

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



Re: Lee Cliff Park Dawlish Devon EX7 0NE (the Property)

In the matter of an Application under section 24 and Paragraph 2(1) of the Schedule 5 to the Leasehold Reform, Housing and Urban Development Act 1993
(Application to approve the form of conveyance)

DECISION AND REASONS

Case Number: CHI/18UH/OCE/2007/0082

Applicant:: Lee Cliff Management Company Limited

Respondent:: Mrs Pamela Parmigiani

Appearances: Russell James (Barrister) for Applicant
John Sharples (Barrister) for the Respondent

In Attendance: Katy Stewart - Ford Simey Solicitors for the Applicant
Eileen O'Connor - Secretary, Applicant
John Aspinall – Treasurer, Applicant
Peter Bridgwater - Stones Solicitors for the Respondent
Pamela Parmigiani - Respondent

Tribunal Members: Cindy A. Rai LLB Solicitor (Chairman)
Timothy E. Dickinson BSC FRICS (Valuer Member)
Timothy Shobrook BSC FRICS (Valuer Member)

Hearing Date: 28th May 2009

Decision Date: 26th August 2009

Background

1. An application was made to the Tribunal some time ago by the Applicant acting on behalf of 23 of the 33 Lessees at the Property for the collective enfranchisement of their long leasehold interests of flats contained in three separate blocks within a holiday park.

2. Following the submission of the application the parties reached agreement without the need for intervention by the Tribunal on most things but except in relation to the:-
 - a. Form of the transfer deed
 - b. Respondents costs
3. A written request was made by the Applicant's Solicitor to the Tribunal to issue directions and Provisional Directions were issued by John Tarling on the 8th January 2009.
4. The parties requested, pursuant to the original application, that the Tribunal determine those clauses to be incorporated in the transfer which remained disputed by the parties. Originally the parties had agreed to the Tribunal approving the form of the transfer by means of a consideration of the papers, without a formal hearing
5. Just prior to the agreed date for this paper determination (which was scheduled to take place on the 24th April 2009), the Applicant's Solicitor requested a hearing (in accordance with direction 3 of the Tribunal's Provisional Directions).
6. At the Hearing which took place in Plymouth on the 18th May 2009 both parties were represented by counsel, with Mr James representing the Applicant and Mr Sharples representing the Respondent. Mrs O'Connor and Mr Aspinall members of the Applicant Company together with Katy Stewart a representative from Ford Simey (its solicitors) and Mrs Parmiagini the Respondent and Peter Bridgewater (from Stones the Respondent's solicitors) were also present.
7. Although a bundle of information had been provided to the Tribunal prior to the date originally set for the paper determination, further correspondence was subsequently provided following the request for a hearing, and on the date of, and just prior to the Hearing, further bundles of information were provided by both parties to the Tribunal. The parties appeared to have exchanged this information prior to the Hearing. Neither objected to the circulation of the further papers. In particular a schedule (similar to a Scott Schedule used by Surveyors for clarifying disputed repairs) which set out the disputed items in the transfer was circulated to the Tribunal and used as a point of reference by both Mr James and Mr Sharples to order their verbal submissions.
8. Counsel for each party discussed each item listed on the schedule in turn; asking the Tribunal to consider each disputed item and to give consideration to whether or not it should be incorporated within the transfer and how it fell within (or did not fall within) the statutory provisions contained in Schedules 5 and 7 of the Act.
9. At the conclusion of the Hearing some of the wording of the disputed transfer clauses listed in the Schedule had been agreed but other clauses had not.
10. The Tribunal therefore directed the parties that it would issue further written directions setting a proposed timescale to enable the parties to try to agree a revised transfer which would incorporate the agreed clauses and highlight those that could not be agreed. Thereafter the Tribunal members would meet again but without a further hearing, to determine the remaining disputed clauses of the Transfer,

11. The confirmatory written Directions were issued by the Tribunal the 18th June 2009 by which time the parties had exchanged further comments on the draft transfer. The parties submitted a “final version” of the transfer to the Tribunal on 29th June 2009 and the Tribunal met again on the 6th August 2009. This delay arose from its members holiday commitments of which the parties had been advised at the Hearing. In reaching this determination the Tribunal members have taken account where appropriate and relevant the arguments put forward by or on behalf of the parties at the Hearing, supplemented by the additional correspondence with which it has been supplied following the Hearing. In particular the Respondent's solicitor, with the agreement of the Applicant's solicitor supplied a bundle containing:-

- copies of the correspondence exchanged since the Hearing,
- a clean print of the transfer with the remaining disputed clauses highlighted in bold,
- a copy of the “travelling draft” of the transfer with red amendments (24.06.09) Ford Simey, green amendments (26.06.09) Ford Simey and blue amendments (26.06.09) Stones
- the agreed transfer plan

12. The Law

The Act contains the provisions relating to a conveyance executed for the purposes of chapter 1 of Part 1 the Act which relates to the collective enfranchisement of lessees interests.

Section 24 contains the provisions for application where terms are in dispute or failure to enter the contract. It is set out below.

S24 Applications where terms in dispute or failure to enter contract.

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser—

(a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser.

(3) Where—

(a) the reversioner has given the nominee purchaser such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all of the terms of acquisition have been either agreed between the parties or determined by a leasehold valuation tribunal under subsection (1),

but a binding contract incorporating those terms has not been entered into by the end of the appropriate period specified in subsection (6), the court may, on the application of either the nominee purchaser or the reversioner, make such order under subsection (4) as it thinks fit.

(4) The court may under this subsection make an order—

(a) providing for the interests to be acquired by the nominee purchaser to be vested in him on the terms referred to in subsection (3);

(b) providing for those interests to be vested in him on those terms, but subject to such modifications as—

(i) may have been determined by a leasehold valuation tribunal, on the application of either the nominee purchaser or the reversioner, to be required by reason of any change in circumstances since the time when the terms were agreed or determined as mentioned in that subsection, and

(ii) are specified in the order; or

(c) providing for the initial notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6);

and Schedule 5 shall have effect in relation to any such order as is mentioned in paragraph (a) or (b) above.

(5) Any application for an order under subsection (4) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is—

(a) where all of the terms of acquisition have been agreed between the parties, the period of two months beginning with the date when those terms were finally so agreed;

(b) where all or any of those terms have been determined by a leasehold valuation tribunal under subsection (1)—

(i) the period of two months beginning with the date when the decision of the tribunal under that subsection becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this section "the parties" means the nominee purchaser and the reversioner and any relevant landlord who has given to those persons a notice for the purposes of paragraph 7(1)(a) of Schedule 1.

(8) In this Chapter "the terms of acquisition", in relation to a claim made under this Chapter, means the terms of the proposed acquisition by the nominee purchaser, whether relating to—

- (a) the interests to be acquired,
- (b) the extent of the property to which those interests relate or the rights to be granted over any property,
- (c) the amounts payable as the purchase price for such interests,
- (d) the apportionment of conditions or other matters in connection with the severance of any reversionary interest, or
- (e) the provisions to be contained in any conveyance,

or otherwise, and includes any such terms in respect of any interest to be acquired in pursuance of section _____ 1(4) or _____ 21(4).

Section 34 (9) of LHRUDA states:-

- (9) Except to the extent that any departure is agreed to by the nominee purchaser and the person whose interest is to be conveyed, any conveyance executed for the purposes of this Chapter shall—
 - (a) as respects the conveyance of any freehold interest, conform with the provisions of Schedule 7, and
 - (b) as respects the conveyance of any leasehold interest, conform with the provisions of paragraph 2 of that Schedule (any reference in that paragraph to the freeholder being read as a reference to the person whose leasehold interest is to be conveyed, and with the reference to the covenants for title implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 being read as excluding the covenant in section 4(1)(b) of that Act (compliance with terms of lease)).
- (10) Any such conveyance shall in addition contain a statement that it is a conveyance executed for the purposes of this Chapter; and any such statement shall comply with such requirements as may be prescribed by [land registration rules under the Land Registration Act 2002] [FN1].

Schedule 7 of the Act contains 5 paragraphs all of which are set out in full below.

SCHEDULE 7
CONVEYANCE TO NOMINEE PURCHASER
ON ENFRANCHISEMENT

Interpretation

Para 1
In this Schedule—

- (a) "the relevant premises" means, in relation to the conveyance of any interest, the premises in which the interest subsists;
- (b) "the freeholder" means, in relation to the conveyance of a freehold interest, the person whose interest is to be conveyed;
- (c) "other property" means property of which the freehold is not to be acquired by the nominee purchaser under this Chapter; and
- [(d) "the appropriate time" means, in relation to the conveyance of a freehold interest, the time when the interest is to be conveyed to the nominee purchaser.] [FN1]

[FN1] substituted by Housing Act (1996 c.52), Sch 10 Para 19 (b)

General

Para 2

- (1) The conveyance shall not exclude or restrict the general words implied in conveyances under section 62 of the Law of Property Act 1925, or the all-estate clause implied under section 63 of that Act, unless—
 - (a) the exclusion or restriction is made for the purpose of preserving or recognising any existing interest of the freeholder in tenant's incumbrances or any existing right or interest of any other person, or
 - (b) the nominee purchaser consents to the exclusion or restriction.

- (2) The freeholder shall not be bound—
 - (a) to convey to the nominee purchaser any better title than that which he has or could require to be vested in him, or
 - [(b) to enter into any covenant for title beyond those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee;] [FN1]

[and in the absence of agreement to the contrary the freeholder shall be entitled to be indemnified by the nominee purchaser in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).] [FN2]

- (3) In this paragraph "tenant's incumbrances" includes any interest directly or indirectly derived out of a lease, and any incumbrance on a lease or any such interest (whether or not the same matter is an incumbrance also on any interest reversionary on the lease); and "incumbrances" has the same meaning as it has for the purposes of section 34 of this Act

[FN1] subsection and words substituted by Law of Property (Miscellaneous Provisions) Act (1994 c.36), Sch 1 Para 12 (3)

[FN2] subsection and words substituted by Law of Property (Miscellaneous Provisions) Act (1994 c.36), Sch 1 Para 12 (3)

Rights of support, passage of water etc.

Para 3

(1) *This paragraph applies to rights of any of the following descriptions, namely—*

- (a) rights of support for a building or part of a building;*
- (b) rights to the access of light and air to a building or part of a building;*
- (c) rights to the passage of water or of gas or other piped fuel, or to the drainage or disposal of water, sewage, smoke or fumes, or to the use or maintenance of pipes or other installations for such passage, drainage or disposal;*
- (d) rights to the use or maintenance of cables or other installations for the supply of electricity, for the telephone or for the receipt directly or by landline of visual or other wireless transmissions;*

and the provisions required to be included in the conveyance by virtue of sub-paragraph (2) are accordingly provisions relating to any such rights.

(2) *The conveyance shall include provisions having the effect of—*

(a) granting with the relevant premises (so far as the freeholder is capable of granting them)—

- (i) all such easements and rights over other property as are necessary to secure as nearly as may be for the benefit of the relevant premises the same rights as exist for the benefit of those premises immediately before the appropriate time, and*
- (ii) such further easements and rights (if any) as are necessary for the reasonable enjoyment of the relevant premises; and*

(b) making the relevant premises subject to the following easements and rights (so far as they are capable of existing in law), namely—

- (i) all easements and rights for the benefit of other property to which the relevant premises are subject immediately before the appropriate time, and*
- (ii) such further easements and rights (if any) as are necessary for the reasonable enjoyment of other property, being property in which the freeholder has an interest at the relevant date.*

Rights of way

Para 4

Any such conveyance shall include—

- (a) such provisions (if any) as the nominee purchaser may require for the purpose of securing to him and the persons deriving title under him rights of way over other property, so far as the*

freeholder is capable of granting them, being rights of way that are necessary for the reasonable enjoyment of the relevant premises; and

- (b) such provisions (if any) as the freeholder may require for the purpose of making the relevant premises subject to rights of way necessary for the reasonable enjoyment of other property, being property in which he is to retain an interest after the acquisition of the relevant premises*

Restrictive covenants

Para 5

(1) As regards restrictive covenants, the conveyance shall include—

(a) such provisions (if any) as the freeholder may require to secure that the nominee purchaser is bound by, or to indemnify the freeholder against breaches of, restrictive covenants which—

(i) affect the relevant premises otherwise than by virtue of any lease subject to which the relevant premises are to be acquired or any agreement collateral to any such lease, and

(ii) are immediately before the appropriate time enforceable for the benefit of other property; and

(b) such provisions (if any) as the freeholder or the nominee purchaser may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of any such lease or collateral agreement as is mentioned in paragraph (a)(i), being either—

(i) restrictions affecting the relevant premises which are capable of benefiting other property and (if enforceable only by the freeholder) are such as materially to enhance the value of the other property, or

(ii) restrictions affecting other property which are such as materially to enhance the value of the relevant premises; and

(c) such further restrictions as the freeholder may require to restrict the use of the relevant premises in a way which—

(i) will not interfere with the reasonable enjoyment of those premises as they have been enjoyed during the currency of the leases subject to which they are to be acquired, but

(ii) will materially enhance the value of other property in which the freeholder has an interest at the relevant date.

(2) In this paragraph "restrictive covenant" means a covenant or agreement restrictive of the user of any land or building.

END OF SCHEDULE

13. The first disputed clause in the transfer is that numbered **13B 1**. The Applicant seeks to include a right of way in the transfer over "the access off Beach Road" with or

without vehicles. The route of the proposed right of way is shown on the transfer plan. It is not the primary access to the property which is the subject of the Transfer. It was not disputed that the right now sought is not contained in the existing leases; and it became clear from the submissions made by and on behalf of both parties that insofar as the current lessees may have exercised rights over this access, they have done so only with the specific consent of the Respondent. Nevertheless Mr James considered that the provisions of the Act enabled the Applicant to seek the incorporation of this right in the transfer. Mr Sharples did not agree with Mr James' interpretation of the legislation. He said that what had been proposed was "parasitic" on a right to park and was not within the provisions of paragraph 4 of Schedule 7 of the Act.

14. Paragraph 4 is relevant to the grant of rights of way. There was much discussion between the parties and by way of submission to the Tribunal from which Tribunal concluded that although a right may have been granted by the Respondent on an occasional basis there is no express right to use this access road in the existing leases. It was however admitted that occasionally consent might have been given to individual lessees to use on a one off basis the Beach Road access (with vehicles). The Tribunal examined the various copies of the leases with which it had been provided being for Flats G2, J3, K3 and F3. The third Schedule to these leases contains "the easements rights and privileges" In clause 1 of this Schedule rights are granted "over all such parts of the Reserved Property as afford access thereto and egress there from". There is no reference to vehicles. A gate which is apparently locked intermittently prevents free use of the Beach access road. If the lessees had regularly used the access they would have known that the gate was often locked. The Tribunal was also referred to a planning consent dated 22nd February 1972 which was the consent which had permitted the construction of the leasehold units that are now the subject of this application and which had specified that vehicular access to the leasehold property must be via the road in respect of which the leases grant the lessees rights and not the Beach Road Access.
15. Paragraph 4 of Schedule 7 of the Act primarily enables a right of way to be included where it needs to be granted to facilitate the separate ownership of the transferred land. It does not contain a provision which suggests that it is intended to enable an applicant to improve upon an existing right that happens to be sufficient to enable it to continue to use the transferred land in the way that they used it before the transfer of the freehold. This was the argument put forward with the Respondent Counsel and the Tribunal is persuaded as to the validity of his representations. It appears to the Tribunal that the Beach Road access is the historic access which served the site long before the development of the site by the construction of the holiday units, now the subject of this application. None of Mr James submissions have persuaded the Tribunal that the additional words shown in bold in the latest version of the transfer should be included as to do so would enhance the rights that the Applicants currently enjoy. For these reasons the Tribunal determines that the bold words in clause **13B 1** be deleted.
16. The next clause in the transfer which the parties cannot agree is numbered **13B 7**. However, in the clean draft of the transfer this clause is not bold; instead two clauses **13B7.1** and **13B7.2** have been inserted. It is not clear to the Tribunal if these are

agreed or not. The Applicant has included a right to park 32 cars within the Car Park (as defined in the transfer). Mr Sharples said that insofar as it might be appropriate to grant such a right to the Applicant it could not be in addition to the rights which the individual lessees enjoyed under each existing lease as these rights would continue. Therefore he seemed to suggest that the right should be by way of confirmation only that the Applicants land would continue to benefit from the rights to park contained in the individual leases (presumably on the basis that if for any reason these leases were surrendered or terminated the Applicant would have the ability to "re-grant" these rights notwithstanding that the Applicant has no freehold interest in the Car Park (being the area defined as such in the transfer). He suggested that the wording suggested by the Applicant would or might result in additional rights to park being granted for the benefit of the Applicant in addition to the rights already enjoyed by the individual lessees.

17. The Tribunal accepts Mr Sharples submissions. It is clearly inappropriate for the freeholder to grant additional rights. The transfer in intended to transfer the land subject to and with the benefit of the existing rights of the Lessees which are clearly set out in clause (g) of the third Schedule in the leases. Furthermore the Respondent already has the right to reallocate parking spaces and presumably this might be necessary from time to time to enable the repair of the surrounding areas. However if the leases should be terminated for any reason the Applicant would need to be able to ensure that any new lease created could include the benefit of the existing rights. For this reason the Tribunal determined that the existing clause be deleted and the clause below substituted as **13B 7**:-

"The exclusive right for the Lessee of a Flat within the Property to park one private car such car to be fully taxed and roadworthy in the parking space marked for identification only on the plan attached to his Registered Lease or if such space is not shown in such parking space as may be allocated by the Transferor from time to time provided always that such parking space shall be within the Car Park"

The following definitions would need to be added to those contained in the transfer:-

"A Flat" is a flat forming part of the Property

"A Lessee" is a lessee of a Flat

"A Registered Lease" is an existing lease of a Flat referred to in the schedule of leases in the charges register of the Transferor's title at the date of this Transfer or any lease that might be granted within the Perpetuity Period in substitution of a Registered Lease

However, if in fact the parties have now agreed to include both clauses, **13B 7.1** and **13B7 2**, they can ignore paragraphs 16 and 17 of this decision.

18. The next disputed clause is **13D 3** which prevents the Transferee from undertaking works on the transferred property which would interfere with the Transferors use of the Retained Land (the extent of which is defined in the transfer). The Applicants suggest that this right cannot be included unless the Respondents mutually agree to not undertake similar works on the Retained Land. Mr Sharples argues that such a restriction is a fetter on the Respondents use of the Retained Land and that it might

impact on its value for development. Such a reduction in value would have had to be taken into account when the price for the transferred land was agreed. Furthermore he says that the provision cannot be included if not agreed since it does not fall within paragraph 5 (b) of Schedule 7 of the Act because it does not secure the continuance of the restrictions which currently arise under the existing leases. Mr James did not offer any persuasive argument to counter this. He said that the Applicants seek a right necessary for the reasonable enjoyment of the transferred property. He did not suggest that the Applicants currently enjoyed this right. By way of rebuttal on the valuation he said that the original price had been agreed in 2005 but a much reduced offer was made in 2006 following the receipt of valuation advice. The price eventually agreed also took into account the valuation principles enshrined in the "Sportelli Decision" Mr Sharples accepted that paragraph 3 (1) (b) of Schedule 7 of the Act entitled the Transferee to a grant of existing rights. The leases already contain this benefit. Paragraph 5 (1) (b) enables the inclusion of restrictive covenants to secure the continuance (with adaptations) arising by virtue of a lease or collateral agreement. No right such as that sought by the Applicant exists now. The restriction that the Respondent wants merely replicates the current provision contained in the existing leases. He also rejected any suggestion that the existing price had taken this potential loss of development value into account and that it was misleading to suggest that the valuation was not an issue albeit that it was now agreed. However the consideration is not an issue which the Tribunal has been asked to determine. It does however prefer Mr Sharples submissions and therefore determines that clause **13D 3** be included in the transfer.

19. The next disputed clause is **13D 5**. This clause relates to a restriction upon the Transferee keeping pets on the Property. It reflects the wording in the current leases. Nevertheless the Respondent has hitherto given permission for some pets to be kept upon the Property. At the Hearing the parties submitted conflicting and extensive arguments with regard to its wording following which the Tribunal had understood that the parties would agree something but apparently the wording is still not acceptable to both. The current leases prevent the lessees from keeping pets. The Applicant wishes to reflect the "status quo" in the restriction. It was suggested that as the Respondent has granted permission to an existing lessee with regard to a particular pet it cannot be considered as a "waiver" of permission but is a specific "permission" for a specific animal and not one which would automatically apply to a successor animal. In the light of arguments advanced in some detail at the Hearing the Tribunal agreed that it is appropriate to suitably adapt the wording contained in the current leases to reflect the status quo. It is not quite clear to the Tribunal which parts of the wording to which the Applicant objected but the Tribunal accept that all the wording should be included. However if the definition of "Registered Lease" is now included the words "referred to in the Title Register for Title Number DN206744" can be omitted.
20. The next disputed clause is **13D 9 (a)**. It can usefully be considered alongside clause **13D 9 (f)**. These are both clauses which would impose restrictions upon the Transferor which replicate the existing restrictions imposed on the lessees under their existing leases. The Applicant alleges that if such restrictions are included it is entitled to insist upon mutual restrictions with regard to the Transferor's Retained Land. The disputed clauses relate to signs in windows or on the exterior, additional

exterior wiring and car or motorcycle maintenance. At the Hearing clause **13D 9 (a)** was thought by the Applicant to be too restrictive. It does replicate the exact wording of the existing leases as does **13D 9 (f)**. It also satisfies the criteria in paragraph 5(b) (i) and (c) of Schedule 7. For this reason the Tribunal determines that both these clause shall be included.

21. Clause **13D 9 (g)** is a new provision but It appears that paragraph 5 (b) (ii) of Schedule 7 would enable the inclusion of restrictions benefitting the Respondents other property "which are such as materially to enhance the value" of the Property. This was what Mr Sharples said. Given that the land to be transferred is fully developed the Applicant's argument put forward at the hearing in relation to sub paragraph (g) were not persuasive. There is no right to carry out such work within a parking space and no lessee should wish to undertake this work within the leased properties. On that basis the Applicant's arguments have not persuaded the Tribunal to delete this clause from the transfer and it determines that it should be retained both on the basis that such restrictions is within Schedule 7 and could or would materially enhance the value of the Respondents other property and also such provision is desirable in the interests of good estate management. The Tribunal determines that this clause be included in the Transfer.
22. Clause **13E** contains the restrictive Covenants imposed upon the Transferor. Taking into account what was said at the Hearing the Tribunal approves all of the wording shown in the clean version of the transfer other than "acting reasonably" in clause **13E 3**. It does not consider that the words "acting reasonably" are necessary or improve the provision as drafted. Upon further consideration as to which party benefits from this provision the drafting of which has apparently been the subject of extensive consideration by the parties legal representatives it is of the view that the risk associated with the Respondent being able to deem whether or not the level of cover is appropriate is prejudicial only to the Respondent's interest.
23. With regard to clauses **13E 4** and **13E 5** the Tribunal preferred Mr Sharples' submissions than those of Mr James. It determines that all that the Applicant can claim is the replication of its existing rights as set out in the existing leases.
24. The Tribunal has difficulty accepting the wording of clause **13E 6**, wording which is proposed by the Applicant since it would enable further argument to be put forward by each party with regard to the choice and suitability of person employed by the Respondent to provide the specified services. There does appear to be a lack of proportionality in the Applicants proposed wording which might lead to increased cost and further argument. It appears preferable to retain the wording which mirrors the existing obligations of the freeholder as set out in clauses 4 and 5 of the Sixth Schedule of the current leases. At the hearing both parties submitted their views but whilst the Tribunal believes that the arguments about fair and reasonable being mutually competitive have some merit it considers that just "fair", in isolation, may not alleviate the Applicants concerns and therefore the Tribunal determines that the wording should be:-
25. "The Transferor shall either themselves or through the managing agent calculate on a fair and transparent basis the recharge to the Transferee of the water and the electricity supplied to each of the three blocks of flats forming the Property [as at the

date hereof] insofar as the supplies are not sub metered and in addition the Transferor shall also be entitled to charge a reasonable fee for its time and costs incurred, and those of the managing agent, with regard to the calculation of the amounts due from the Transferee. "

26. The Tribunal concluded that the disputed provision which the parties have been unable to agree lacked clarity which the revised provision should provide. It is considered that the changes fall within the discretion afforded by paragraph 5 (1) (b) (i) .
27. Whilst the travelling draft of the transfer contains comments in red, blue and green in relation to **Clause 13E 7** it is not included in the clean transfer. As it was the subject of much discussion at the Hearing the Tribunal has separately considered when reviewing the relevant clauses whether the Applicant has made an argument which it can support by reference to the provisions of the Seventh Schedule to the Act for requiring mutual covenants from the Respondent. Having carefully considered the wording it is of the view that this can only be accepted if the inclusion might enhance the value of the property transferred. (See paragraph 5 (b) (i) and (ii)). No arguments put forward in support of this by or on behalf of the Applicant have persuaded the Tribunal that it should determine that this provision be included in the transfer. The omission of the clause from the clean version of the transfer is therefore consistent with the Tribunal's determination.
28. The Tribunal is pleased to note that a figure of £700 appears to have been agreed in clause **13F 5** although for some reason this has not been amended in the clean transfer supplied in Stone's bundle but it is assumed that this is an omission and the Tribunal have therefore altered this from £600 to £700 in the approved transfer as this seems to reflect what was in the travelling draft transfer.
29. Having listened to the arguments put forward on behalf of both parties at the Hearing the Tribunal formed the view, following the Hearing, (perhaps more in hope than expectation) that given more time the parties should have been able to agree most of the disputed provisions but it became clear from the bundle supplied, prior to the Tribunal's further consideration of the disputed issues, that this has not been the case. This has left the Tribunal with no alternative but to determine the "final" version of the transfer itself.
30. The parties have attached a copy of the agreed transfer plan. The Tribunal was unsure why the blue lines around the "Retained Land" do not simply surround the extent of this land. Instead blue lines seem to intersect the property for no apparent reason. The parties may wish to reconsider whether this is necessary or not. Points V and Y should be removed too.
31. It is disappointing to note that despite being prompted at the Hearing to do so neither party had included with the Transfer the statement required pursuant to clause 24 (10) of the Act. The Tribunal determines that the following statement be added to the final transfer.

"This Transfer has been executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform and Urban Developments Act 1993 and is in a form approved by

the Southern Leasehold valuation Tribunal on the 26th August 2009 pursuant to section 24 of the said Act”

- 32.. For the sake of clarity and to avoid the potential of further dispute between the parties the Tribunal has annexed to this decision the clean version of the transfer supplied prior to its final consideration on the 6th August 2009 with its amendments added thereto and any deletions endorsed on that transfer.
33. Given the uncertainty as to the parties intentions with regard to the inclusion of clauses **13B 7.1** and **13B 7.2** the Chairman will endorse a signature on a final version of the transfer that includes the suggested amendment set out in paragraph 17 of this decision if that is what the parties require but the transfer annexed assumes that as neither provision was in bold on the clean copy of the transfer the inclusion of these clauses is agreed by the parties.

Cindy Rai

A handwritten signature in black ink, appearing to read 'Cindy Rai', written over a large, faint circular stamp or watermark.

Chairman

26th August 2009

A member of the Panel appointed by the Lord Chancellor

Land Registry
Transfer of part of registered title(s)

TP1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

1	Title number(s) out of which the property is transferred: DN206744
2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:
3	Property: Land and buildings at Lee Cliff Park, Dawlish Warren The property is identified <input checked="" type="checkbox"/> on the attached plan and shown: edged red <input type="checkbox"/> on the title plan(s) of the above titles and shown:
4	Date:
5	Transferor: Pamela Parmigiani <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in England and Wales including any prefix:
6	Transferee for entry in the register: Lee Cliff Park Management Company Limited (Co. Reg. No. 05771724) <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in England and Wales including any prefix:
7	Transferee's intended address(es) for service for entry in the register: 47 Durban Road, Thurcaston Park, []

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

8	The transferor transfers the property to the transferee
9	<p>Consideration</p> <p><input checked="" type="checkbox"/> The transferor has received from the transferee for the property the following sum (in words and figures): £70,000.00 seventy thousand pounds</p> <p><input type="checkbox"/> The transfer is not for money or anything that has a monetary value</p> <p><input type="checkbox"/> Insert other receipt as appropriate:</p>
10	<p>The transferor transfers with</p> <p><input checked="" type="checkbox"/> full title guarantee</p> <p><input type="checkbox"/> limited title guarantee</p>
11	<p>Declaration of trust. The transferee is more than one person and</p> <p><input type="checkbox"/> they are to hold the property on trust for themselves as joint tenants</p> <p><input type="checkbox"/> they are to hold the property on trust for themselves as tenants in common in equal shares</p> <p><input checked="" type="checkbox"/> they are to hold the property on trust:</p>

This panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

"Flat" is a flat forming part of the Property
"A Lessee" is a lessee of a Flat
"A Registered Lease" is an existing lease of a Flat referred to in the Schedule of leases in the Charges Register of the Transferor's title at the date of this Transfer or any lease that might be granted within the Perpetuity Period in substitution for a Registered Lease

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

12. Additional provisions

Definitions

13A Definitions

In this Transfer:

1. "Car Park" means the land shown hatched green on the Plan
2. "Perpetuity Period" means the period of eighty years from the date of this Transfer
3. "Plan" means the plan attached to this Transfer
4. "Property" means the land and buildings transferred by this Transfer (and each and every part of it)
5. "Retained Land" means the land edged blue on the Plan (and each and every part of it) apart from the Property
6. "Service Charge" means the service charge defined in and payable in accordance with clause 13F
7. "Transferee" means the Transferee named in this Transfer and includes the Transferee's successors in title to the Property
8. "Transferor" means the Transferor named in this Transfer and includes the Transferor's successors in title to the Retained Land
9. "Walkways" means the pedestrian pathways on the Retained Land forming the frontage to each of the three blocks of flats built on the Property

Rights granted for the benefit of the property

13B Rights Granted to the Transferee

The Property is transferred to the Transferee together with the following rights:

1. Full right and liberty for the Transferee in common with all other persons entitled to the like right at all times and for all purposes in connection with the permitted user of the Property to go pass and repass over and along all such parts of the Retained Land as afford access to and egress from the Property ~~with or without vehicles in respect of the singular vehicular accessway currently used by the occupants of the Property to afford access to and from the Car Park in connection with exercising the right to park as contained at paragraph 7 below, the access off Beach Road being approximately between the positions~~

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~~marked V and Y on the Plan.~~

2. The free and uninterrupted passage and running of water soil gas electricity telephone and any other Service Media now serving the Property from and to the Property through the sewers drains and water courses cables pipes and wires which now are or may at any time during the Perpetuity Period be in under or passing through the Retained Land
3. All rights of support and protection now enjoyed or intended to be enjoyed by the Property over any part of the Retained Land
4. The right with workmen and others of access to and entry upon all parts of the Retained Land as are necessary at reasonable times giving (except in case of emergency) at least 48 hours' notice in writing to execute repairs or works for which the Transferee is responsible under this Transfer or to enable the Transferee to maintain or renew the sewers drains water courses cables pipes and wires serving the Property or otherwise for the proper performance of the Transferee's obligations under this Transfer the Transferee making good all damage caused
5. The right (in common with all others similarly entitled) to use closed receptacles for storing refuse in the refuse areas from time to time allocated to the Property by the Transferor
6. The right (in common with all others similarly entitled) to use the communal gardens within the Retained Land PROVIDED THAT such use shall not be such as to cause a nuisance or annoyance either to the owners or occupiers of any other part of the Retained Land or any adjoining property and shall be subject to such reasonable rules and regulations for the use of the same as may be laid down by the Transferor from time to time
- 7.1 It is agreed by the parties that the right to to park private vehicles within the Car Park as contained at 13B7.2 below, as vested in and benefitting both the Transferee and the tenants of the flat leases comprised within the Property, shall be a right to park in not more than 32 spaces in total, as are located within the Car Park
- 7.2 The right to park thirty two private cars (such cars to be fully taxed and roadworthy) in such parking spaces as may be allocated by the Transferor from time to time, Provided Always that such parking spaces shall be within the Car Park
8. The Transferor shall provide a sufficient number of lines for the drying of clothes in such places within the Retained Land as

she shall in her absolute discretion decide from time to time, it being acknowledged that the Transferee shall have no right to use the existing laundry facilities.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Rights reserved for the benefit of other land

13c Rights reserved to the Transferor

The following rights are reserved out of this Transfer for the benefit of the Retained Land:

1. The free and uninterrupted passage and running of water soil gas and electricity from and to the Retained Land through the sewers drains and water courses cables pipes and wires which now are or may at any time during the Perpetuity Period be in under or passing through the Property
2. All rights of support and protection now enjoyed or intended to be enjoyed by the Retained Land over any part of the Property
3. The right with workmen and others of access to and entry upon all parts of the Property as are necessary at reasonable times giving (except in case of emergency) at least 48 hours notice in writing to execute repairs or works for which the Transferor is responsible under this Transfer or to enable the Transferor to maintain or renew the sewers drains water courses cables pipes and wires serving the Retained Land or otherwise for the proper performance of the Transferor's obligations under this Transfer the Transferor making good all damage caused

Include words of covenant.

Restrictive covenants by the transferee

13D Covenants by the Transferee

The Transferee covenants with the Transferor for the benefit of the Retained Land that:

1. The Transferee shall pay the Service Charge
2. The Transferee shall not do or permit or suffer to be done in or upon the Property anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the Transferor
3. The Transferee shall not do or permit any erection, building, construction, extension, development or any alteration to the Property which interferes with the use and enjoyment by the Transferor of the Retained Land and/or adversely affects the right to light and air currently enjoyed by the Transferor in connection with the Retained Land

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(b) No clothing or other articles shall be hung or exposed in or upon any part of the Property so as to be visible from the outside nor shall anything be hung or placed outside the Property

(c) No dangerous inflammable or explosive material shall be brought or suffered to be brought or kept in or upon the Property

(d) Between the hours of 11.00 pm and 8.00 am the Transferee shall ensure that no excessive or unreasonable noise or disturbance is made and that no music, amplified music or television is heard in any part of the Retained Land

(e) No external wireless or television aerials or other apparatus for the reception of satellite signals shall be erected by the Transferee on any part of the Property but the Transferee shall be entitled to connect into the communal satellite dish for the relevant block of flats and one satellite dish shall be permitted on the exterior of each block of flats forming part of the Property; Provided That, the Transferee may, if reasonable reception is not available, substitute a suitable television aerial or aerials or apparatus or apparatuses for the existing aerial or apparatus so long as the system shall not exceed what is reasonably required and so long as the system shall not exceed what is reasonably required and so long that only communal (rather than individual) aerial(s) and apparatus(es) shall be allowed.

(f) No additional external wiring to be attached to the exterior of the Property or on the Retained Land

(g) No car or motorcycle repairs or maintenance

Include words of covenant.

Restrictive covenants by the transferor

13E Covenants by the Transferor

The Transferor covenants with the Transferee for the benefit of the Property that:

1. The Transferor shall pay all existing and future rates taxes assessments and outgoings (if any) imposed on or payable in respect of the Retained Land
2. The Transferor shall maintain cleanse and keep in good condition the parking area drives footpaths garden ground external and boundary walls fences and other appurtenances and amenities of the Retained Land

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4. The Transferee shall not use or permit the Property to be used for any illegal or immoral purpose nor permit any trade or business to be carried on there nor any boarders or lodgers to be taken in but the Transferee shall use the Property for the purpose only of either holiday accommodation or private residences.
5. The Transferee shall not permit any domestic or other pets to be kept upon the Property save where permission has been expressly given (to a Tenant of a Registered Lease (referred to in the Title Register for Title Number DN206744) by the Transferor prior to the date of this Transfer
6. The Transferee shall not obstruct the Walkways or any access to the Property or any part of any access or stairwell affording access to the Property and shall keep them clear at all times
7. The Transferee shall upon any transaction or disposition to which the Transferee is a party or over which the Transferee has control involving a change or a contract for a change in the ownership of the Property ensure that the person becoming or contracting to become as a result of such transaction or disposition the owner of the Property enters into a direct covenant with the Transferor to observe and perform the obligations on the part of the Transferee contained in this clause 13D in the manner set out in clause 13H and shall pay the reasonable charges of the Transferor's Solicitors in connection with such covenant
8. The Transferee shall upon any devolution or transmission of the ownership of the Property to which the Transferee is not a party and over which the Transferee has no control use the Transferee's best endeavours to ensure that the person becoming the owner of the Property as a result of such devolution or transmission enters into a direct covenant with the Transferor to observe and perform the obligations on the part of the Transferee contained in this clause 13D in the manner set out in clause 13H and shall pay the reasonable charges of the Transferor's Solicitors in connection with such covenant
9. The Transferee shall observe and perform the following regulations and any other regulations which the Transferor may make from time to time for the good order and management of the Retained Land

(a) No name writing address signboard plate or placard of any kind shall be put on or in any window or the exterior of the Property or so as to be visible from the outside of the Property

qualified accountant as soon after the end of each Accounting Year as shall be practicable and shall relate to the Accounting Year

4. The Certificate shall contain a fair summary of the services and expenses and all other expenditure during the Accounting Year to which it relates and the Certificate (or a copy of it duly certified by a person by whom it was given) shall be conclusive evidence for the purposes of this clause of the matters which it purports to certify
5. The Transferee shall pay in advance on the 1st October and 1st April in every year one half of a sum ("the Provisional Sum") on account of the Service Charge of the Accounting Year next ensuing after the first day of October as the Transferor or its agents shall from time to time specify to be fair and reasonable provided that subject to and without prejudice to the foregoing provisions the amount of the Provisional Sum current at the date hereof for each individual flat comprised in the Property shall be ~~£200~~^{£200} six hundred pounds (£200.00) of which sum the Transferee shall pay on the date of this Transfer its due proportion calculated from the date of this Transfer to the date upon which the next payment of the Service Charge falls due
6. As soon as practicable after the end of the Accounting Year the Transferor or its agents shall furnish to the Transferee an account of the Service Charge payable for that year due credit being given for the Provisional Sum paid by the Transferee in respect of the year and if the Service Charge shall exceed the Provisional Sum the amount of such excess shall be paid within fourteen days of receipt of such account but if it shall be less the amount of the overpayment shall be credited against the next half-yearly payment

13G Indemnity

The Property is sold subject to the covenants conditions and other matters contained or referred to in the title register for title number DN206744 (including the registered leases) and the Transferee covenants with the Transferor to observe and perform those covenants and conditions (including the covenants on the part of the Lessor contained in the registered leases) in so far as it is within the Transferees power to do so and to keep the Transferor indemnified against any breach of them.

13H Covenant on Transfer

TO: PAMELA PARMIGIANI (or other the Transferor for the time being) re: Lee Cliff Park Dawlish

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3. The Transferor shall maintain a policy of insurance for the Retained Land in respect of third party public and occupiers liability in such sum as the Transferor shall deem appropriate from time to time ~~acting reasonably~~
4. For the purposes of performing its obligations hereunder the Transferor shall at its discretion employ on such terms and conditions as it deems fit such contractors maintenance staff cleaners gardeners or other such persons as it may from time to time in its absolute discretion consider necessary
5. The Transferor shall employ such surveyors builders engineers tradesmen managing agent and other professional persons as may be necessary or desirable for the proper maintenance safety or administration of the Retained Land
6. The Transferor shall either themselves or through the managing agent calculate on a fair and ~~or reasonable~~ ^{proportionate} basis the recharge to the Transferee of the water supply and electricity supply to each of the three blocks of flats forming the Property as at the date hereof and consumed in connection with the services delivered to the Retained Land which benefit the Property, the water supply and electricity supply is not sub-metered, ^{and in addition} the Transferor shall be entitled to charge a reasonable fee for its time and that of any managing agent and costs incurred in calculating the water and electricity recharge to the Transferee

and those of the managing agent

Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on.

Other

13F Service Charge

1. The Service Charge shall consist of 66% of the actual costs to the Transferor of providing all or any of the services and defraying the charges and expenses specified in clause 13E in each Accounting Year (as defined in this clause 13F) PROVIDED THAT the percentages specified in this clause may be varied by the Transferor if reasonable in the event of any material change of circumstance which affects the Transferee's liability under this clause
2. The Accounting Year shall mean the period from the First day of October in each year to the 30th day of September in each and every year or such other annual period as the Transferor may in her discretion from time to time determine
3. The amount of the Service Charge shall be ascertained and certified annually by a certificate ("the Certificate") signed by a

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qualified accountant as soon after the end of each Accounting Year as shall be practicable and shall relate to the Accounting Year

4. The Certificate shall contain a fair summary of the services and expenses and all other expenditure during the Accounting Year to which it relates and the Certificate (or a copy of it duly certified by a person by whom it was given) shall be conclusive evidence for the purposes of this clause of the matters which it purports to certify
5. The Transferee shall pay in advance on the 1st October and 1st April in every year one half of a sum ("the Provisional Sum") on account of the Service Charge of the Accounting Year next ensuing after the first day of October as the Transferor or its agents shall from time to time specify to be fair and reasonable provided that subject to and without prejudice to the foregoing provisions the amount of the Provisional Sum current at the date hereof for each individual flat comprised in the Property shall be six hundred pounds (£600.00) of which sum the Transferee shall pay on the date of this Transfer its due proportion calculated from the date of this Transfer to the date upon which the next payment of the Service Charge falls due
6. As soon as practicable after the end of the Accounting Year the Transferor or its agents shall furnish to the Transferee an account of the Service Charge payable for that year due credit being given for the Provisional Sum paid by the Transferee in respect of the year and if the Service Charge shall exceed the Provisional Sum the amount of such excess shall be paid within fourteen days of receipt of such account but if it shall be less the amount of the overpayment shall be credited against the next half-yearly payment

13G Indemnity

The Property is sold subject to the covenants conditions and other matters contained or referred to in the title register for title number DN206744 (including the registered leases) and the Transferee covenants with the Transferor to observe and perform those covenants and conditions (including the covenants on the part of the Lessor contained in the registered leases) in so far as it is within the Transferees power to do so and to keep the Transferor indemnified against any breach of them.

13H Covenant on Transfer

TO: PAMELA PARMIGIANI (or other the Transferor for the time being) re: Lee Cliff Park Dawlish

RE: Transfer dated [] 2009 between
(1) P Parmigiani and (2) Lee Cliff Park
Management Company Limited ("The Transfer")

I ** of ** COVENANT with you that I and my
successors in title will at all times from
the ** day of ** duly pay all service charges
and observe and perform all the covenants
restrictions stipulations and conditions
contained in the Transfer and on the part of
the Transferee to be observed and performed
(whether running with the Property or of a
purely personal or collateral nature) to the
same extent as if I were the original
Transferee named in the Transfer

13I Arbitration

Any dispute on the terms of this Transfer and any
matter which this Transfer requires to be decided by
arbitration is to be reserved to a single arbitrator
under the Arbitration Acts save where the Transferor
and Transferee agree to deal with it by another form
of dispute resolution. The Transferor and the
Transferee may agree the appointment of the
arbitrator or either of them may apply to the
President of the Royal Institution of Chartered
Surveyors to make the appointment

referred

*This Transfer has been executed for the
purposes of Chapter 1 of Part 1 of the Leasehold
Reform and Urban Developments Act 1993
and is in a form approved by the
Southern Leasehold Valuation
Tribunal on the 26th August 2009
pursuant to section 24 of the said Act*

The transferor must execute this transfer
as a deed using the space opposite. If
there is more than one transferor, all must
execute. Forms of execution are given in
Schedule 9 to the Land Registration
Rules 2003. If the transfer contains
transferee's covenants or declarations or
contains an application by the transferee
(such as for a restriction), it must also be
executed by the transferee.

13 Execution

Signed as a deed by PAMELA
PARMIGIANI in the presence of:

Signature

Signature of witness

Name (in BLOCK CAPITALS)

Address

Signed as a deed by LEE CLIFF
PARK MANAGEMENT COMPANY
LIMITED acting by a director and its
secretary or two directors.

Signature
Director
Signature
Director/Secretary

*31
Approved by the Southern Leasehold Valuation Tribunal
26th August 2009
Cody Alan CHAIRMAN*

Land Registry
Official copy of
title plan

Title number D 4206744
Ordnance Survey map reference SX9778SF
Scale 1:1250
Administrative area DEVON · TEIGNBRIDGE



AGREED PLAN

VERSION 26/06/09

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Sandygate

