

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property: Blocks K, M and N, Courtlands, Patching Hall Lane, Broomfield, Chelmsford, Essex, CM2 0Z

**Applicant
Nominee
Purchaser:** Courtlands Kingswood Limited, 23A Grove Road, Chelmsford, Essex CM2 0Z

**Applicant's
Solicitor:** Tollhurst Fisher Solicitors, Trafalgar House, 8-10 Nelson Street, Southend on Sea, SS1 1EF (ref: RP/JO/CON/46-1)

**Respondent:
Freeholder &
Landlord:** Patching Hall Management Company Limited

**Respondent's
Solicitor:** Wortley Redmayne Kershaw Solicitors, Stonebridge House, Stone bridge Walk, High Street, Chelmsford, Essex CM1 1EY (Ref: DP.MAB.PAT.6.8.6)

Case Number: CAM/228F/OCE/2006/0037

Application: An application to the Tribunal under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (the 1993 Act) to determine matters in dispute in respect of the exercising of the right to a collective enfranchisement

Tribunal: Mr JR Morris (Chairman
Ms M Krisko BSc (Est Man) BA FRICS
Mr R Thomas MRICS Dip RE

Date of Hearing: 12th January 2007

Attendance:

Applicant: Mr Goodfellow, Counsel
Mr R Plant, Solicitor
Mr RJ Condren, Tenant and Treasurer of Kingswood

Respondent: Mr D Perry, Solicitor
Mr Dearlove Director, Patching Hall Management Company Limited
Mr B Charmers, Director, Patching Hall Management Company Limited

STATEMENT OF REASONS

The Application

1. This is an application to the Tribunal under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (1993 Act) to determine matters in dispute in respect of the exercising of the right to a collective enfranchisement.
2. The Applicant as Nominee Purchaser comprising Qualifying Tenants in an Initial Notice dated 3rd March 2006 claimed the right to acquire the freehold interest pursuant to s1 (1) of the 1993 Act of the Specified Premises known as Blocks K, M and N, Courtlands, Patching Hall Lane, Broomfield, Chelmsford, Essex, CM2 0Z and shown red on an accompanying plan together with the Additional Freehold pursuant to s1 (2)(a) of the 1993 Act of the garden area and communal passageways and staircases and shown green on an accompanying plan.
3. In addition the Applicant proposed Rights, which were numbered 1-7 in the Initial Notice, should be granted under s 13(3)(iii) of the 1993 Act.
4. The Respondent in a Counter Notice admitted the Tenants' right to purchase the freehold and the extent of the freehold interest in the Specified Premises pursuant to s1 (1) of the 1993 Act and Rights 1 and 7 proposed by the Applicant.
5. The Respondent in the Counter Notice did not accept the proposal contained in the Initial Notice as to the extent of the Additional Freehold or the Rights numbered 2 to 6 as stated.
6. The Respondent made a counter proposal in relation to the Additional Freehold and additions and amendments to each of the Rights 2 to 6.
7. The Respondent made further counter proposals as to the Rights to be Granted in relation to the Courtland Development and Rights to be Reserved in relation to the Specified Premises and Additional Freehold for the benefit of the Retained Land by the Respondent as Freeholder.
8. The Application identified the following matters to be in dispute:
 - the extent of the Additional Freehold
 - the rights to be granted and reserved
 - the provisions in the transfer
 - the costs to be recovered pursuant to s 33 of the 1993 Act.
9. The price to be paid for the Freehold interest has been agreed.
10. A Hearing was convened on the 12th January 2007 prior to which the Parties were engaged in negotiations and agreed all matters except for the flowing issues, which the Parties required the Tribunal to determine:

Issue 1

Whether the paragraph 3 of the First Schedule The Transferee's Obligations should be included in the Transfer. The paragraph states:

"Not at any time to build upon or to extend any existing building or structure on the Property not to make erections on or to erect any building on the Property without obtaining the prior consent in writing of the Transferor (such consent not to be unreasonably withheld or delayed)"

Issue 2

Whether the paragraph 3 of the Second Schedule The Transferor's Obligations should be included in the Transfer. The paragraph states:

"Not at any time to build upon or to extend any existing building or structure on the Retained Land not to make erections on or to erect any building on the Retained Land without obtaining the prior consent in writing of the Transferee (such consent not to be unreasonably withheld or delayed)"

Issue 3

Whether the Block F, which comprises stores, demised to the Tenants and the Caretaker's Workshop and Lavatory, and Block G, which comprises garages demised to the Tenant's and the Caretaker's Garage should be transferred to the Applicant with a Leaseback of 999 years of the Caretaker's Workshop, Lavatory and Garage to the Respondent or should be retained by the Respondent and Leased back to the Tenants for a term of 999 years.

Issue 4

Whether the costs included in a Schedule submitted by the Respondent and to be recovered pursuant to s 33 of the 1993 Act are reasonable and payable by the Applicant.

11. As many of the matters agreed by the Parties were as a result of negotiations immediately prior to the Hearing it was considered expedient that the Applicant would following the determination and submission to the Respondent send to the Tribunal for final approval the agree Transfer together with the plan.

Description of Premises

12. The Tribunal inspected the Property on the 12th January in the presence of the Applicant's Counsel and Solicitor.
13. The Property is three 3-storey Blocks of purpose build flats of brick with flat roofs. Two of the blocks are of 12 flats and one is of 15 flats. Externally the Blocks appeared to be in fair condition. They are set in communal grounds laid to grass. Adjacent to the flats are garages and stores and garages, which are let to Tenants as part of their demise. Some of the garages were in poor condition and in need of extensive refurbishment. The Respondent currently owns the area in front of the garages and stores. The Local Authority has adopted the access roads. The boundary between the garage and stores area and adopted access roads is marked by sets of stones.
14. The Tribunal made an inspection of Block F which comprises stores, demised to the Tenants and the Caretaker's Workshop and Lavatory, and Block G, which comprises garages demised to the Tenant's and the Caretaker's Garage No inspection was

made of the interior of the Blocks of flats or of the flats themselves as this was not necessary to determine the matters in issue.

Representations

Issue 1

15. The Applicant stated that the provisions of the respective paragraphs numbered 3 of the First and Second Schedules were mutual and enabled both Parties to maintain a measure of control over their respective parts of the Estate. The Applicant stated that it would not be appropriate for the Applicant alone to be bound by such a provision i.e. that paragraph 3 of the First Schedule, Transferee's Obligations, should be included but not Paragraph 3 of the Second Schedule. It was not unreasonable for the Applicant to wish to undertake certain works such as the erection of bicycle sheds or other minor construction works and it should be allowed to carry out such works without hindrance.
16. The Respondent stated that it should be allowed a measure of control over the Property as the valuation had been undertaken as the Property stood and without taking account development value.

Issue 2

17. The Applicant stated that due to the proximity of the Retained Land it was reasonable for the Applicant to have some control over the extent of any development.
18. The Respondent stated that whereas it did not have any immediate plans it might wish to build a further two storeys over the Caretakers flat which currently was only one storey and this would merely bring the structure in line with the rest of the Block of which the flat was a part. In addition the Respondent referred to the garages that were in poor condition and said that it would be undertaking extensive work on these. Such development over the Caretakers Flat and refurbishment of the garages would be reasonable and should not be subject to the consent of the Applicant.
19. The Respondent submitted a compromise that if paragraph 3 of Schedule 2, Transferor's Obligations was removed then paragraph 3 of Schedule 1, Transferee's Obligations could be modified to allow the erection of bicycle sheds and minor works without the requirement of consent.

Issue 3

20. The Applicant stated the Block F, which comprises stores, demised to the Tenants and the Caretaker's Workshop and Lavatory, and Block G, which comprises garages demised to the Tenant's and the Caretaker's Garage should be transferred to the Applicant with a Leaseback of 999 years of the Caretaker's Workshop, Lavatory and Garage to the Respondent. If it was retained by the Respondent and Leased back to the Tenants for a term of 999 years it would require all the Tenants who had stores and/or garages to agree to their Leases being varied and each Tenant affected would have to have a new lease of the store and/or garage requiring several documents to be drafted. However a Leaseback to the Respondent of a virtual freehold of the Caretakers Lavatory, and Garage would only require one document.
21. The Respondent submitted that the Caretakers Lavatory, and Garage comprised a substantial part of the Blocks F and G. These facilities were in close proximity to the

Caretaker's accommodation and it was appropriate that they, like the Caretaker's flat should remain in the ownership of the Respondent.

Issue 4

22. The Respondent provided a Schedule of Costs. The Schedule was divided into three sections of A Solicitor's Untimed Costs, B Solicitor's Timed Costs, C Expert's Costs and D Costs of Conveyancing.
23. The work was carried out by a Partner of 13 years Post qualifying experience at a rate of £185 per hour until September 2006 and thereafter at a rate of £190 per hour. Where charges were expressed in units, these were of 6 minutes duration.
24. The Applicant submitted that the under the Civil Procedure Rules the fee for a Grade A earner is £184.00. The Respondent stated that this was just a guide and had not been altered since January 2005.

Section A

25. With regard to the Untimed Costs the Applicant stated that 35 units for letters to the client and client's agent prior to 30th September 2006 were excessive and that 12 was a more reasonable figure.
26. The Respondent stated that the Solicitor's long-standing relationship with the client necessitated close contact and that many of the letter s to the client were requesting information directly rather than going through the Agent.
27. The Applicant stated that the Civil Procedure Rules do not entitle charges for letters in to be reclaimed.
28. The Respondent pointed out that the Rule does not apply in this case and section 33 of the 1993 Act entitles the Respondent to recover reasonable costs. It was also added that letters in require reading and action taken.
29. The Respondent stated that the 3 Letters In from the Tribunal since 1st October 2006 were not chargeable under section 33 of the 1993 Act and were included in error

Section B

30. The Respondent agreed that the Initial Notice was not served until 7th March 2006 and therefore the fees between 15th October 2006 and 6th March 2006 were not chargeable under section 33 of the 1993 Act.
31. The Applicant questioned the two periods of 24 minutes – Length attendance on Expert on 26th April 2006 and 48 minutes – Discussions with Expert on the 2nd May 2006. The Respondent stated that the matter was complex and required discussions with the Expert in the course of instructing him.
32. The Applicant and Tribunal questioned the time on 4th May 2006 for Considering the Expert's Report and amending counter notice - 1 hour 30 minutes and 14th May 2006 for Substantial revision of counter notice following meeting with clients – 1 hour 30 minutes. The Respondent replied that the amendments were necessary following the Expert's viewing of the Property and the client's instructions.

33. The Tribunal question the charge for 22nd June 2006 for Attending the Respondent's AGM to advise on the position – Travel 30 minutes and attendance 1 hour 24 minutes. The respondent submitted that this was the most effective way of giving information to the Company.
34. The Respondent advised the Tribunal that the items on the Schedule of 26th October 2nd November and 6th November were entered in error and were not chargeable under section 33 of the 1993 Act.
35. The Respondent said that the item of inspecting the premises on 6th November 2006 was to confirm the situation regarding the transfer.

Section C

36. The Applicant questioned the Respondent's Expert's fee as the Applicant's own Expert had only charged £500. The Tribunal requested that further details be given of the rate and time taken for completion of the report by Mr Gillespie MSc FRICS the Chartered Surveyor who undertook the valuation. A period of 10 days for the Hearing was granted with a further 7 days for the Applicant to make representations. The Respondent submitted the letter for the retaining of the Expert. No additional representations were received from the Applicant.
37. The Respondent's pointed out that although the Expert's charge was a fixed fee it was based on £175.00 per hour. In the retainer letter Mr Gillespie stated that he considered there were three separate claims. He took his instructions to be:
 - o To survey a representative sample of the flats, peruse leases and service charge accounts, review local market evidence and relevant Leasehold Valuation Tribunal decisions and make appropriate enquires form local authority and any other relevant source.
 - o To report in writing with a valuation for the purposes of assessing an enfranchisement price for reach block in accordance with Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 – Part I
38. The fee was £800 for each block of twelve flats and £950 for the block of fifteen flats making a total of £2,550.00. Mr Gillespie is not registered for VAT.

Section D

39. The Costs of conveyancing were not questioned by the Applicants.

Determination

Issue 1

40. The Tribunal noted the mutual provisions of the respective Paragraphs 3 of Schedules 1 and 2. It saw no reason to restrict the development of the Property and considered that the statutory requirement for planning permission was an adequate control in this case. The Tribunal did not accept that the Respondent's Surveyor only valued the Property as it stood The Tribunal noted the contents of the Surveyors letter of retainer and was of the opinion that a conscientious Surveyor would take account of the development potential of the Property in making a valuation. The Tribunal therefore determined that Paragraph 3 of Schedule 1 relating to the Transferee's Obligations should not be included in the Transfer.

Issue 2

41. The Tribunal were of the opinion that found that the development of the Retained Land would not derogate from the Property and therefore did not consider it appropriate in this case for the restriction. The Tribunal therefore determined that Paragraph 3 of Schedule 2 relating to the Transferor's Obligations should not be included in the Transfer.

Issue 3

42. The Tribunal agreed with the Applicant that Block F, which comprises stores, demised to the Tenants and the Caretaker's Workshop and Lavatory, and Block G, which comprises garages demised to the Tenant's and the Caretaker's Garage should be transferred to the Applicant with a Leaseback of 999 years of the Caretaker's Workshop, Lavatory and Garage to the Respondent. It was noted that a Leaseback to the Respondent of a virtual freehold of 999 years of the Caretakers Lavatory, and Garage would only require one document whereas a leaseback to the Tenants would require the variation of their Leases would require several documents. The arrangement was not considered to be detrimental to the Respondent's holding of the Caretaker's Flat as a separate estate. The Tribunal therefore determined that Block F and Block G, should be transferred to the Applicant with a Leaseback of 999 years of the Caretaker's Workshop, Lavatory and Garage to the Respondent.

Issue 4

43. The Tribunal accepted the Respondent's comments regarding the general level of fees and determined that £185 per hour until September 2006 and thereafter a rate of £190 per hour was reasonable.

Section A

44. The Tribunal found the number of letters to the Client and Agent high and were of the opinion that some duplication between the two was likely. The Tribunal considered 25 to be reasonable.
45. The Tribunal accepted that a charge for letters in was reasonable in this case but that this should be at one half of the rate.
46. The tribunal determined that the reasonable costs under section 33 of the 1993 Act for Section A of the Schedule were:
- | | |
|-----------------------|------------------|
| 73.5 units @ £18.50 = | £1,359.75 |
| 12.5 units @ £19.00 = | £ 237.50 |
| Sub Total | £1,597.25 |
| VAT 17.5% | £ 279.52 |
| Total | £1,876.77 |

Section B

47. The Tribunal considered that the period of time allocated to giving instructions was excessive and determined 24 minutes was reasonable.
48. The Tribunal found that a period of 1 hour 30 minutes had been itemised on the 2nd May 2005 for drafting the Counter Notice and this was considered sufficient in the experience of the Tribunal. The Tribunal therefore determined that it was not reasonable for the time on 4th May 2006 for Considering the Expert's Report and

amending counter notice - 1 hour 30 minutes and 14th May 2006 for Substantial revision of counter notice following meeting with clients – 1 hour 30 minutes to be charged pursuant to section 33.

49. The Tribunal found that the item of 22nd June 2006 for Attending the Respondent's AGM to advise on the position – Travel 30 minutes and attendance 1 hour 24 minutes was not reasonable under section 33 as the advice was for the Respondent's convenience and did not part of the costs relating to the enfranchisement.
50. The Tribunal accepted the item of inspecting the premises on 6th November 2006 but determined that the travel of 24 minutes should be at the rate of on half the normal charge.
51. The Tribunal determined that the reasonable costs under section 33 of the 1993 Act for Section B of the Schedule were:
- | | |
|--------------------------------|------------------|
| 7 hours 12 minutes @ £185.00 = | £1,332.00 |
| 30 minutes @ £190.00 = | £ 95.00 |
| 24 minutes @ £95.00 = | £ 38.00 |
| Sub total | £1,465.00 |
| VAT @ 17.5% | £ 256.38 |
| Total | £1,721.38 |

Section C

52. The Tribunal noted that Mr Gillespie charged for 15 hours to carry out the total valuation exercise. The Tribunal found that in relation to the survey each of the flats and blocks were very similar and understood that the leases were the same. In relation to the valuation there was no marriage value and the calculation was not particularly complex or difficult. The Tribunal therefore considered that the survey, perusal of deeds and calculation should have taken no more than 5 hours with an allowance of approximately one and a half hours travelling at half the hourly rate. **The Tribunal therefore determine a reasonable charge for the valuation of £1,175.00.** The Surveyor's fee is not subject to VAT.

Section D

53. The Tribunal determined that the Conveyancing costs under Section D of the Schedule of **£616.88.00** (525.00 plus £91.88 VAT) were reasonable costs under section 33 of the 1993 Act:
54. The Tribunal will make an order relating to the agreed matters on receipt of the Transfer (TP1) and the amended agreed plan which must be submitted within six weeks of this Determination.


JR Morris, Chairman