RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL & LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HA/OAF/2010/0004

Re: 27 Richmond Heights, Lansdown, Bath, BA1 5QJ ("the Property").

Between

Mr Frank Cottle & Mrs Carol Lynne Cottle ("the Applicants")

And

Bath Ground Rent Estate Limited ("the Respondent")

Those attending the hearing were only the Applicants in person; the Respondent Company, through its agents, McCloy Legal, had indicated it did not wish to attend the hearing and no representative of the Respondents was present.

DETERMINATION AND STATEMENT OF REASONS

The application

1. The application was made by the Applicants under section 9 of the Leasehold Reform Act 1967 and gave notice of their desire under that Act to acquire the freehold of the house and premises known as 27 Richmond Heights, Lansdown, Bath, to include not only the house and garden but also two separately sited garages. In their notice in reply, the Respondents admitted the right to acquire the house and (part) garage comprised in title number ST 172601 but did not admit the right to acquire the (part) garage and land contained in title number AV 24694 nor the garage and land contained in title number ST 172824.

2. The Tribunal inspected the property which was the subject of the application prior to the hearing on 26 August 2010. Though the application was by Mr and Mrs Cottle, we were told that the title to all three pieces of land is now vested in Mrs Cottle.

The house and premises

3. The house and premises named in the application consisted of three separate land registry titles, each containing property granted in long leases, as follows:

(1) By a lease dated 10 April 1968 ("the 1967 Lease"), now registered with title number ST172601, the house known as 27 Richmond Heights was granted by CH Beazer and Sons Ltd to Francis Cottle in consideration of the payment of a premium of £3,750 for a term of 999 years from 24 June 1967 at an annual rent of £10 10s, (now £10.50p). The demise included firstly the plot of land known as Plot 80 on the new building estate and the house erected on the land known as 27 Richmond Heights; and secondly lock-up garage known as plot 21. This garage is on the opposite side of

the road to the house and is at the south-western end of a block of five such garages and on the corner of the junction of Richmond Heights with a cul-de-sac known as Lansdown Heights. In this determination, the land included in this first lease is referred to as "the House and Original Garage".

(2) By a lease dated 7 March 1977 ("the 1977 Lease"), now registered with title number AV 24694, made between the same parties, a strip of land adjoining garage number 21 on its south-western side was granted by CH Beazer and Sons Ltd to Francis Cottle in consideration of the payment of a premium of £60 also for a term of 999 years from 24 June 1967 at an annual rent of 50p. In this determination, the land included in this second lease is referred to as "the Garage Extension Land".

(3) By a lease dated 26 May 1999 ("the 1999 Lease"), now registered with title number ST172824, made between the Respondent and Mr Francis Cottle, a piece of land was granted to Mr Cottle in consideration of the payment of a premium of £1,000 for a term of 125 years from 1 January 1999 at an annual rent of one peppercorn annually if demanded. The definition clause, the plan on the lease, and the limitation of use clause, made it clear that the purpose of the grant of the lease was to enable a garage to be erected, adjoining existing garages, for the parking of a single private motor car and for storage. The land is some 100 metres down the hill from the house and original garage and also on the opposite side of the road to the house. In this determination, the land included in this third lease is referred to as "the Second Garage".

The issues

4. The issues for the tribunal to determine were as follows:

(1) Given that the Respondent had admitted the right of Carol Lynne Cottle to acquire the house and original garage comprised in title ST 172601, the role of the Tribunal was limited to determining the price to be paid or, at least, satisfying itself that the terms of the acquisition had been agreed between the parties.

(2) Whether the Garage Extension Land was let with the house within the meaning of section 2(3) of the Leasehold Reform Act 1967, and if so, to determine the price to be paid.

(3) Whether the Second Garage was let with the house within the meaning of section 2(3) of the Leasehold Reform Act 1967, and if so, to determine the price to be paid.

The first issue

5. By a letter dated 3 May 2010, the Applicants offered to purchase the freehold of the House and Original Garage for the sum of £250 and to pay £250 plus VAT to the Respondents for legal expenses. By letter dated 21 May 2010, McCloy Legal

confirmed their client's acceptance of those terms. On 17 June, McCloy Legal wrote to the RPTS Southern office not only indicating that they did not intend to attend the hearing but that 'the terms have been agreed'. At the hearing, the Applicants specifically confirmed that they stood by the terms of their 3 May offer. The Tribunal therefore accepted that an agreement had been reached and formally determine that the Applicants have the right to acquire the House and Original garage granted by the 1967 Lease and comprised in title number ST 172601 at the agreed price of £250 with a contribution to the cost of the Respondent of a further £250 plus VAT.

The second issue

6. On the second issue, the parties were not agreed. Before considering the parties contentions, it will be helpful to refer to the facts on the ground and the relevant law.

7. Our inspection, both of the original garage and its extension, and by examination of the Land Certificate of title number AV 24694 produced to us by Mr Cottle, shows that the garage has, since 1977, been widened to extend over most of the Garage Extension Land so that only a tiny semi-circular strip now remains unbuilt upon (namely, between the extended side garage wall and the curve of the pavement round from Richmond Heights into Lansdown Heights). The Applicants keep this small unfenced area as a small flower garden. Otherwise, the Garage Extension Land is now incorporated into the original garage and only the line of the join between the original concrete floor and the floor of the extension shows where the boundary of the two titles lies. To the casual observer, all that would be seen is an end garage that is wider than the other four in the row.

8. The relevant law is contained in section 2(3) of the Leasehold Reform Act 1967. The purpose of the Act was to permit holders of long leases of houses to acquire the freehold. The enfranchisement rights in sections 1, 1A, 1AA and 1B of that Act extend only to a leasehold 'house and premises', not to other property, such as in this case, a garage. However, section 2(3) states that:

> 'where reference is made in this Part of this Act to the house and premises, the reference to premises is to be taken as referring to any garage, outhouse, garden, yard and appurtenances which at the relevant time are let to (the tenant) with the house'.

The relevant time is the date when the tenant serves his notice of claim, which is satisfied in this case. But it is not sufficient that the Applicants are, as here, the leaseholders of the House and Original Garage, and of the Garage Extension Land, at the time the claim was made. The garage must also be let 'with the house'. Clearly, that part of the garage let with the house in 1967 meets that requirement, hence the Respondent's admission of the right to acquire the freehold title that part of the garage as it now exists. The short issue is whether the Garage Extension Land is 'let with the house'.

9. Mr Cottle, for the Applicants, contended that it was a matter of 'common sense' and pointed to the fact that at the time of the grant of the 1977 Lease he had planning permission for the extension and that the plans were approved by the then freeholders. It would certainly be regarded by a lay person as odd if only part of the garage as it exists today could be included in the enfranchisement.

10. The Respondent not only did not attend the hearing but, apart from stating in their Notice of Reply that

> 'we do not admit your right in respect of the garage and land comprising in titles numbers AV 24694 and ST 172824 as they do not form part of the house and premises comprising 27 Richmond Heights and were not let with those premises',

they chose not to make any further reference to the issue in the bundle of documents supplied.

11. The Tribunal determines that the Garage Extension Land comprised in the 1977 Lease is let with the house 27 Richmond Heights by way of addition to the property comprised in the 1967 Lease. We so conclude for the following reasons:

(1) The two leases are between the same parties and, particularly, are for identical terms of 999 years from 24 June 1967.

(2) Though there is no explicit statement that the 1977 lease is supplemental to the 1967 Lease, there is a specific covenant by the Lessee not to erect any building other than an extension to the existing garage on the adjoining land. Moreover, the extent of the land demised by the 1977 Lease is tiny, a strip less than a yard or so wide on average, most of which it was envisaged by both parties to the 1977 Lease would be incorporated into the existing garage. Hague on Leasehold Enfranchisement, in paragraph 2-18, asserts that the land must be let 'by addition to the original lease (eg by way of a supplemental lease for the residue or approximately the residue of the original term)'. This suggests that it is not essential that it is explicitly granted as a supplemental lease. Here, the circumstances make it absolutely clear that this was a grant of land additional to the 1967 Lease.

(3) We agree with Mr Cottle, that, if the statute permits, it makes common sense to include the Garage Extension Land in the enfranchisement. We do consider that the statutory wording permits the inclusion of the Garage Extension land.

12. The Tribunal was presented with no valuation evidence. Mr Cottle merely said that the Applicants would be willing to pay up to £25 for the freehold interest in the Garage Extension Land. In the absence of the Respondent's representatives, the Tribunal was unhappy about using its own expert knowledge when it could not be put to both parties for comment. It was also unwilling to adjourn the hearing given the small sums involved. However, the Tribunal considered that it did have very relevant

valuation evidence in the agreed sum for the House and Original Garage at £250. This represents a multiplier of 23.8% based on a ground rent of £10.50p.

13. The Tribunal therefore applied the same multiplier to the ground rent in the 1977 Lease of 50p. This results in a price for the freehold of £11.90p. Rounding that up, we determine the price for the enfranchisement of the Garage Extension Land, which we find as let with the house, as £12. We also consider the extra conveyancing costs of including the land granted by the 1977 Lease to be minimal and determine that an additional £50 plus VAT should be paid to the Respondent for the transfer of the freehold of the Garden Extension Land when undertaken in conjunction with the transfer of the House and Original Garage.

14. The Tribunal stresses that a multiplier of 23.8% should not be regarded in any way as a precedent for other cases and is only applicable to the particular circumstances of this case.

The third issue

15. Mr Cottle tried to argue that the Second Garage granted to him by the 1999 Lease was also let with the house. He said, no doubt truthfully, that he regarded it as essential for their two car family; that it would stay with the house and be sold with it; and to the Applicants it was an integral part of their property. But he conceded that there was no obvious link; that the term of the lease, at 125 years, was very different; and that, unlike the Garden Extension Land (which could not, for practical purposes, be sold separately unless the garage was reduced to its original size), it could be disposed of at any time as a separate property. Mr Cottle further contended that a valuation letter written by the Applicant's surveyor on 5 February 1998, prior to the purchase of the Second Garage, valued the land at about £700 but suggested a price of £1,000 to reflect the additional value to the house of an extra garage. Mr Cottle paid the higher sum of £1,000 and therefore argued that the additional value paid showed that the Second Garage could be included in the enfranchisement. But, even accepting that the Second Garage adds value to the house, it does so as a separate lease for 125 years; the additional value to the house does not mean that the garage is 'let with the house'. We conclude that there is no basis at all in law by which the Second Garage could be regarded as 'let with the house' and the Applicants have no right to claim the freehold of that garage.

Conclusion

16. The Tribunal determines that the Applicants have the right to enfranchise the property known as 27 Richmond Heights as contained in the 1967 and 1977 Leases since we find that the Garden Extension Land was let with the house. The price payable is the £250 agreed plus the sum of £12 for the Garden Extension Land. The Applicant must pay in addition the Respondent's costs of £250 plus VAT as agreed

plus an additional £50 plus VAT for the transfer of the freehold of the Garden Extension Land.

17. Although the application requested the Tribunal to determine the terms of the acquisition, no submissions were made to us as to the form of the conveyance/transfer either orally, by the Applicants at the hearing, nor in writing by either party. We are therefore unable to determine the contents of the transfer as no issues have been put to us. If the parties are unable to agree such terms, then the matter may be restored to enable such determination within 56 days of the date this determination is sent to the parties.

Professor David Clarke, MA, LLM.
Simon Hodges, FRICS.
7 September 2010.