

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

S.24 Leasehold Reform, Housing & Urban Development Act 1993



DECISION AND REASONS

Case Number: CHI/43UD/OCE/2006/0003

Property: Riverside
Millbrook
Guildford
Surrey
GU1 3XD

**Applicant
(nominee purchaser):** Riverside Millbrook Ltd

**Respondents
(reversioner):** Michael Lampard
Brenda Jean Ann Lampard
Steven Michael Lampard

Date of Application: 19 December 2005

Date of Hearing: 27 April 2006

Appearances: For the Applicant: Mr Anthony Radevsky of Counsel
For the Respondents: Mr Christopher Heather of Counsel

Witnesses: Mr Philip Leonard Ringrose a Director of the Applicant Company
Mr Roger Taylor FRICS of Bells Southfields Ltd
Mr M H Trent FRICS (retired) previously of Clarke Gammon
Wellers Chartered Surveyors

In Attendance: Mr Michael Pinkerton of Gardner Weller Solicitors for the
Applicant
Mr D K Haines of Charles Russell Solicitors for the Respondents

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Miss C Rai LLB (Legal Member)
Mr P K D Harrison FRICS (Valuer Member)

Date of Decision: 26 May 2006

Summary of Decision

The lease dated 17 March 2006 between the Respondents and Steven Michael Lampard relating to the storage lockers is void. The land forming the communal grounds identified as the land edged green on the plan attached to the Initial Notice is to be included in the freehold transfer to the Applicant, subject to the existing leases of the private garden areas. The price to be paid is £22,000.

BACKGROUND

1. This is an application by the nominee purchaser, a company in which all eleven qualifying tenants are participating, to acquire the freehold reversion of their leasehold premises which is more particularly described in the Initial Notice referred to in paragraph 2 below.
2. The Initial Notice under Section 13 of The Act served by the participating tenants on 23 December 2004 identified 1 March 2005 as the date by which the Counter Notice under Section 21 of The Act was to be served. The Notice identified the premises to be acquired under Section 1(1) by way of red edging on the plan attached (being the "specified premises") and under Section 1(2)(a) by way of a green edging on the same plan. The two areas together form the entire freehold of the property contained in Title Nos. SY673663 SY368237 and SY682883. It is common ground that the land shown edged green on the plan incorrectly included two garden areas which were included in the property demised by the leases of flats 2 and 4.
3. The reversioner served a Counter Notice dated 24 February 2005 not admitting that the participating tenants were entitled to collective enfranchisement. The reason given was that the specified premises included storage areas which had not been demised to the participating tenants.
4. In an application by the Respondents made to the Guildford County Court the validity of the various notices was questioned. His Honour Judge Reed QC declared the Initial Notice dated 23 December 2004 to be valid and that the participating tenants were on that date entitled to exercise the right to collective enfranchisement. The reversioner's Counter Notice dated 24 February 2005 was declared to be of "no effect". The reversioner was therefore ordered to serve a further Counter Notice to the nominee purchaser by 15 August 2005.
5. The reversioner's (second) Counter Notice dated 11 August 2005 was served and this Counter Notice admitted that the participating tenants were entitled to collective enfranchisement. It accepted that there should be a freehold transfer of the land shown edged red on the plan. The Counter Notice proposed that, instead of transferring the land shown edged green, the nominee purchaser should be granted the various rights identified in detail in that Notice. In addition reference was also made to the transfer of the specified premises being subject to a lease dated 25th April 2005 which the reversioner had granted for a term of 999 years to Stephen Michael Lampard (one of the reversioners) (the First Locker Lease). The nominee purchaser's price, proposed at £19,900 for the specified premises and £100 for the other property was not accepted and a counter proposal of a price of £35,000 for the specified premises with the grant of rights over the other property was made by the reversioner.
6. In April 2005 the reversioner had granted a lease of storage lockers in the lower ground floor area for 999 years to Stephen Michael Lampard, one of the reversioners. No application to register the First Locker Lease at the Land Registry was made until November 2005 which is outside the statutory time limit for registration. The Applicants had objected to the registration of the lease.

7. The Tribunal issued Standard directions in January 2006 requiring the preparation and exchange of valuation reports. A date was set for the hearing for 2 days on the 27 and 28 April 2006. The Respondent's solicitors asked for the proceedings to be stayed pending a determination by the Land Registry adjudicator on the validity of the First Locker Lease and whether it could be registered.
8. By a lease dated 17 March 2006 between the Respondents and Steven Michael Lampard (the Second Locker Lease) a tenancy of the storage lockers in the lower ground floor area at Riverside was granted. This demise would appear to be the same storage lockers and areas in the lower ground floor premises as were included in the First Locker Lease which had apparently subsequently been surrendered by operation of law.
9. A Pre-Trial Review Hearing was held on 10 April 2006 and on hearing Counsel for both parties the Tribunal made various further directions with regard to procedure and the provision of statements of case and of witness statements. Any replies to submitted statements or witness statements were to be provided at least two working days prior to the first day of the hearing.
10. The parties agreed that the Tribunal had jurisdiction under S.24 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) to make a decision as to the validity of the Second Locker Lease dated 17 March 2006.
11. The bundle of documents as requested by the directions was prepared and delivered to the Tribunal as required.
12. A hearing took place at the Continuing Education Centre, University of Surrey on 27 April 2006.

RELEVANT LAW

13. The right to collective enfranchisement is conferred by S.1 of the Act. There is no dispute about the validity of the Initial Notice and the (second) Counter Notice.
14. S.19(1) deals with the effect of an Initial Notice in relation to a subsequent transaction by the reversioner such as the granting of a lease after the registration of an Initial Notice as follows:
15. *"19(1) Where the initial notice has been registered in accordance with section 97(1), then so long as it continues in force –*
 - (a) *any person who owns the freehold of the whole or any part of the specified premises or the freehold of any property specified in the notice under section 13(3)(a)(ii) shall not –*
 - (i) ...

- (ii) *grant out of that interest any lease under which, if it had been granted before the relevant date, the interest of the tenant would to any extent have been liable on that date to acquisition by virtue of section 2(1)(a) or (b); and*

(b) ...

and any transaction shall be void to the extent that it purports to effect any such disposal or any such grant of a lease as is mentioned in paragraph (a) or (b)"

- 16. If the lease had been granted before the Initial Notice was served (and registered), in order for it to be void if granted afterwards, it would have had to have been liable to acquisition by virtue of section 2(1) of the Act.
- 17. "2.(1) *Where the right to collective enfranchisement is exercised in relation to any premises to which this Chapter applies ("the relevant premises"), then, subject to and in accordance with this Chapter –*
 - (a) *there shall be acquired on behalf of the qualifying tenants by whom the right is exercised every interest to which this paragraph applies by virtue of subsection (2); and*
 - (b) *those tenants shall be entitled to have acquired on their behalf any interest to which this paragraph applies by virtue of subsection (3);*

and any interest so acquired on behalf of those tenants shall be acquired in the manner mentioned in paragraphs (a) and (b) of section 1(1)

2.(2) ..."

- 18. S.2(3) describes the interest to which paragraph 2(1)(b) applies.
- 19. "2(3) *Paragraph (b) of subsection (1) above applies to the interest of the tenant under any lease (not falling within subsection (2) above) under which the demised premises consist of or include –*
 - (a) *any common parts of the relevant premises, or*
 - (b) *any property falling within section 1(2)(a) which is to be acquired by virtue of that provision,*

where the acquisition of that interest is reasonably necessary for the proper management or maintenance of those common parts, or (as the case may be) that property, on behalf of the tenants by whom the right to collective enfranchisement is exercised."

20. The Respondents in their Counter Notice wished to exclude the transfer of the land edged green but offered rights over the land shown edged green on the plan instead. By virtue of Section 1(4) of the Act the right of acquisition in respect of the freehold may be taken to be satisfied by the grant of "permanent rights". This section sets out the type of rights that are appropriate as follows.
21. *"1(4) The right of acquisition in respect of the freehold of any such property as is mentioned in subsection (3)(b) shall, however, be taken to be satisfied with respect to that property if, on the acquisition of the relevant premises in pursuance of this Chapter, either*
- (a) there are granted by the person who owns the freehold of that property*
 - (i) over that property, or*
 - (ii) over any other property,*

such permanent rights as will ensure that thereafter the occupier of the flat referred to in that provision has as nearly as may be the same rights as those enjoyed in relation to that property on the relevant date by the qualifying tenant under the terms of his lease; or
 - (b) there is acquired from the [person who owns the freehold of that property] ³⁴⁰ the freehold of any other property over which any such permanent rights may be granted."*
22. The rights have to be identified in the reversioner's Counter Notice by virtue of Section 21(3).
23. *"21(3) If the counter notice complies with the requirement set out in subsection (2)(a), it must in addition –*
- (a) state which (if any) of the proposals contained in the initial notice are accepted by the reversioner and which (if any) of those proposals are not so accepted, and specify –*
 - (i) in relation to any proposal which is not so accepted, the reversioner's counter-proposal, and*
 - (ii) ...*
 - (b) if (in a case where any property specified in the initial notice under section 13(3)(a)(ii) is property falling within section 1(3)(b)) any such counter-proposal relates to the grant of rights or the disposal of any freehold interest in pursuance of section 1(4), specify –*
 - (i) the nature of those rights and the property over which it is proposed to grant them, or*

(ii) *the property in respect of which it is proposed to dispose of any such interest,*

as the case may be;"

24. When dealing with interpretation the Act identifies "common parts" at S.101.

"common parts", in relation to any building or part of a building, includes the structure and exterior of that building or part and any common facilities within it;"

25. Schedule 6 of the 1993 Act sets out in detail the valuation principles to be followed when assessing the price to be paid and both experts have followed this guidance.

LEASES

26. The Tribunal was provided with copies of a selection of the leases and details of the leasehold title to each flat. There are some differences between the leases; in particular the leases of Flat 4 and Flat 2 include areas of garden which were erroneously included in the area edged green on the plan. This is not a controversial issue and the parties have agreed and recognise these areas are leased to the owner of these Flats.

27. In order to identify relevant parts of the lease which have contributed to this decision we have included extracts from the lease of the penthouse. The Tribunal has however had regard to the full contents of all the leases of which it has seen copies when coming to its decision.

28. Within the Definitions and Interpretation clause 1.1 the following are described.

29. *"Common Areas"* means all parts of the Development not comprising the External Parts the Demised Premises or areas or premises exclusively demised to any other person (but includes the external fire escape routes)"

30. *"External Parts"* means the main structure roof foundations service ducts lift shaft any structural walls within the Building and those parts of all external walls not being the responsibility of lessees within the Building balconies and other external parts of the Building not having been demised nor intended to be demised to the Other Owners"

31. Schedule 2 of this lease lists 9 rights granted which we list here. It should be noted that this is one of the leases which grants the right to use a storage locker and this right does not appear in all of the other leases.

32. "SCHEDULE TWO Rights granted

The right for the Lessee and all persons authorised by her in common with the Lessor and the Other Owners or occupiers on the Development and all others having the like right (so far as the Lessor may grant the same):-

- 1 *At all times by day or by night and for all purposes to go pass and repass over Common Areas on foot (and in the case of roadways with vehicle(s)) to obtain access to and egress from the Demised Premises including the benefit of the right of way from the Development over Abbot Road which is noted on the Property Register of the Lessor's title number SY693663*
- 2 *To use for the purpose of recreation (but subject to all regulations from time to time made by the Lessor) those parts of the Common Areas laid out on the Development for that purpose*
- 3 *To use any refuse containers which may be provided on the Development for the tidy disposal of domestic refuse only*
- 4 *To subjacent and lateral support and to shelter and protection from the other parts of the Building*
- 5 *The free and uninterrupted passage and running of water soil gas electricity telephone and other services from and to the Demised Premises through the Pipes which are now or may at any time during the Term be in under or passing through the Development and the right to make connections hereto*
- 6 *For the Lessee with servants workmen and others at all reasonable times by prior appointment (except in the case of emergency) to enter into and upon other parts of the Development for the purpose of repairing maintaining renewing altering or rebuilding the Demised Premises*
- 7 *To the benefit of the restrictions and covenants contained in the leases of the other flats comprised in the Development granted or to be granted by the Lessor so far as the same are intended to benefit the Demised Premises and are capable of accruing to the benefit of the Demised Premises.*
- 8 *To use the entryphone and to connect any television set in the Demised Premises with any communal aerial or satellite communication dish provided by or on behalf of the Lessor*
- 9 *To use one storage locker in the lower ground floor of the Building for the purpose of domestic storage only the position of such storage locker shall be as allocated by the Lessor from time to time"*

33. In addition in Schedule Five the Lessor covenants at para. 5.2 as follows:

34. "5.2 *The Lessor shall keep those parts of the Common Areas outside the Building (including the external fire escape routes) in a clean and tidy condition properly lighted and cultivated as necessary"*

INSPECTION

35. Members of the Tribunal inspected the premises prior to the hearing. They were accompanied by representatives of both parties and were shown round by Mr Ringrose a Director of the Applicant Company. The Tribunal was able to inspect the exterior of the building, the lower ground floor parking area, storage lockers and janitor's area, and the external gardens.
36. The building is situated on the edge of Guildford town centre off the main A281 road to Horsham. It is situated on a relatively shallow site against a steep escarpment. There is a substantial reinforced concrete retaining wall against this escarpment. The rear communal gardens have been terraced against the steep slope to provide some leisure areas. Access to these gardens is only obtained through one of the flats or from the external metal fire escape staircase. It would be possible to gain access from the Abbott Road by way of a gate at the top of the escarpment but this involved a circuitous route. It was pointed out to the Tribunal that originally there had been steps linking the various levels of the communal garden but these had now been removed.
37. The building has a mixture of brick, rendered and reconstituted stone elevations of varying heights with accommodation arranged over five floors with a split level layout. Flats are reached by way of communal ways, staircases and lift, which have been finished to a superior standard.
38. It was noted that the storage lockers generally occupied a void area between the rear wall of the building and the retaining wall against the steep escarpment. The roof of the storage lockers at the rear became a walkway above giving access to various external parts of the building including ventilator turrets on top of some of the storage lockers. The janitor's cupboard was located beneath an access way adjoining Flat 4 which formed a route to the private garden. Other storage lockers have been formed within the main building.
39. The Tribunal noted that in addition to the storage lockers demised in the Second Locker Lease there was included an area of the car park located just outside the janitor's store.

ISSUES IN DISPUTE

40. 1 Is the lease relating to storage lockers at Riverside dated 17 March 2006 void by virtue of Section 19(1) of the Act?
- 2 What is the extent of the appurtenant property of which the applicant is entitled to acquire the freehold?
- 3 Have the Respondents satisfied the requirements of S.1(4) of the Act, in respect of the area of land edged green on the plan, by offering the grant of rights rather than agreeing to transfer the freehold?
- 4 The price to be paid.

Issue 1. Is the Second Locker Lease dated 17 March 2006 void?**The Applicant's case**

41. The lease dated 17 March 2006 was granted after service of the Initial Notice was registered. It was agreed at the pre-trial review that this Tribunal had jurisdiction to determine the issue.
42. Mr Radevsky says that in order for this lease to be void it would have had to have been capable of acquisition if it had been in force before the Initial Notice was served. The test is whether the lease demised premises which consisted of or included any common parts of the relevant premises. Common parts are defined in the Act on an inclusive rather than exclusive basis but the definition identifies the structure and exterior of the building or any part of it and any common facilities within it.
43. The premises demised by the lease or at least part of them comprise common parts. The storage lockers are currently allocated to the tenants of the flats for their use either directly by way of rights under their lease, or by way of representations made when the flats were first and subsequently marketed.
44. Mr Ringrose gave evidence to the Tribunal of the marketing procedures and that he had always believed that the storage lockers were a common facility by use of the lessees. He had acted for his wife who was a lessee. Mrs Ringrose's flat demises the use of a storage locker although a specific locker is not specified. Other Lessees have been given keys to lockers and no charge has been made for their use.
45. The janitor's cupboard is included in the area demised by the March 2006 lease and this is required for the maintenance and cleaning of the common parts of the property.
46. In addition, within the storage lockers there are substantial pipes for services and drainage, electrical cables and other service conduits. Access to these is required for the proper maintenance of the building and these parts must therefore be common parts. If any part of the property demised by the lease is a common part the lease must be void.

The Respondents' Case

47. Mr Heather admitted that initially the storage lockers might be considered as common areas as defined by the lease; however, the definition of common parts in the Act was different. None of the lockers in the March 2006 lease are demised under the flat leases. Only two flats Nos. 1 and 10 have rights in their leases to use the lockers.
48. The definition of common areas in the lease includes a right to obtain access to and egress from the demised premises. None of the lockers leads to a flat and there is no right to access the lockers either individually or in common with other lessees so they cannot therefore be common parts.

49. He argued that the rights granted under flats 1 and 10 to use a locker nominated by the landlord is a licence. This implies that in order to satisfy the requirements of a licence the Respondent must have retained sufficient interest to enable such a licence to be given. This suggests that the lockers are retained parts as opposed to common parts. (Retained parts are not defined in the leases)
50. His second suggestion was that these lockers are not required so as to effect the proper management or maintenance of the whole premises and therefore it is not necessary for the Applicant to acquire them.
51. If maintenance of the building is required then the lease allows a right to enter for such maintenance without prior notice.
52. Mr Michael Lampard submitted a written witness statement dated 25 April 2006 stating his reason for non-attendance as him being in Florida and not returning to the UK until 1 May. He responds to Mr Ringrose's witness statement.
53. The Applicant objects to the inclusion of this witness statement as Mr Lampard did not make himself available at the hearing.
54. Mr Lampard refuted the contention that it was the intention of the Respondents at any time to demise any of the storage lockers with the flat leases. He did not tell any of the proposed purchasers that the leases would include storage lockers, this is also clear from the leases themselves. He described any subsequent right to use the storage lockers as a personal agreement between himself on behalf of the Respondents and the leaseholder in question. He states that the janitor's store and WC is locked with the only keys held in his offices for the benefit of his wife, his son or himself.

Issue 2. What is the extent of the appurtenant property?

55. It is agreed between the parties that depending on the outcome of this hearing those areas of garden which have been demised to the long lessees will be included in the freehold to be acquired by the nominee purchaser.

Issue 3. Do the rights offered satisfy the requirements of s.1(4)?

The Applicant's Case

56. Mr Radevsky says that specific rights were set out by the reversioner in the Counter Notice. This Counter Notice had to state the rights proposed by the landlord to be granted in lieu of the lessee's right to acquire the freehold of this land. Unless these rights were "as nearly as maybe the same rights as those enjoyed" by the qualifying tenants under their leases Section 1(4) cannot be relied on by the Respondents.
57. The rights offered are not equivalent. Under the leases the qualifying tenants have the benefit of covenants by the landlord to repair the common areas, to keep them clean and tidy, cultivated and lit as needed. No such provisions were offered in the Counter Notice. The rights offered are therefore significantly inferior to those presently enjoyed under the terms of the lease.

58. Following the identification of this argument and well after the service of the Counter Notice solicitors for the Respondent wrote a letter dated 26 April 2006 offering further additional rights and covenants in relation to the grounds. This letter was made available to the Tribunal very late in proceedings. It is clear from the Act that all the proposed rights in order to satisfy the Respondent's counter claim must be set out in the Counter Notice. The further letter therefore has no validity in assessing whether the grants of equivalent rights have been offered.

The Respondents' Case

59. Mr Heather says that the permanent rights offered in lieu of the transfer of the freehold are identical to the wording in Schedule 2 of the lease. If these rights are as nearly as maybe the same the right of acquisition is satisfied and the Tribunal has no discretion in the matter.
60. The rights in the Counter Notice were sufficient, but if they were not, the letter written by the Respondent's solicitor on 26 April 2006 reinforces these rights and offers to make them the same. There is no limitation on the timing of the offer of rights in lieu of the transfer of the freehold.

Issue 4. The price to be paid

The Applicant's case

61. Mr Roger Taylor FRICS spoke to his proof of evidence and a valuation of £22,000. His approach to the valuation had been straightforward. The leases were granted for a term of 999 years from 25 March 2000 at a ground rent of £100 per annum subject to review for each 25 year tranche of the term calculated from the commencement date. The rent review at each 25 year step is ascertained by dividing the value of the specific flat at the review date by the price paid at the outset to give a ratio which is multiplied by the initial ground rent. This Mr Taylor considered to be an unusual method of calculating the increases.
62. The total ground rent of flats is £1,100 per annum (wrongly shown in the proof at £11,000 per annum) to which Mr Taylor applied a yield of 5%, YP 20.
63. He considered the yield at the low rate of 5% in order to take account of the provision for ground rent increases at review. These future increases cannot be accurately forecasted but the rent review provision makes the investment slightly more attractive as the ground rent is likely at least to keep place with inflation. Whereas he would normally have expected to see a yield in the region of 7% he has adjusted this to a generous level of 5%.
64. The leases are too long to even consider a valuation of the reversion which is taken as nil.
65. The Commonhold and Leasehold Reform Act 2002 amendment to the Sixth Schedule of the 1993 Act provides that there should be no allowance for marriage value if the leases are longer than 80 years so there is no addition for marriage value.

66. No special value has been placed upon the parking spaces as these are demised within the leases of the apartments.
67. The Tribunal's directions had asked for an alternative valuation that would be appropriate if the lease of the storage lockers was to be acquired. Mr Taylor considered that his valuation would not vary as the storage lockers would only have a nominal commercial value.
68. When considering any alteration in value for the storage lockers Mr Taylor considered that the only likely occupiers could be the lessees of the flat as no one else would have the appropriate rights to gain access. Because of this the storage lockers would have a nominal commercial value and no addition should be made to the price.
69. He therefore values the ground rent at £1,100 multiplied by a yield of 5% (a years purchase of 20) producing his valuation of £22,000.

The Respondents' Case

70. Mr Trent spoke to his valuation report dated 20 April 2006. Although the report is stated to be on behalf of the Respondents Mr Trent confirmed that he had prepared it for the benefit of the Tribunal and his declaration and statement of truth is included.
71. His valuation capitalised the ground rent of £1,100 at 6.5% but only for 100 years. He then added a reversionary figure based upon flat values of £4m deferred at 6.5% for 100 years. This gave him a mathematical valuation of £24,300 which he rounded upwards to £25,000.
72. As directed he also considered as an alternative the value of the freehold to include the storage areas. On this basis he assessed the value of the 11 storage areas of 270 ft² at £16,500. The total value including the storage areas would therefore be £41,500. There was no addition for marriage value or other matters.
73. Mr Trent made no attempt to assess the likelihood of an increase in rent at rent review after 25 years. He did however consider that there would be a reversionary value after 100 years. No indication in the valuation report was given for this addition for a reversion. It became clear during his oral evidence that he had considered that the leases might be forfeited in 100 years time which would enable the freeholder to obtain vacant possession of the flats. It would seem that 100 years had been chosen as this was the maximum period shown in Parry's Valuation Tables.
74. In order to arrive at the capital value for the flats of £4m Mr Trent had relied upon the figures he had been sent by his instructing solicitor and he had used these in his calculation. He considered that he had tested these figures by his own knowledge and experience but he had not varied any of them and had used them directly. When prompted he confirmed that he believed the figures to be obtained from the Land Registry for sales of the various flats at various times. Mr Trent was unable to explain how forfeiture of all the flats at the same time could be achieved or the grounds on which forfeiture might be resisted by the tenants.

75. With regard to the storage lockers he had calculated a floor area of 270 ft². He was directed to the plan attached to the Second Locker Lease and identified the areas that he had included in his calculation. The areas he had used by scaling from the plan were not the areas demised in the Second Locker Lease. He therefore amended his floor area to 170 ft². Mr Trent stated that he thought an appropriate rate per ft² would be £7.50 but offered no evidence in support of this figure. He agreed that his valuation for the storage lockers was too high at £16,500 and reduced this to £10,500. The total valuation including the storage lockers would therefore be £35,500.
76. With regard to the yield he had used he thought that this type of ground rent investment with the beneficial rent reviews would be attractive and a low yield with a high multiplier can be justified. He had adopted 6.5%.

CONSIDERATION

Issue 1. Is the March 2006 lease void?

77. It is clear from the Applicant's evidence that the storage lockers form part of the lessees' usual facilities. No extra charge is made for the use of the lockers and each lessee has a key to a locker. Mr Lampard's assertion that the lockers are offered as a private arrangement between him and the lessees was unsupported.
78. The janitor's W.C. and store is a facility used in common for the benefit of the lessees. The Tribunal was able to inspect it on the day of the hearing. We are satisfied from Mr Ringrose's evidence that it has been regularly used by the janitor as a common facility for the whole property.
79. We need to consider whether the parts demised by the Second Locker Lease fall within the definition of common parts within the 1993 Act. The definition is an inclusive definition however the words of the definition themselves are sufficient to satisfy the requirements of the Act.
80. The definition is *"in relation to any building or part of a building, includes the structure and exterior of that building or part and any common facilities within it"*.
81. From our own inspection and from the evidence given the storage lockers clearly include part of the structure and exterior of the building. The roof of the storage lockers forms the walkway at the rear of the external wall of the building between the retaining wall and the external wall of the building. The retaining wall is part of the structure and is part of the exterior of the building. Within the storage lockers are substantial common facilities including the service pipes, drainage pipes and service conduits all of which easily fall within the definition of common facilities as described in the definition.
82. The open car parking area outside the janitor's store and part if not all of stores 8 and 9 are within the building and must therefore be part of the structure. The open area of the car park outside the janitor's store can be seen from inspection to be a common area.

83. The second string of Section 2(3) requires the acquisition of the interest to be reasonably necessary for the proper management or maintenance of the common parts.
84. Having established that the areas demised are common parts within the definition of the Act we have no doubt that acquisition is necessary for the proper management or maintenance of those common parts. Insufficient rights are granted to allow access to the rear wall of the lockers which incorporate as their rear face the substantial concrete retaining wall. The front walls of these lockers form the structural elements of the building. Clearly access is required to maintain these communal parts.
85. The Second Locker Lease is therefore one which would have been capable of acquisition by the nominee purchaser if it had been in place prior to service of the Initial Notice and is therefore void.

Issue 2. What is the extent of the appurtenant property?

86. We believe that this is not now a contentious point and it is accepted that the areas contained within the green edged land which are demised with Flats 2 and 4 shall be excluded from the area of land edged in green and included instead within the specified premises. As will be seen from the decision that follows this is not now of significance.

Issue 3. Do the rights offered satisfy the requirements of S.1(4)?

87. In order for the Counter Notice to have validly excluded the green edged land from the freehold transfer it needs to satisfy the requirement that the alternative rights offered will ensure that the occupiers have "as nearly as maybe the same rights as those enjoyed" under the terms of their leases. We are satisfied that the right granted, either by way of the initial Counter Notice or included in the 26 April letter, are not "*as nearly as maybe the same rights*" as are granted under the terms of the tenant's lease.
88. The Applicant emphasised the omission of a right to enter to effect the repair and cultivation of the retained parts coupled with a covenant from the reversioner undertaking (subject to payment) to maintain and cultivate the communal gardens. The Respondents' solicitor attempted to rectify this possible defect by way of its letter of 26 April 2006. Although it is written "without prejudice" to the contention that the rights within the Counter Notice are sufficient the letter is clearly an attempt to extend those rights because it is accepted that they are insufficient.
89. We are satisfied that the Act requires the nature of the rights to be set out in the Counter Notice (S.21(3)(b)(i)). The subsequent letter cannot repair such an omission. The Respondents argue that the Act only requires the nature of those rights to be generally identified but we consider that there must be enough detail to enable the Applicant to consider whether what is offered is sufficient.

90. We agree with Mr Radevsky that the Act provides that detailed rights must be identified in the Counter Notice as otherwise the Respondents could keep adding or taking away rights up to the actual date of transfer. By reference to Schedule Two in the lease of Flat 1 we are satisfied that at least three rights granted in that lease are not repeated in the Counter Notice or for that matter in the 26 April letter. These are:
- 4 To subjacent and lateral support and to shelter and protection from the other parts of the Building
 - 7 To the benefit of restrictions and covenants contained in the lease of the other flat comprised in the Development granted or to be granted by the Lessor so far as the same are intended to benefit the Demised Premises and are capable of accruing to the benefit of the Demised Premises
 - 9 The use by Flats 1 and 10 of one of the storage lockers allocated by the Lessor from time to time.
91. It was established in evidence that those two leases contained the right for the lessees to use a storage locker (but not a specific storage locker) so any of the lockers could be allocated to these flats in order to satisfy the provision in their leases. Such rights were not referred to as affecting the property demised by the Second Locker Lease.
92. We are therefore satisfied that the rights identified in the (second) Counter Notice are insufficient permanent rights to satisfy the provisions of section 1(4)(b) and section 21(3)(b) of the Act and thus enable the Respondents to retain the area of land edged in green on the plan attached to the Initial Notice. Instead this whole area should be included in the freehold transfer to the Applicant.

Issue 4. The price to be paid

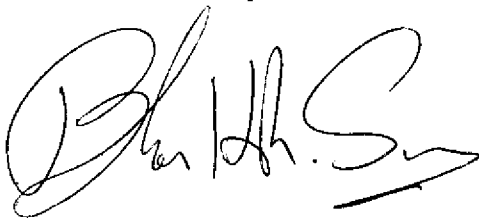
93. We found Mr Trent to be an unreliable witness. His valuation approach was peculiar. He was unable to justify his addition of a reversionary value after 100 years other than by saying that this is when Parry's Valuation Tables ran out. When prompted, he relied upon the possibility of forfeiture as being a reason for the 100 year reversion. He failed to consider the various protections from forfeiture available to lessees, which would make the likelihood of all flats falling vacant at the same time in 100 years impossible.
94. His figures for the reversionary value of the flats was unsupported and the current market valuations of the flats upon which he had relied had been provided by his instructing solicitor and accepted by him without question or evidence.
95. His valuation of the storage locker area was based upon incorrect floor areas and on a rental value which was unsupported by comparable evidence.
96. Mr Taylor produced a well reasoned valuation in the usual form and allocated no value to the storage lockers.

97. We initially felt that his yield of 5% was overly generous for this small ground rent investment; however, he persuaded us that 5% was correct in these circumstances bearing in mind the beneficial 25 yearly rent reviews.
98. We therefore adopt Mr Taylor's valuation in its entirety.

DECISION

99. In accordance with paragraph 19(1) of the 1993 Act we are satisfied that the lease dated 17 March 2006 between the Respondents and Steven Michael Lampard is a transaction to which this section applies and the lease is void.
100. We confirm that the two areas of the land within the green edging on the plan attached to the Initial Notice should not have been included as they are demised to flat 2 and 4. As the entire land is to be transferred this observation is of no significance.
101. We determine that Section 1(4) has not been satisfied in that the rights offered over the area of land edged green on the plan attached to the Initial Notice do not ensure that the occupiers of the flats acquire as nearly as maybe the same permanent rights as those enjoyed under the terms of their leases. Accordingly it is determined that the whole of the property included within the area shown edged green in the Initial Notice is to be acquired by the nominee purchaser.
102. The price to be paid by the nominee purchaser for the purchase of the property (being the land shown edged red and green in the Initial notice) at Riverside, Millbrook, Guildford, Surrey is £22,000 (Twenty two thousand pounds).

Dated 26 May 2006

A handwritten signature in black ink, appearing to read 'Brandon H R Simms', with a stylized flourish at the end.

Brandon H R Simms FRICS MCIArb
Chairman