

4218



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00ML/OCE/2015/0017

Property : 8, Portland Place, Brighton, East Sussex
BN2 1DG

Applicant : 8 Portland Limited

Representative : Mr S. Gallagher, counsel

Respondent : Danute Liuba Cranfield

Representative :

Type of Application : Leasehold Enfranchisement

Tribunal Member(s) : Judge D. Agnew
Mr D. Banfield FRICS

Date and venue of CMH :

Date of Decision : 29th June 2016

DECISION

Background

1. By an application dated 19th March 2016 the Applicant applied to the Tribunal under section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) to determine the terms upon which the Applicant shall acquire the freehold of 8 Portland Place, Brighton BN2 1DG (“the Property”). All the terms of acquisition were disputed including the price, the extent of the property to be acquired and the provisions of the Transfer.
2. The original notice of claim was dated 17th July 2014. The Respondent challenged the validity of the notice but the validity was ultimately upheld by the County Court judge. An amended initial notice was served pursuant to the court order made on 18th January 2016.
3. In her counter notice the Respondent sought to retain the freehold of the balconies projecting from the property where not included in the demise of the flats, two underground vaults, the rear patio, front yard and all external stairs and gateways to the building. She also sought £38,600 for the price of the “specified premises” plus £9,500 for the other interests in response to the Applicant’s figures of £12,600 and £100 respectively.
4. A number of Directions were issued by the Tribunal and the matter came before the Tribunal for an oral hearing on 22nd June 2016. Present at the hearing were Mr S. Gallagher, counsel for the Applicant together with his instructing solicitor, Mr Storer and one of the lessees of the Property and a Director of the Applicant company, Mr Trenear-Thomas. Mrs Cranfield attended the hearing in person. Also present was the Applicant’s valuer and expert witness Mr Simon Brooks MSc MRICS.

The hearing

5. The Tribunal decided to hear Mr Brooks’s evidence first so that he could be released at the earliest practical point in the proceedings. Mr Gallagher asked Mr Brooks to present his report and offered him up for cross-examination.
6. Mrs Cranfield first challenged the valuation date used by Mr Brooks. She contended that it should be the date of the hearing and not the date of the notice of claim used by Mr Brooks. It transpired, however, that Mrs Cranfield was relying on a case which had been decided before the coming into effect of a change in the legislation which expressly states that the valuation date is the date of the notice of claim (section 1(8) of the Act). She then challenged Mr Brooks’ valuations of the flats at the Property. She considered that his figures were low. She mentioned the sale price achieved for a property “across the road” which had recently been sold for £1.75 million. She was not specific as to the address of this property and Mr Brooks was unable to comment without knowing the

address of the property and having the opportunity of confirming and considering Mrs Cranfield's example.

7. Next, Mrs Cranfield suggested to Mr Brooks that his comparables were not similar to the Property. Mr Brooks stood by his opinion that his comparables were appropriate.
8. It was then put to Mr Brooks by Mrs Cranfield that he had not included any development value as he should. Mr Brooks was confident that there was no development value. One big obstacle was that the Property is a listed building situated in a conservation area and planning permission was unlikely to be achieved. Then there would be the construction costs which would be high. There is no development value for the vaults because the lessees have rights over them.
9. Finally, Mrs Cranfield challenged Mr Brooks' figure for improvements which he had applied to some of the flats but no figure for improvements to Flat 5. Mr Brooks explained that he had visited all the flats at the Property save for the Respondent's flat and was satisfied with the figure he had attributed to the improvements he had seen. He explained that there had been no deduction for improvements of Flat 5 because it had no central heating or double glazing.
10. Mrs Cranfield produced no valuation evidence at all to back up her proposed figure for the freehold and other interests or to contradict the Applicant's valuer's figures. The Tribunal therefore then moved on to consider the parties' representations with regard to the extent of the property to be transferred.
11. It transpired that Mrs Cranfield's main concern with regard to the retention of some property was to have the facility to store items in one of the underground vaults. This was useful to her as her flat is small. The Tribunal therefore asked Mr Gallagher to take instructions over the luncheon adjournment as to whether the Applicant would be prepared to grant Mrs Cranfield a leaseback of that underground vault. The Tribunal also asked Mrs Cranfield to consider over the short adjournment whether, if the whole of the Property were to be transferred to the Applicant and simultaneously a lease of the underground vault were to be granted to her, she would be prepared to abandon the rest of her claim with regard to the property she wished to retain.
12. After the luncheon adjournment the parties confirmed that they had reached an agreement. The agreement is as follows:-
The Nominee Purchaser (the Applicant) will acquire the transfer of the whole of the property comprising title number ESX 105894 subject to a leaseback of the underground vault that does not contain the electricity meters for a term of 999 years from 22nd June 2016 at a peppercorn rent throughout the term (if demanded) for a nil premium and on the same terms as the 999 year lease under title number ESX 358141

subject to necessary modification to give effect to the fact that the premises comprise a vault.

13. The Tribunal approves the agreement and the form of transfer is annexed to this decision and marked "Appendix 1".
14. The Applicant also agreed that it would not acquire the existing 999 year lease of Flat 3 to Danute Liuba Cranfield and Kristina Rebecca Cranfield so that it will remain in existence as will the 125 year lease of Flat 3 to the same lessees.

Decision as to the purchase price

14. As Mrs Cranfield produced no evidence in support of her own figure for the freehold or to back up any criticism of Mr Brooks' valuation the Tribunal, having satisfied itself that Mr Brooks' evidence was rational and credible had no hesitation in accepting his calculations. The resulting sum to be paid by the Applicant to the Respondent for the freehold of the Property after the adjustment of Mr Brooks' figure to take account of the fact that the 999 year lease is not being acquired is £16,211. Mr Brooks' calculation, adjusted as aforesaid, is annexed as Appendix 2 to this decision.

Costs

15. The Applicant has made an application that the Respondent be ordered to pay the Applicant's costs incurred in connection with the substantive application and has filed a Statement of Costs for summary assessment. Costs may only be awarded by this Tribunal in accordance with Rule 13 of the Tribunal Procedure (First-tier Tribunal) Rules 2013 where a party has acted unreasonably in bringing, conducting or defending the proceedings. The Tribunal gave directions for written submissions to be made. The determination of the question of costs will be dealt with by the Tribunal separately in order not to delay the issue of this determination and reasons so that the parties can get on with finalising the necessary documentation and other arrangements for putting the transfer of the freehold and grant of the leaseback into effect.

Dated the 29th June 2016

Judge D. Agnew (Chairman)

APPEALS

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

Transfer of whole of registered title(s)

Any parts of the form that are not typed should be completed in black ink and in block capitals.

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.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Give full name(s) of all the persons transferring the property.

Complete as appropriate where the transferor is a company.

Give full name(s) of all the persons to be shown as registered proprietors.

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.

	<p>1 Title number(s) of the property:</p> <p>ESX105894</p>
	<p>2 Property:</p> <p>8 Portland Place Brighton BN2 1DG</p>
	<p>3 Date:</p>
	<p>4 Transferor:</p> <p>Danute Liuba Cranfield</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
	<p>5 Transferee for entry in the register:</p> <p>8Portland Limited</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p>08809756</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
	<p>6 Transferee's intended address(es) for service for entry in the register:</p> <p>13 East Drive Brighton BN2 0BQ</p>

127

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 11.

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.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
 - in the first box, or
 - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, or
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to Joint property ownership and practice guide 24: private trusts of land for further guidance. These are both available on the GOV.UK website.

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

7 The transferor transfers the property to the transferee

8 Consideration

The transferor has received from the transferee for the property the following sum (in words and figures):

The transfer is not for money or anything that has a monetary value

Insert other receipt as appropriate:

9 The transferor transfers with

full title guarantee

limited title guarantee

10 Declaration of trust. The transferee is not more than one person.

11 Additional provisions

This Transfer is executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993.

128

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.

If there is more than one transferee and panel 10 has been completed, each transferee must also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to Joint property ownership and practice guide 24: private trusts of land for further guidance.

12 Execution

Signed as a Deed by DANUTE
LIUBA CRANFIELD in the presence
of:
Signature of witness.....
Name (in BLOCK CAPITALS).....
Address

Signature:

Executed as a Deed by 8Portland
Limited acting by two directors or
by one director and the Secretary

Signature:

Director

Signature:

Director/Secretary

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

129

APPENDIX 2

Property: 8 Portland Place, Brighton, East Sussex BN2 1DG
 Assessment of the price to be paid for enfranchisement in accordance with Schedule 6
 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended by
 the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

Date: 06-Nov
 2013
 Notice: 17-Jul
 2014

Flats 1,2,4,and 5

Lease Terms:

Term				125
Start	25	12	1985	1986.0
End				2111.0
Notice/Valuation date	17	7	2014	2014.6
Difference				28.6
Unexpired Term				96.4

<i>Rising</i>			£	<i>rem</i>	<i>total</i>
Ground rent	2014.6	2036.0	400.00	21.4	
	2036.0	2061.0	800.00	25.0	
	2061.0	2086.0	1600.00	25.0	
	2086.0	2111.0	3200.00	25.0	96.4

Freeholder's interest

Term

Ground Rent		Years		Amnt £	£	£	£
YP	7.0%	21.4	10.9314	400.00	4373		
Review To							
YP		25.0	11.6536				
PV £1		21.4	0.2348				
			2.74	800.00	2189		
Review To							
YP		25.0	11.6536				
PV £1		46.4	0.0433				
			0.50	1600.00	807		
Review To							
YP		25.0	11.6536				
PV £1		71.4	0.0080				
			0.09	3200.00	297	7665	
Reversion							
PV £1	5.0%	96.4	0.0091	932,500		8446	16111

Term & Reversion	16111
Intermediate lease	3456
FH less GR intermedite lease	14
Price	19582

Appurtenant Land inc 100

(156)