# RESIDENTIAL PROPERTY TRIBUNAL SERVICE
# LEASEHOLD VALUATION TRIBUNAL

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| **Property** | : | **Rokesley House,<br>122 Marine Parade,<br>Brighton BN2 1DD** |
| **Applicant** | : | **Rokesley House Ltd.** |
| **Respondent** | : | **Dean Jonathan Golding** |
| **Case number** | : | **CAM/00/ML/OCE/2007/0002** |
| **Date of Application** | : | **22nd December 2006** |
| **Type of Application** | : | **To determine the terms of acquisition and costs of the enfranchisement of the property** |
| **Tribunal** | : | **Bruce Edgington (lawyer chair)<br>Frank James FRICS<br>Sarah Redmond BSc ECON MRICS** |
| **Date and place of hearing** | : | **21st May 2007 at Thistle Hotel, Kings Road, Brighton** |
| **Appearances** | : | **Andrew Dymond (Farrington Webb) for the Applicant<br>Stan Gallagher (Osler Donegan Taylor) for the Respondent** |

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## DECISION

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1. The price for the Respondent's freehold interest and/or the leasehold interest of Kendal Golding in the Basement Courtyard, stairwell and storage cupboard, being the subject of a Lease ("the basement courtyard lease") dated 1st February 2006 and made between the Respondent (1) and the said Kendal Golding (2) as the same is registered at HM Land Registry under title number ESX292325 is £100.00.

2. The 'hope' value for loss of car parking at the front of the property is assessed at £1,000.00.

3. The parties are at liberty to apply to re-instate this matter for a further hearing before 4.00 pm on the 18th June 2007 in order to resolve any dispute involving the terms of the Transfer and/or Deed of Surrender or any dispute over costs. If no such application is made by that date and time, this application will be deemed to have been withdrawn in respect of those issues.

## Reasons

**Introduction**

4. This case relates to the collective enfranchisement of the property and all matters have been agreed save for (a) whether a separate price is to be paid for the Respondent's freehold interest and the leasehold interest of Kendal Golding in the property which is the subject of the basement courtyard lease and if so, (b) what is the price to be paid based on the agreed valuation date of 17th August 2006, (c) what price, if any, is to be paid for the Respondent's loss of parking at the front of the property, (d) the terms of the Transfer and/or Deed of Surrender now that the Respondent has agreed to the basement courtyard being included in the transfer and (e) costs.

5. At the outset of the hearing, Mr. Gallagher, on behalf of the Respondent accepted that the value of the interests in the courtyard, save for the issue of parking, was 'nominal' from which the members of the Tribunal inferred that the figure of £100 in the Initial Notice was agreed.

6. For the avoidance of doubt counsel for the parties also told the Tribunal at the commencement of the hearing that everything else had been agreed. Accordingly, this is the final hearing and the final decision to be made in respect of disputed items in the enfranchisement save for the 2 issues where the parties have been given liberty to apply.

7. The property is a Regency terraced property on the sea front at Brighton which is fairly close to the city centre. It consists of 7 flats. It is in a conservation area.

8. The Respondent is a property developer and he bought the property in July 2003 as a development project. He undertook renovation works and disposed of flats on long leases and, save for some outstanding works to the commons parts, the project ended on the sale of the last flat which was the ground floor flat bought by Mr. John Young and Mr. Henry Macaulay on the 19th August 2005.

9. On the 1st February 2006, the Respondent then decided to grant a long lease to his wife, Kendal Golding of the basement courtyard in order, so he says, to "safeguard the value of" certain parking rights at the

front of the property. As these parking rights form a large part of the Respondent's evidence and are said, by him, to be worth £75,000.00, it is necessary to look at them in some detail.

**The Parking Rights**

10. On the 25th February 1924 the 5 owners of 117,118,119,122 and 123 Marine Parade entered into an Indenture in which they record that they were or are the owners of strips of adjoining land extending from the front of their houses towards the sea. This land is recorded as having been used "*partly as a carriage and footway for the use and convenience of the occupiers* (of the houses) *and partly and an enclosed lawn or pleasure ground*".

11. In fact, the Respondent accepts that there is no evidence that his predecessor in title actually owned any part of this land and it appears highly likely that the same can be said of the owners of 117, 118, 119 and 123 Marine Parade. Nevertheless, they decided to grant themselves rights to keep the lawn and pleasure ground enclosed and locked.

12. As far as the carriage and footway is concerned, the rights purportedly granted are "*to go pass and re-pass on foot or in any manner of vehicle to and from any of the* (houses) *from and to Marine Parade aforesaid or the entrance to the said enclosure lawn*". There is no right to park.

13. The remainder of the Indenture records an agreement that there will be a committee of the owners of the 5 properties which shall meet in January in each year in Brighton and "*it shall be competent for the said Committee to arrange for the cultivation care and maintenance of the said lawn and the surrounding fence and for the repair upkeep and cleansing of the said carriage way*".

14. Paragraph 5 of the Indenture then says, in effect, that the agreement is attached to the houses and is binding on the owners of the houses from time to time. Significantly, it also says that the owners of the houses cannot use the pavement, carriageway or enclosed garden area "*otherwise than in accordance with the terms and provisions of*" the Indenture.

15. Evidence was produced that the Indenture is registered at HM Land Registry against the freehold titles to 117-119, 122 Marine Parade. Presumably, it is also registered against the title of 123 Marine Parade.

16. The Tribunal concludes, on a proper construction of the Deed of Indenture, that it was an agreement between the freehold owners of 117, 118, 119, 122 and 123 Marine Parade, which is binding on their successors in title and assigns and did not allow parking.

17. The evidence then shows that eventually the carriageway was used for parking and, because parking in this area is at such a premium, it is alleged, and accepted by the Tribunal, that people other than the owners of the houses and their visitors were parking. Indeed, it seems that there were disputes even between the property owners about who should be parking there.

18. Meetings were called. They were purportedly in accordance with the terms of the Indenture but they were called to try to sort out an agreement for allocation of parking spaces which is not, of course, something permitted under the terms of the Indenture. Any agreements purportedly reached at these meetings have not been adhered to and the problems with parking evidently continue.

19. The only conclusion that this Tribunal can draw from all this is that the Respondent's attempt to preserve parking 'rights' is illusory. The Deed of Indenture, as it stands, does not permit the land to be used for parking and on the evidence before this Tribunal, it seems unlikely that the present owners of the properties in question will reach agreement.

**The Inspection**

20. The members of the Tribunal inspected the property in the presence of both counsel and solicitors representatives. It was found to be as described above and the Tribunal could see where the crescent shaped carriageway and the garden area were as indicated on the Indenture plan. There were lockable posts at each entrance one of which was open. A large part of the area referred to as the 'enclosed garden' in the Indenture was being used for parking. The grass has been worn away with such use. It did not look very attractive and the Tribunal could well imagine that in wet weather, it would be muddy and even more unsightly.

**The Hearing**

21. The Tribunal was assisted by seeing, in advance, the Deed of Indenture referred to above together with a copy of the basement courtyard lease. It also saw valuation reports filed on behalf of the Respondent from Mr. Stewart Gray FRICS arguing that the open market value of 5 car parking spaces is £75,000.00 or £56,600 if they could not be sold on the open market and valuation reports filed on behalf of the Applicant from Mr. Andrew Pridell FRICS arguing, in effect, that there is no separate value.

22. The Tribunal was also assisted by a skeleton arguments from Mr. Dymond and Mr.Gallagher.

23. It was agreed that the evidence from the witnesses of fact was largely irrelevant to issues now before the Tribunal. As to the expert evidence, it was most unfortunate that Mr. Pridell had become

incapacitated with a back problem and was unable to attend the hearing. Mr. Dymond was prepared to proceed and rely on his reports and Mr. Gallagher said that it would be disproportionate to adjourn the case and he was content to proceed on the basis, of course, that Mr. Pridell's reports were not agreed and that he would have no opportunity to cross examine Mr. Pridell.

24. Mr. Gray gave evidence to support his reports. He confirmed that his valuations ignored any "complexities" in the title and that if he had these parking rights for sale in an auction, there would have to be a legal pack and an explanation of what the 'rights' amounted to. He said that he was not a lawyer and was not sure of the legal issues.

25. He accepted that the comparable at Lower Rock Gardens was a bigger space than any involved in this case and was easily accessible to the street unlike the subject parking availability.

26. If this car parking was to be assessed purely on the basis of hope value, he said that parking which was 'first come, first served' would be of very much less value than designated parking spaces and that he had in fact never had to sell 'first come, first served' parking. He said that there were many very expensive properties in this location and the owners would be prepared to invest and pay a "bullish price" in a speculative hope of getting parking in the future.

27. Mr. Gray said that he had seen the paperwork. The Tribunal put it to him that if the right to park was as tenuous as alleged by the Applicant, then how would he value such a speculative possibility of parking. He said that he was sure that there would be people interested. He gave examples of people buying land at inflated prices where planning permission had been refused on the speculative basis that planning policies change and there might be a chance of obtaining planning permission in the future. He thought that a minimum of 20% of open market value would be paid i.e. £15,000.00 and probably more.

**Conclusions**

28. The Tribunal is not at all sure that the Deed of Indenture is of any real value at all. In so far as it seeks to establish the start of a possessory title or a prescriptive right to an easement, it seems to be accepted that the land has been the subject of incursion by people not authorised by the parties to the Deed or their successors in title for much of the period since 1924 and a claim for possessory title is therefore likely to fail. As to any easement, there is certainly no purported easement to park mentioned in the Deed.

29. As far as discussions between the owners are concerned, it was accepted that no agreement had actually been reached or, if it had been reached, one party, the owner of 117-119 Marine Parade, clearly

did not consider himself bound by it. No-one had sought to enforce the terms of such agreement in the courts.

30. Equally, it was clear that the true owner of the land in question had not attempted to prevent the parties to the Indenture or their successors from using this land as if it was their own. Thus the owners of 117-119, 122 and 123 Marine Parade and, apparently, various members of the public, have, over time, established a *de facto* ability to park on this land uninterrupted by the true owner.

31. This is clearly a highly unusual situation. It is one which neither expert had come across before. It was a pity that Mr. Pridell was not available to give evidence because there is a clear ambiguity in his report of the 16th May as compared with the schedule of matters agreed with Mr. Gray. In his report he has clearly included any value of the ability to park within the price for the freehold of £28,500.00 whereas the agreement clearly says that the value of £28,500.00 ignores car parking.

32. The Tribunal concludes that a purchaser of a flat in this building will be influenced by the fact that there is a chance that he/she may be able to park at the front. Perhaps this would only amount to choosing that flat as opposed to another identical flat without this facility. It may also be that Mr. Pridell allowed for this in his valuation of the flats.

33. Thus, the possibility of being able to park must, in this Tribunal's view, have some value. However, Mr. Gray's valuation is far too high. The points he does not seem to have given proper emphasis to are:-

(a) There is no agreement between the owners which means that no-one is guaranteed a parking space. The Respondent has had the time and the financial incentive to try to reach agreement with the owner of 117-119 Marine Parade and has clearly not done so.

(b) The car parking scheme suggested will involve considerable financial outlay.

(c) Planning permission will be required to lay a car park on some of the area which was grassed. Not even Mr. Gray would speculate on the result of a planning application bearing in mind that the property is in a conservation area. Indeed, there is a possibility, to say the least, that once the local authority has been alerted to what has gone on, it may insist on the grass area being landscaped which would considerably reduce the area available for parking.

(d) His assessment that local owners would pay "a bullish price" for the chance of a future right to park is unrealistic. The example of someone buying land with a view to securing a change in planning use is not a good one. In this case the speculator would not actually be able to buy anything except a remote possibility. The fact that a local

surveyor of Mr. Gray's experience has never come across such an arrangement does perhaps say a great deal in itself.

34. Using the valuation method set out in Mr. Gray's paragraphs 1.3 and 2 of his report of the 18th May 2007, the Tribunal concludes:-

(a) That the expected rent for the total spaces of £5,200 is over optimistic. The comparable at Lower Rock Gardens clearly has room for 2 small vehicles and is therefore much larger than any of the spaces in question. Further, it is possible that there would not be 5 spaces for the reason set out above i.e. it may not be possible to continue using the grass area.

(b) 10% yield for a chance of parking which is as speculative as this is far too generous. It would be significantly more than this.

(c) The proportion for hope value would be much less than 20%

35. Taking all these factors into account, the Tribunal concludes that the chance to use the parking spaces does have some value but the only realistic basis upon which this can be assessed is that an owner would have the chance of parking on a 'first come, first served' basis and the evidence would suggest that this chance is not very good.

36. The Tribunal assesses this at a figure of £1,000.00

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**Bruce Edgington**
**Chair**
**23rd May 2007**