



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

Case Reference : **GM/LON/00BJ/OCE/2018/003/005
& 006**

Property : **Nos.18, 19, 26, 27, 81, 76 and 77
Lockesfield Place London E14 3AH**

Applicant : **(1) Rakesh Patel (2) Ana Judith
Mata Blasco, Shinil Kumar
Balakrishnan & Mulikshur
Chowdhury (3) Alice Pamela
Narang, Ana Judith Mata Blasco &
Shinil Kumar Balakrishnan**

Representative : **Mr. Carl Fain, counsel instructed by
Brethertons Solicitors**

Respondent : **Lockes Field Management Company
Limited**

Representative : **Mr. Thomas Jefferies, counsel
instructed by DWFM Solicitors**

Types of Application : **Collective enfranchisement
(preliminary decision)**

Tribunal Members : **Judge Tagliavini
Mr. W Richard Shaw FRICS**

**Date and venue of
Hearing** : **25 April 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **6 June 2018**

DECISION

Decisions of the tribunal

- (i) The garages and car parking spaces are to be acquired by the Applicant nominee purchasers without restrictions.
- (ii) The Applicants are to contribute towards the cost of maintaining communal areas and common facilities after acquisition.
- (iii) The Respondent is not entitled to compensation pursuant to paragraph 5 of Schedule 6 of the Leasehold Reform, Housing and Urban development Act 1993.

The application

1. These are three applications made pursuant to section 24 of the Leasehold Reform, Housing and Urban development Act 1993 ('the Act') seeking the tribunal's determination of the terms of acquisition.

The background

2. The Applicants served Notices of Claim dated 4 May 2017. Counter notices dated 14 July 2017 were served by the Respondent admitting the Applicants right to acquire the freehold interest but proposed that the rights sought to be granted should be conditional on payment of the services charges provided for in the leases at clause 12.6. The Respondent also proposed the grant of the right to use the parking space or garages rather than a transfer. In the event service charges were deemed not to be payable, the Respondent sought a substantial (rather than nominal) premium for the freehold interests.
3. The premises comprise part of a 1980's development of 91 flats and houses. The buildings are between two to four stores high with, in many cases parking on the ground floor. Leases were granted for a term of 999 years with no rent. Some properties were sold with a garage and some with a parking space. Leases were granted by Groveside Homes Limited as Lessor with the Respondent a party to the lease and identified as "the Company." The Applicants are lessee members of the Company, which is a resident owned company, which acquired the freehold in 1994 from Groveside Homes Limited. In an earlier enfranchisement application in respect of two properties, the Nominee Purchaser agreed with the Respondent the continued use of communal areas and the Nominee Purchaser agreed to pay 2/91 of the costs of providing these services to maintain and manage these parts of the Estate and the use of service media.

The issues

4. The parties agree that the following three issues are to be determined by the tribunal as a preliminary matter:
 - (i) Whether the Respondent is entitled to refuse to transfer to the Applicants the freehold of parking spaces and garages (which are demised to the Applicants under the terms of their occupational leases, and which were included in their respective claims) and instead, grant permanent rights over those parking spaces and garages?
 - (ii) Should there be a term in the Transfer to the effect that the Applicants contribute towards the cost of maintain communal areas and common facilities?
 - (iii) Whether in the absence of a covenant to contribute towards the cost of maintaining communal areas and common facilities the Respondent is entitled to compensation under paragraph 5 of schedule 6 of the Act?

The hearing

5. The tribunal was provided with two lever arc files containing the parties' documents and legal authorities and was in addition, provided with valuation reports and skeleton arguments from both counsel.

The Applicants' case

6. The Applicants assert that the Respondent is not entitled to refuse to transfer the parking spaces and garages assigned to the various leases as the Nominee Purchasers (NPs) are entitled to acquire them in accordance with section 1(2)(a) of the 1993 Act as they are appurtenant property within the meaning of section 1(7) and therefore fall within section 1(3) of the Act. Sections 1(3) and s.1(7) state;

(3)Subsection (2)(a) applies to any property if at the relevant date either—

(a)it is appurtenant property which is demised by the lease held by a qualifying tenant of a flat contained in the relevant premises; or

(b)it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises (whether those premises are contained in the relevant premises or not).

(7)In this section—

“appurtenant property”, in relation to a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the flat;

7. The Applicants assert that as the garages and parking spaces are not property which, the lessees use in common with others, they are therefore entitled to acquire them in accordance with s.1(3)(a),
8. The Applicants assert that there should not be a term in the transfer to the effect that the NPs, contribute towards the cost of maintaining communal areas and common facilities as there is nothing in Schedule 7 that requires them to give a positive covenant in the transfers to make such payments nor can they require the Respondent to give positive covenants to maintain these areas. The Applicants accepted that these communal areas must be maintained for the other lessees not participating in this collective enfranchisement and who are required to make as financial contribution. Further, the rights granted in the leases are not conditional on payment of service charges and therefore there is no basis on which the transfer of these rights is conditional upon payment.
9. The Applicants further asserted that the Respondent is not entitled to any compensation pursuant to paragraph 5 of Schedule 6 of the 1993 Act. This states:

(5)The value of the freeholder’s interest in the specified premises shall not be increased by reason of—

(a)any transaction which—

(i)is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and

(ii)involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by a qualifying tenant of a flat contained in the specified premises; or

(b)any alteration on or after that date of the terms on which any such superior interest is held.

10. The Applicants assert that as the leases are tripartite and the service charges are payable to the Respondent as “the Company” and not to the Respondent as the freeholder, only the Company can suffer any financial loss and therefore the Respondent as reversioner does not suffer any loss by a shortfall in service charges. In any event the Reversioner could seek to vary the terms of the remaining leases retrospectively, so that the non-participating lessees are required to pay

100% of the costs of maintaining the communal areas. Paragraph 5 of Schedule 6 makes it clear that it is the freeholder that must suffer the loss as it is to him that a reasonable amount is paid. It is the Company that is required to maintain the communal areas and in the event it goes into liquidation there is no provision in the lease whereby the freeholder would then be obligated to carry them out but rather that the lessees covenant to join together to carry out the Company's obligations in default of it doing so. Consequently, the Applicants assert that there is no compensation payable to the Respondent in the event they are not required to contribute to costs of the maintenance and upkeep of the communal areas to which, they have access as specified in the leases.

The Respondent's case

11. The Respondent asserted that it had proposed the grant of the right to use the parking spaces or garages as appropriate by way of an easement or a lease, rather than a transfer as sought by the applicants. The Respondent accepted that section 1(4) of the 1993 Act does not enable the Respondent to offer the right to park in lieu of a transfer of the parking spaces/garages because they are claimed under section 1(3)(a). Notwithstanding, the Respondent asserted that the conveyancing issues that would be created would be avoided if the applicants were granted either a permanent right to park or a 999-year lease as the garages/spaces did not correlate with the numbers or locations of the subject properties as they lie beneath flats owned by other lessees and issues of "flying freeholds" would need to be surmounted.
12. The Respondent asserted that the Applicants were seeking to have the benefit of the communal areas, without a requirement of contributing to their maintenance or upkeep. Any short-fall in the collection of service charges would increase as other leaseholders sought to acquire their freehold, leading to the likelihood of the Respondent becoming insolvent and the deterioration of the Estate. The Respondent submitted that easements granted to the Applicants in respect of the communal areas should be made conditional on payment of service charges and will be enforceable on the benefit/burden principles as explained in a number of cases including *Wilkinson v Kerden* [2013] EWCA Civ 44.
13. The Respondent asserted that in the existing leases, clause 1 grants easements, which are in substance conditional on payment of service charges as the leases contain a single set of interdependent set of rights and obligations which if not met by the lessee allows the lessor to forfeit the lease. Further, paragraph 3(2) of Schedule 7 of the lease provides for the grant of easement to secure as nearly as may be the same rights as exist before the transfer. This states:

(2)The conveyance shall include provisions having the effect of—

(a)granting with the relevant premises (so far as the freeholder is capable of granting them)—

(i)all such easements and rights over other property as are necessary to secure as nearly as may be for the benefit of the relevant premises the same rights as exist for the benefit of those premises immediately before the appropriate time, and

(ii)such further easements and rights (if any) as are necessary for the reasonable enjoyment of the relevant premises; and

(b)making the relevant premises subject to the following easements and rights (so far as they are capable of existing in law), namely—

(i)all easements and rights for the benefit of other property to which the relevant premises are subject immediately before the appropriate time, and

(ii)such further easements and rights (if any) as are necessary for the reasonable enjoyment of other property, being property in which the freeholder has an interest at the relevant date.

14. The Respondent further asserted that if, in the event the Applicants were entitled to acquire the rights to the use of common areas unconditionally i.e. without payment of any service charges, compensation is payable under paragraph 5 of Schedule 6. This states:

5(1)Where the freeholder will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.

(2)This paragraph applies to—

(a)any diminution in value of any interest of the freeholder in other property resulting from the acquisition of his interest in the specified premises; and

(b)any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property.

15. It was submitted that a shortfall in service charges will impact upon the Respondent in two capacities, firstly as “the Company” to whom the service charges are payable and as the lessor, the person entitled to the benefit of the covenant to pay the service charge to the Company. As owner of the unfranchised areas of the Estate, the Respondent loses the ability to enforce payment of service charges from the Applicants to the company and therefore it should be entitled to recover their loss, without which the Estate will deteriorate; *Alfred McAlpine Construction Limited v Panatown Ltd* [2001] 1 AC 518. In this particular instance the Respondent acquired the freehold because of its role as the Company and in any event would suffer loss, or be required by legislation to take certain steps to prevent loss or damage to property or to health in the event the Company became insolvent

The tribunal’s decision and reasons

16. The tribunal finds that the claim to the garages/spaces falls under the definition appurtenant property and are therefore to be acquired by the NPs. The tribunal recognises that in light of the physical location of these, certain conveyancing difficulties may arise. However, the tribunal is persuaded that section 1(3)(a) of the 1993 Act is made out and should be followed.
17. The tribunal finds that the transfer should be made conditional upon the burden/benefit principles relied upon by the Respondent i.e. that use of common areas by the NPs is conditional upon their contribution to the service charge. The tribunal prefers the Respondent’s submissions on this issue to those of the Applicants and is of the view that, without a condition of a contribution being made there is a real danger that the Estate could fall into disrepair. The tribunal also finds that it is inequitable for the NPs to benefit from the use of areas of the Estate to which they do not contribute and at the expense of other lessees, who for whatever reason may not seek to acquire their freehold. Further, the tribunal finds that although as a strict matter of law the Respondent and “the Company” are two separate entities, the loss felt by the latter will impact upon the former, as they are bound so closely together in reality.
18. In light of its decision at paragraph 17 above, it must follow that the tribunal finds that there is no compensation payable to the Respondent by the NPs.
19. Having determined the preliminary matters identified by the parties, further directions may be sought if required, by the parties for the final disposition of this matter.

Signed: Judge Tagliavini

Dated: 6 June 2018