

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HN/OCE/2006/0093

Decision of the Tribunal under Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993

Applicant: Knole Road Freehold Limited
Respondent: New Era Investments Limited
Re: **27 Knole Road, Bournemouth**
Date of Application 23rd November 2006
Date of Inspection 13th April 2007
Date of Consideration 13th April 2007
Representing the Applicant DTW Solicitors (not attending)
Representing the Respondent Eyre & Johnson Limited (not attending)

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
T Dickinson BSc FRICS	Valuer
M Ayres FRICS	Valuer

Date of Tribunal's Decision: 20th April 2007

Decision

1. Both of the following provisions in the draft transfer remaining in dispute shall be omitted:
 - a. The proviso to the section in Panel 13 headed "Rights granted for the benefit of the property";
 - b. Clause B in Panel 13 headed "Rights reserved for the benefit of the Retained Land".

Reasons

Introduction.

2. This is an application made by Knole Road Freehold Limited (the Applicant) on 23rd November 2006 under Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) for determination of the provisions to be contained in the transfer of 27 Knole Road, Bournemouth (the Property) by the Respondents to the Applicant. All other issues arising from the claim for enfranchisement under the 1993 Act had been agreed between the parties.
3. [The Respondent had also issued an application under Section 27a of the Landlord and Tenant Act 1985 concerning outstanding service charges, but that application had been settled prior to hearing and was treated by the Tribunal as withdrawn].
4. The Respondent's lawyers had drafted the Transfer. This had been amended by the Applicant's solicitors by deletion of certain Clauses or parts of Clauses. The resulting amended draft was

annexed to the application, but some amendments had been agreed between the parties. The issues related only to whether the two remaining deleted provisions should be deleted, stand as drawn or amended by other wording.

5. A hearing was arranged for 13th April 2007. Both parties indicated they did not intend to attend in person so the matter proceeded by consideration by the Tribunal of the case papers and the written submissions of the parties.
6. The Respondents lawyers had made final submissions in writing by letter and enclosures of 11th April. As a result the Applicant's solicitors wrote to the Tribunal by Fax dated 13th April stating they had not had time to respond and that the Tribunal should decide whether further submissions from the Respondent were acceptable and whether the Applicant was entitled to respond.
7. Having considered the content of the Respondent's submissions of 11th April and given preliminary consideration to the substantive issues to be determined, the Tribunal was satisfied that there was nothing in the Respondent's submissions of 11th April which was likely to alter the Tribunal's determination of the issues had those submissions not been made; therefore, there was no need for an adjournment for further submissions from the Applicant.
8. For determination of the remaining substantive issues, therefore, the submissions considered by the Tribunal were the Respondent's Statement of Case dated 22nd February 2007, and the Applicant's Solicitors' letter dated 5th April to the Respondent's lawyers.

Consideration

9. The Tribunal considered the law, the relevant submissions received and taking into account also its expert knowledge made its decisions on the following grounds.
10. The proviso to the section in Panel 13 headed "Rights granted for the benefit of the property"
 - a. The proviso is to the effect that before exercising any rights over the community land the Transferee should have paid the Transferor's costs incurred for its maintenance, repair, etc.
 - b. The Respondent submits that without the proviso, the Applicant would have greater rights than presently enjoyed by leaseholders and the Respondent would lose the right to re-imburement of expenditure incurred.
 - c. The Applicant submits that Section 1(4) of the 1993 Act provides for the grant of unconditional rights and that the Applicant, not the Respondent, will be responsible for maintenance, repair, etc.
 - d. The Tribunal found that
 - i. Under Section 1(4) of the 1993 Act qualifying tenants are entitled, in respect of appurtenant land, to either the freehold or permanent rights. If the Respondent is for any reason unwilling to grant permanent rights without qualification, the Respondent can only transfer the freehold. The Tribunal assumes that the Respondent is not willing to transfer the freehold, so its grant of permanent rights cannot be qualified in the manner originally drafted.
 - ii. the absence of such a proviso would not give the lessees greater rights than at present as they now have an obligation to contribute to such costs;
 - iii. it accepted the Applicant's contentions so that the proviso should not be contained in the transfer.
11. Clause B in Panel 13 headed "Rights reserved for the benefit of the Retained Land"
 - a. The clause would enable the Respondent to erect new buildings, increase the height of existing buildings or re-build even if that obstructed, affected or interfered with the amenity of the property transferred (not the community land) or the passage of light and air to it.
 - b. The Respondent suggests it should stand subject to a qualification that it would not affect the rights to be granted over the retained land.

- c. The Applicant says the grant of the permanent rights would prevent such work mentioned at 11.a above.
- d. The Tribunal found that
 - i. Section 1(4) provides for the grant of permanent rights as are proposed elsewhere in the draft transfer
 - ii. Such a clause would be wholly in conflict with those rights and prevent compliance with Section 1(4)
 - iii. The qualification proposed by the Respondent, if it is intended to preserve all the permanent rights, could only, if anything, be to their detriment and therefore might conflict with the Respondent's duty under Section 1(4).
 - iv. The Tribunal found that the Respondent's proposed amendment was not acceptable and this clause should be deleted entirely.

12. The Tribunal made its decisions accordingly.



Chairman
A member of the Leasehold Valuation Tribunal
appointed by the Lord Chancellor