of the ground rent, the reviewed rent, the transfer fees and the deferment of the capital value of the block.

In respect of the initial fixed ground rent, Mr Church proposed that the appropriate rate to use would be 5.28%. This rate was taken from evidence from an Allsops auction of a ground rent portfolio located in Finchley. However, a rate of 4.75% was adopted by Mr Church in

respect of the reviewed ground rent, on the assumption that the reviewed rent is based upon the agreed relationship with the capital values of the block. It was suggested that the market would expect to see some capital growth in the period up to the next rent review and this should be reflected by adopting a lower rate.

Mr Church suggested that the rate for the deferment in the present case would be 5.75%. He had recently settled a case at 6 Marina Court where a deferment rate of 6% had been agreed. The distinction between Marina Court, Brighton and the subject property was that The Perrys had the added benefits of geared rent reviews and an income flow from the assignment fees.

Finally in respect of the valuation of the potential income from the transfer fees, Mr Church felt that a rate of 4.75% was appropriate. It was appropriate to use this rate as like the reviewed ground rent there was potential growth from this income stream in the fact that the fees are linked to the capital value of the units.

## 7.9 Rent Review

Mr Church suggested that there three ways in order to deal with the review of the ground rent. The first is to take the appropriate ground rent using the assumptions under the lease but as at the current valuation date and to capitalise this on the realisation that the market would assume there is some potential for growth due to the nature of long term house prices. This was the approach favoured by Mr Church. The second option would be try and take a view of house price inflation over the period and to estimate the reviewed rent accordingly. Finally, one would take the current rent and apply a very much lower capitalisation rate to reflect the recognised growth that should occur over the period since the initial rent was set. Mr Church initially suggested a reviewed rent of £1,372 per annum for the block, but this was prior to his alterations to his capital values for the block.



#### 7.10 Transfer Fees

Mr Church submits that this is a valuable source of income to the freeholder. As any fee is linked to the capital value of the flat that is sold, there is a perception that this is an income that increases as capital values increase.

In conclusion of all these elements, Mr Church suggested that the premium to be paid for the block should be £42,562 and this is shown in Appendix 2. It is acknowledged that given the slight reduction in his assessment of the capital values, then the premium suggested by Mr Church may decrease very slightly.

#### 7.11 Costs

The invoice from Church and Partners indicated that Mr Church had spent 10 hours 15 minutes on this matter and had charged out his time at a rate of £162 per hour. Additionally mileage of 270 miles was charged at 60 pence per hour. This gave a total invoice for the valuation work of £1,822.50. Mr Church indicated that Section 33 did not limit the costs that were recoverable up to the service of the counter notice. There are many enfranchisement and lease extension cases which settle quickly. In these circumstances Mr Church tries to limit the costs in the early stages by only an outline report that can be subject to amendment once further information is obtained. With regards to the mileage the total mileage is made up of a return journey to London of 172 miles and then a return journey from London to Wendover of 98 miles. This is charged out at 60 pence per mile.

## 8. Consideration

### 8.1 Capital Values

In respect of Russell Court, it was in the opinion of the Tribunal a much superior block. We were asked to consider five transactions in this block. The first two sales related to Flat 3, £185,000 in September 2005, and Flat 10 that sold for £186,000 in September 2004. The problem with this information is that we have virtually no information regarding the individual flats and to the extent of the legal interest that was being sold. We have slightly better information regarding Flats 5 and 9 in Russell Court. However, as no sales have been completed, then this information can only provide a very general view and not concrete comparable information.

Of far more assistance is the sale of Flat 6 The Perrys. We have full details of the size and nature of the accommodation provided. There is no need to make any adjustments to take account of the quality of the block, only to reflect the differences between the various flats within the subject block. There is a problem regarding the date of the transaction in comparison to the subject valuation date. In general the Tribunal has a greater preference to relevant comparables close to the valuation date in comparison to the use of indices. Occasionally it is recognised that it may be appropriate to look at evidence and to consider the use of such indices, even though we recognise their limitations. We acknowledge the suggestion by Mr Buller that if indices are to be used it would be more useful to look at the indices for flats rather than a general indices for all dwellings. In the present case the Nationwide indices show that the prices of flats have fallen during the relevant period in this very general area of the South East. Taking this information, together with the opinions from local agents reported by the Experts and from our own knowledge of the area, we are of the view that prices for flats have been stable for the period and we did not consider that the reduction in the term of 9 months would influence the price where more than 80 years remained. Accordingly the capital

value of Flat 6 as at the valuation date, but in the present condition would be £167,500. It is acknowledged that there have been some works to the flat, but some of the work related to the replacement of fittings, rather than improvements in themselves. We consider that a sum of £1,500 should be deducted from the value of £167,500 to reflect these issues. Therefore we determine that the unimproved existing leasehold value of flat 6 as at the valuation date would be £166,000. From this base figure the Tribunal has made various adjustments for each individual flat taking account of the particular features of each flat. Our assessment of the six flats as at the valuation date is:

Flat1	£166,000
Flat 2	£160,000
Flat 3	£170,000
Flat 4	£170,000
Flat 5	£170,000
Flat 6	<u>£166,000</u>

Total Existing Leasehold Value	£1,002,000.
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The uplift between the existing leasehold value and the freehold interest in the block was suggested to be £5,000 per flat by Mr Buller and an approach of a 2% increase was suggested by Mr Church. The figure of £5,000 per flat is purely an opinion and without any supporting evidence and certainly no information regarding the length of the lease of the existing interest. Given the lack of evidence on this issue we have taken a view given our own knowledge that a suitable uplift would be 2%. Given this the value of the freehold interest in the block would be £1,022,040.

## 8.2 Yields

We agree with Mr Church that the different elements of income and deferment should be considered separately.

In respect of the capitalisation of Ground Rent income Mr Church used evidence from a variety of sources. His information from the Humberts sale had certain potential limitations in that there would appear to be issues in respect of rental growth, management and insurance provisions, which could not be properly analysed. Likewise the Allsops auction transaction, was just one transaction and there were some doubts as to whether the transaction was uncontaminated from the fact the two property companies were involved as tenants of the majority of Flats in the investment. There is also the question of management and insurance potential that was not fully examined and therefore indicated the flaws that could arise from this source of evidence. Additionally the schedule of settled cases undertaken by Mr Church was of limited assistance as we did not have a full picture of all the pertinent issues for each transaction. Mr Buller had altered his approach to reflect the Arbib decision. However, that case only considered appropriate deferment rates.

We were unable to accept Mr Church's analysis of the market evidence he produced. In our view this is a relatively low value and small development with a relatively low current ground rent and we considered that the rate for the capitalisation of this ground rent should be 6%. We recognized that the review of the ground rent in 16 years linked to the capital value of the flats would be seen as attractive to investors. It is acknowledged that there is a general perception in the property market that residential capital values will rise in the long term. This perception would be reflected by the use of a lower rate for the capitalisation of this income flow. Therefore the Tribunal has adopted a yield of 5.5% for this element of the valuation.

On the question of the rate to be used on the deferment, Mr Buller's view of the appropriate rate based on the approach in *Arbib* has merit, although as Mr Church pointed out, at the valuation date, the risk free base rate was 1.25% rather than 2%. Mr Church, referring to decisions and his own settlements, suggested that 6% was normally appropriate, but that the attractiveness of a geared rent review and an income flow on transfer fees would be reflected in a lower yield of 5.75%. The Tribunal consider that there is an element of double counting as some of the attractive features mentioned by Mr Church will be assessed separately. Therefore there should not be a further element of discount for these factors in the deferment rate. Accordingly the Tribunal determine a rate of 6% for the deferment.

### 8.3 Rent Review

There were some similarities of approach between the two experts in respect of the treatment of the reviewed rent. The Tribunal confirms the preferred approach of Mr Church and the approach of Mr Buller, in that the rent should be calculated given the circumstances and level of values pertaining at the valuation date. To try and estimate the level of future house price inflation over the period would be very difficult and an approach most valuers would try to avoid. Given the level of the existing lease values in the block the Tribunal have determined that the level of the reviewed ground rent at the valuation date would be £1,283.

### 8.4 Transfer Fees

It is recognised that the level of fees will be perceived to increase over time as capital values are assumed to rise over the long term. However, the number or rate of transactions cannot be guaranteed. Even past assignment history in the block is no indication of what may happen in the future. There may be long periods where there are no transactions in the block. Mr Church suggests that the fact that as several of the flats are held as investments then the frequency of

transactions will be increased. Mr Buller offers the contrary view that the fact that flats are held as investments may mean that there are fewer transactions. In the opinion of the Tribunal these very opposing positions suggest that the degree of risk from this income stream is higher than that perceived from the flow of the ground rent and the rent review linked to capital values. Therefore, the attractiveness of this potential income flow is restricted; accordingly the capitalisation rate should be 6%.

The rate on the valuation of the transfer fees should reflect that there is far more risk involved in this potential income flow. Whilst the link to capital values would be some comfort to investors. The uncertainty of the income flow would be a concern. To reflect both these issues, it is the opinion of the Tribunal that a rate of 6% would be appropriate for the valuation of this element.

The Tribunal's valuation of the premium taking all the above factors into account is included in Appendix 3. The premium determined for the Freehold Interest for The Perrys is £33,938

#### 8.5 Costs

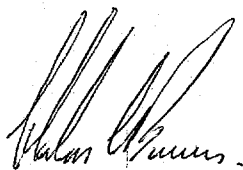
There is no specific mention in Section 33 of the Act that any costs that arise after the service of the counter notice should not be recoverable. We acknowledge that there may be valuation work done after the counter notice that may be recoverable from the Applicant. However, the wording of Section 33 (5) states that "The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings". Once an application has been made to the LVT for any outstanding issues to be determined, then any costs following on from and in connection with that application would not be recoverable. In this case the application

to the LVT was made on 13<sup>th</sup> April 2006. Correspondence from Mr Church and Mr Buller indicate that Mr Church made his inspection of the subject property and made his enquiries of the local agents on 20<sup>th</sup> June 2006. Following on from this local research and investigations on the internet of auction results etc, Mr Church then produced a detailed report on the premium to be paid. It would appear to the Tribunal that this work was connected to the LVT hearing on 5<sup>th</sup> September 2006 and as such could not be recoverable from the Applicant. Mr Buller had indicated that he was happy with items (a) to (g) on the invoice and this gave a total of 3.5 hours. However the Tribunal consider that item (f) regarding the leases and deed of variation may have occurred prior to the application to the LVT and we have therefore determined that a total of four hours would be recoverable. At an hourly charging rate of £162 this would provide a sum of £648. In respect of the disbursements, it would appear that these costs were incurred on 20<sup>th</sup> June and were in respect of the preparation of a case for the LVT and as such should not be recovered from the Applicant.

9. Decision

9.1 Premium for the Freehold Interest of The Perrys £33,938

9.2 Costs £648



H C Bowers  
Chairman

Date

3/10/06

The Perrys

09/01/06

## Revised Valuation having regard to Arbib / Cadagon

Capitalisation Rate	6.75%	
Ground Rent Income	£600 p.a.	
Receivable 16 years	<u>9.6051 Y.P.</u>	
at 6.75%		5,763
On review Ground Rent		
£960,000 x 0.1282%	1,230	
Rec. 66 yrs at 6.75%	<u>14.6160</u>	
	17,977.68	
P.V. of £1 deferred 16 yrs	<u>0.35165</u>	
		6,322
Reversionary Value	960,000	
P.V. of £1 deferred 82 yrs		
at 6.75%	<u>0.00419</u>	
		4,022
Value of Registration Fees		<u>7,261</u>
		<u>£23,368</u>
Simplistic Valuation	19,803	



## APPENDIX A

## Calculation of price to be paid for the freehold of The Perrys

		£
Present income	£600	
YP £1 @ 5.28% 16 years	10.625	6,375
At first review	£1372	
YP £1 @ 4.75% 66 years	20.068	
PV £1 @ 4.75% 16 years	0.4759	13,103
Reversion	£1,088,770	
PV £1 @ 5.75% 82 years	0.0102	11,105
Transfer Fees	£582	
YP £1 @ 4.75% 82 years	20.584	11,979
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Total Premium Payable		£ 42,562
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**VALUATION FOR COLLECTIVE ENFRANCHISEMENT -  
S.24 Leasehold Reform, Housing and Urban Development Act 1993**

**1 - 6 The Perrys, 133 Aylesbury Road, Wendover, Bucks HP22 6JN**

Date of valuation is 20th September 2005

Six flats

Period unexpired approximately 82 years

Ground rent - 33 years @ £100 p.a. each flat

- reviewed at 33 and 66 years to a multiplier of current capital value

Agreed ground rent at 33 year review multiplier :

at ratio of original GR (£600) to original capital value (£466,500) = 0.12861%

Agreed that this be applied to the current value and capitalised for remainder of term

Agreed that there is no marriage value payable

Agreed that there is no compensation payable under paragraph 5

Agreed Transfer fees equivalent to £582 p.a.

Term Yield - determined at 6% and 5.5% at first review

Deferment rate - determined at 6%

Leasehold values determined: £160,000 + 2 x £166,000 + 3 x £170,000 =  
£1,002,000

Virtual, unimproved freehold values: uplift of 2% determined = £1,022,040

Yield rate for transfer fees - determined at 6%

**Value of Freeholder's current interest**

	£	£	£
Ground Rent 6 x £100		600	
Years purchase for 16 years @ 6%		<u>10.1059</u>	6,064
Ground rent at first review		1,289	
Years purchase for 66 years @ 5.5%	17.651		
deferred 16 years @ 5.5%	<u>0.42458</u>	<u>7.4943</u>	9,658
Reversion to freehold in possession		1,022,040	
deferred 82 years @ 6%		<u>0.0084124</u>	8,598
Transfer fees		582	
Years purchase for 82 years @ 6%		<u>16.5265</u>	9,618
<b>Total enfranchisement price</b>			<b><u>£33,938</u></b>