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

Case Reference : LON 00AZ/OCE/2016/0330

Property : 9 Aylward Road, London SE23 2JE

Applicant : Mr. I Brown & Ms A Reid

Representative : Mr. Crews Solicitor

Respondent : London & Quadrant Housing Trust

Representative : Mr. B Maltz of counsel

Type of Application : Enfranchisement

Tribunal Member : Judge LM Tagliavini
Mrs S Redmond MRICS

Date and place of hearing : 10 Alfred Place, London WC1E 7LR
22 May 2017

Date of decision : 22 May 2017

DECISION

Decision

1. The tribunal determines that the following terms should be included in the otherwise agreed 5th draft of parties TR1*:

11.7 Overage

11.7.1 Definitions and interpretation relating to Overage

Deed of Covenant: a deed of covenant with the Transferor containing covenants in the same terms as those given by the Transferor in this clause. 11.7 of this transfer with such minor modifications as the transferor may agree.

Satisfactory Certificate: a certificate in accordance with the requirements of the restriction referred to in clause 11.7.5 (ii) and the requirements of the Land Registry from time to time.

11.7.5 Disposals and Restriction

11.7.5 (i) The Transferee covenants with the Transferor not to make any Disposal at any time during the Overage Period without first procuring that the person to whom the Disposal is being made has executed a Deed of Covenant.

11.7.5 (ii) The Transferee shall apply for the entry of the following restriction against the Transferee's title to the Property at the Land Registry simultaneously with the registration of this transfer and shall procure that the restriction has priority to any mortgage or charge entered into by the Transferee:

“No disposition of the registered estate (other than by a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a certificate signed by Home Ownership Options Team of Cray House, 3 Maidstone Road, Footscray, Kent DA15 5 HU or its conveyancer that the provisions of clause 11.7 of the transfer dated _____ 2017 and made between London and Quadrant Housing Trust (1) Iain Scott Brown and Anita Romaine Reid (2) have been complied with or that they do not apply to the disposition”

11.7.6 Transferor's Obligations

The Transferor covenants with the Transferee that it will

- (i) provide a Satisfactory Certificate for the registration of (i) a Permitted disposal or (ii) a Disposal at the Land Registry within

10 Working Days on receipt of a written request from the Transferee and in the case of a Disposal on receipt of a Deed of Covenant properly executed by the person to whom the Disposal is being made provided that there are no outstanding sums due from the Transferee under the terms of this transfer clause 11.7 and in default of the Satisfactory Certificate being provided within 10 Working Days by the Transferor the Transferee or their appointed conveyancer or agent shall be entitled to provide the Satisfactory Certificate for registration with the Land Registry a copy of which shall be sent to London and Quadrant at the address stated above in 11.7.5 (ii); and

- (ii) apply for the withdrawal of the restriction entered against the title of the Property within 10 Working Days from and including the end of the Overage Period and in default of the Transferor making this application within 10 Working Days the Transferee or their appointed surveyor or agent is permitted to make such an application.

11.7.7 Transferor's costs

The Transferee covenants with the Transferor that it shall pay the Transferor a reasonable fee to cover its administration costs in connection with the Transferor's provision of a Satisfactory Certificate pursuant to clause 11.7.6 above.

11.7.8 Entire Agreement

11.7.8 (i) 11.7.8 (ii) and 11.7.8 (iii) (*as drafted*) are included together with all other previously agreed clauses as set out in the 5th draft of the TR1

The plan provided by H.M. Land Registry LN42152 is omitted.

**As appears on pages 30 to 42 of the Bundle of Documents*

The application

1. This is an application seeking a determination of the terms of the freehold acquisition of the subject property known as 9 Aylward Road, London SE23 2JE pursuant to section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993.

The issues

2. The parties having agreed the premium payable for the acquisition of the freehold, the tribunal was required only to determine the terms of transfer not having been agreed by the parties. It had also been agreed between the parties that instead of a sum being paid in respect of any

hope development value, the parties would reach an Overage Agreement to provide the Respondent with an opportunity to receive a share of any financial benefit realised by any development of the subject property within the period of 20 years from the date of transfer.

3. It was initially asserted by the Applicants, that as all terms of the acquisition had been agreed, the tribunal no longer had jurisdiction to determine the dispute as to the terms of the transfer. However, at the hearing of this application, it was conceded by Mr. Crews on behalf of the Applicants that jurisdiction to determine this outstanding issue namely the terms of the TR1 remained with the tribunal.

The Applicant's case

4. The parties had agreed the majority of the terms of transfer as recorded in the 5th draft of the TR1. However, Mr. Crews objected to the Respondent's insertion of clauses that required the Respondent to provide a Certificate in respect of any permitted or other disposal of the subject property by the Applicants. Mr. Crews submitted that this requirement was unnecessary to protect the Respondent's registered interests, it added an unsatisfactory layer of administration, which would invariably cause delay and incur unnecessary costs.

The Respondent's case

5. Mr. Maltz for the Respondent, submitted that the intention of the parties to agree the benefit of a deferred share in the hope development value of the subject property in return for the payment of the agreed premium, was intended to be binding on the Applicants and their successors in title. Therefore, in order to realise this intention it was necessary to include overage provisions that would bind future parties. The Respondent therefore included within the 5th draft of the TR1 provisions requiring a Deed of covenant so as to ensure that the obligation to make payment to the Respondent would be enforceable against the applicants' successors in title.

The tribunal's decision and reasons

6. The tribunal finds the arguments of Mr. Maltz for the Respondent to be the more persuasive and agrees with his submission, that the interests of the Respondent vis a vis any Applicants' successors in title require express protection. The tribunal finds that Mr. Crews' objections to the Respondent's proposed clauses in the TR1 were not satisfactorily explained or his submissions sufficient to identify how, in the exclusion of these clauses, the parties intentions of providing a future shared benefit would be realised by the Respondent, were there to be successors in title to the Applicants' interests if they were not bound by a restrictive covenant against the freehold title.
7. Therefore, the tribunal finds that the clauses inserted by the Respondent in the 5th draft of the TR1 are to be included in the terms of

transfer as modified by agreement of the parties at the hearing of this application.

Signed: Judge Tagliavini

Dated: 24 May 2017