

**LEASEHOLD VALUATION TRIBUNAL
RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993, SECTION 24**

LON/OOAG/OCE/2007/0220

Premises: Queens Court, 224-234 (evens) West End Lane, London NW6 1UU

Tenant/Applicant: Queens Court Freehold Ltd.

Represented by: John May Law

Landlord/Respondent: Endlane Ltd.

Represented by: Mr. S Serota, Wallace LLP

Tribunal: Ms. L M Tagliavini, LLM, DipLaw,BA(Hons)
Mrs. A Flynn MA MRICS
Mr. N Gerald

-
1. This is an application by the tenant, Queens Court Freehold Limited, the Nominee Purchaser acting for the Participating Tenants in their claim to acquire the freehold pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The Respondent is the Freehold owner of Queens Court. The subject premises comprise of residential flats with four retail units on the ground floor, which are subject to leasebacks to the Respondent in accordance with section 36 of the Act. All terms of the acquisition have been agreed between the parties with the exception of the user provisions of the leasebacks in the commercial units and the Tribunal is asked to determine what are the appropriate terms for inclusion.

The Applicant's Case:

2. Mr. May told the Tribunal that the point the Tribunal was being asked to decide was a "discreet" point and not one, so far as he was aware, that had been decided before. He accepted that the burden of proof fell on the Applicant to establish why the clauses preferred should be included in the terms of the extended leases. He referred the Tribunal to section 36 and para.7 of Schedule 9 of the Act. He stated that the question that must be asked is whether it is reasonable to deviate from the lease terms. He told the Tribunal that presently the uses of the four units included as a charity shop (No. 224), a launderette (No. 228) and a florist (No. 230). He referred the Tribunal to the various individual leases for these units, which he said, all contained controls in varying degrees as to the use to which the units could be put. One required the use of the unit as a florist only and others referred to prohibition of use under classes A1 and A2 Statutory Instruments 1987 No. 764, The Town and Country Planning (Use Classes) Order 1987.
3. Mr. May argued that the limitations under A1, A2, A3, A4 and A5 should be included in the leasebacks for units 228, 230 and 234 and Classes A1 and A2 in the lease for 224. He stated that the use of these retail premises for the provision of food and drink, for example, would be detrimental and disruptive to the enjoyment of the tenants in occupation above, particularly as the four units represented less than 25% of the total area subject to the Freehold.

The Respondents Case:

4. In his written and oral submission, Mr. Serota also referred the Tribunal to Part IV of Schedule 9 of the Act, which sets out the terms upon which leasebacks are to be granted. In particular paragraph 17 of Schedule 9 which provides:

"(i) except where the demised premises consist of or include any unit let or intended for letting on a business Lease, the Lease shall not include any provision prohibiting or restricting the assignment of the Lease or the subletting of the whole or part of the demised premises.

(ii) where the demised premises consist of or include any such unit as is mentioned in sub-paragraph (i) the Lease shall contain a prohibition against

- (a) assigning or sub-letting the whole or part of any such unit,*
or
- (b) altering the user of any such unit*

Without the prior written consent of the Lessor (such consent not to unreasonably withheld).

5. Mr. Serota asserted that the Applicant seeks to restrict for all time use of the premises to use within the Classes A1 and A2 and up to A5 in some instances, was in sharp contrast to the Respondent's assertion that there should be no limitation to the use to which any of the premises can be put other than those contained in the obligations in the lease or varied on obtaining the Landlord's written consent. Mr. Serota asserted that it cannot be right that the Respondent who is to have 999 year commercial leases should be bound as to what uses the units can be put. Mr. Serota also asserted that Schedule 9 contained no all-time prohibition

of any uses but made changes in use subject to the Landlord's consent. Therefore, the Applicant's proposed terms should not be included as terms of the leasebacks.

6. Mr. Serota also stated that it was of genuine concern if use of the subject commercial units was restricted and would have a significant effect on the value of what the Freeholder is actually retaining. Mr. Serota stated that sufficient protection was afforded to the Applicant by the need to obtain permission for alteration of use, which permission could, if reasonable, be withheld.
7. During a short adjournment, the parties were able to draft two alternative clauses, which they invited the Tribunal to consider as being appropriate depending upon whether the narrow uses sought by the Applicant were accepted, or the less restrictive uses preferred by the Respondent.

Decision:

8. It is the Tribunal's opinion that the terms of the leaseback sought by the Applicant are overly restrictive and are not prescribed by statute. It is the Tribunal's opinion that the less restrictive approach adopted by Mr. Serota is to be preferred as while providing protection against unreasonable use, does take into account the unknown events of the next 999 years and the inevitable changes of use that will occur.
9. Therefore, the Tribunal accepts the terms of the leasebacks as drafted by the parties (Alternative 2) which reads as follows:

"Not without the consent of the landlord, which consent not to be unreasonably withheld, to use the premises as a charity shop/laundrette/flowerist" – (appropriate word to be inserted in respect of each unit).

Chairman:

W. Taphradine

Dated:

16th March 2008