

Stourton Court

THE SOUTHERN AREA RENT ASSESSMENT COMMITTEE  
and LEASEHOLD VALUATION TRIBUNAL

Case no: CHI/00HN/OCE/2003/0036

DECISION

Re: Stourton Court 27 Marlborough Rd Bournemouth Dorset

APPLICANT : Stourton Court Freehold Ltd

FIRST RESPONDENT The Trustees of the A E Cooper Dean Charitable Foundation

SECOND RESPONDENT Stourton Court (Bournemouth) Management Company Ltd

1 THE ISSUE

The First Respondent is the owner of the freehold interest in Stourton Court, 27 Marlborough Road Bournemouth Dorset (the property) and has agreed to sell its interest in the property to the Applicant on the terms of the transfer annexed hereto, save that the parties have not agreed the wording of Clause 13.11.2 of the transfer and seek the determination of the Tribunal as to whether this clause should be included in the transfer and if so , on what terms.

The parties have agreed that the matter may be determined by a Chairman alone and without the necessity for a formal hearing.

Written representations from the Applicant and First Respondent have been submitted to the Tribunal and have been considered by the Chairman in making the decision set out below.

2 THE CLAUSE

Clause 13.11.2 of the annexed transfer purports to reserve from the transfer rights which would otherwise pass to the Applicant (buyer) under s 62 Law of Property Act 1925 and /or under the rule in *Wheeldon v Burrows* (1879) 12 Chd 31. Paragraph 2 of Schedule 7 of Leasehold Reform Housing and Urban Development Act 1993 states that s 62 Law of Property Act 1925 should not be excluded from a transfer under that Act except in two

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specific circumstances, neither of which apply in this case. The 1993 Act does not refer to the rule in *Wheeldon v Burrows*.

### 3 THE PARTIES' REPRESENTATIONS

The First Respondent (seller) argues that it is necessary to include the disputed clause in the transfer because they are transferring only part of their freehold interest and are retaining the grounds surrounding the property and adjacent land (called 'the estate' in the draft transfer). Therefore, as this is in effect a transfer of part, without the exclusion of s 62 Law of Property Act 1925 and the rule in *Wheeldon v Burrows*, the Applicant (buyer) will acquire quasi-easements under those provisions. They further argue that since the property and the First Respondent's 'estate' have hitherto been in common ownership it is difficult to identify matters which might in the future be classified as quasi-easements and the inclusion of the exclusion clause is an attempt to clarify the subject matter of the transfer and to prevent future disputes. The Applicant however argues that the clause cannot be included because the provisions of Schedule 7 of the 1993 Act preclude it, and that neither of the exceptions contained in the Act apply. Further, the First Respondent has not identified any matter which might be the subject of an implied easement and to which the clause which they seek to include would apply.

### 4 THE DECISION

Having considered the parties' representations, the Chairman considers that the transfer to the Applicant should contain a clause in the following terms:

'The Transferee shall not be entitled to any rights easements or quasi-easements over or against the Transferor's Adjoining Land by virtue of the rule in *Wheeldon v Burrows* save in so far as are specifically granted in this Transfer and save in respect of any other necessary easement for such conducting media in relation to water drainage gas electricity or other like services as may benefit the Property at the date of this Transfer and rights of access in relation thereto'.

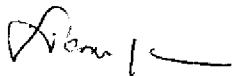
### 5 REASONS

In this case the First Respondent is (unusually in this context) selling only part of its land. On a sale of part it is advisable for a seller to exclude s 62 Law of Property Act 1925 and the rule in *Wheeldon v Burrows* to prevent the buyer from acquiring rights over the seller's land which, when the whole of the seller's land was in single

ownership, had not been explicitly recognised as easements or quasi-easements and which, for that reason were difficult to identify or to deal with by express reservation in the transfer deed. That argument pertains here and the First Respondent had wished to include a clause excluding possible easements and quasi-easements from transferring to the Applicant. However, the exclusion of s 62 Law of Property Act 1925 is expressly forbidden by the Leasehold Reform Housing and Urban Development Act 1993 except in two limited circumstances which both parties appear to acknowledge are not relevant to this case. The 1993 Act does not however mention *Wheeldon v Burrows* and it is therefore possible to exclude such rights as might be acquired by the buyer under the rule derived from that case. The Chairman therefore directs that the clause set out in paragraph 4 above shall be included in the transfer between the parties. This clause does not offend the 1993 Act and will provide partial protection for the First Respondent against the acquisition by the Applicant of unforeseen easements and quasi-easements.

## 6 DECISION

The Decision of the Chairman is that a clause in the wording set out in paragraph 4 of this document shall be included as Clause 13.11.2. of the transfer between the parties.

  
Frances Silverman

Chairman

A Member of the Leasehold Valuation Tribunal appointed by the Lord Chancellor

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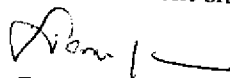
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In this case the First Respondent is (unusually in this context) selling only part of its land. On a sale of part it is advisable for a seller to exclude s 62 Law of Property Act 1925 and the rule in *Wheeldon v Burrows* to prevent the buyer from acquiring rights over the seller's land which, when the whole of the seller's land was in single

**SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case No:** CHI/0011N/OCE/2003/0036

**Re:** Stourton Court 27 Marlborough Road Bournemouth Dorset BH14 8DE

**BETWEEN:**

STOURTON COURT FREEHOLD LIMITED

**("the Applicant")**

and

THE TRUSTEES OF THE A E COOPER DEAN CHARITABLE  
FOUNDATION

**("the First Respondent")**

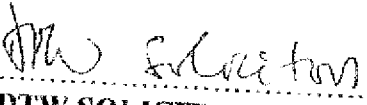
and

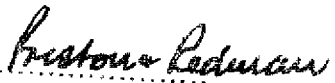
STOURTON COURT (BOURNEMOUTH) MANAGEMENT  
COMPANY LIMITED

**("the Second Respondent")**

The Applicant and the First Respondent agree to the form of Transfer of the freehold interest annexed hereto as is signified by the signatures below of their respective solicitors, other than in respect of clause 13.11.2 which is in issue between the parties and in respect of which a determination by the Tribunal is sought.

DATED this 25<sup>th</sup> day of October 2005

  
.....  
**DTW SOLICITORS**  
Solicitors to the Applicant

  
.....  
**PRESTON & REDMAN**  
Solicitors to the First Respondent



1. Stamp Duty

- ☐ It is certified that this instrument falls within category ☐ in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- ☐ It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £
- ☐ It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title number(s) out of which the Property is transferred

3. Other title number(s) against which matters contained in this transfer are to be registered, if any

DT223396

4. Property transferred

The block of twelve flats and adjacent blocks of seven and five garages respectively at Stourton Court 27 Marlborough Road Bournemouth BH4 8DE

The Property is defined:

- ☒ on the attached plan and shown  
for identification purposes only edged red
- ☐ on the Transferor's title plan and shown

5. Date

6. Transferor

SYLVIA ALICE MAY BOWDITCH DOUGLAS JAMES EDWARD NEVILLE-JONES  
RUPERT JOHN ALDINGTON EDWARDS EMMA JANE BOWDITCH JOHN ROBERT BARRETT BOWDITCH  
LINDA JEAN BOWDITCH  
(the Trustees for the time being of the Charity known as the A E Cooper-Dean Charitable Foundation)

7. Transferee for entry on the register

STOURTON COURT FREEHOLD LIMITED (Company Registration Number 04142941)

8. Transferee's intended address(es) for service (including postcode) for entry on the register

12 Stourton Court 27 Marlborough Road Westbourne Bournemouth BH4 8DE

9. The Transferor transfers the Property to the Transferee

10. Consideration

☒ The Transferor has received from the Transferee for the Property the sum of  
SEVENTY THREE THOUSAND THREE HUNDRED AND THIRTY FIVE POUNDS (£73,335.00)

☐

☐ The transfer is not for money or anything which has a monetary value

11. The Transferor transfers with

☐ full title guarantee ☒ limited title guarantee

as modified by an additional provision in panel 13 of this Transfer

12. Declaration of trust

- ☐ The Transferees are to hold the Property on trust for themselves as joint tenants
- ☐ The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares
- ☐ The Transferees are to hold the Property

13. Additional provisions

Definitions

13.1 In this Transfer unless there is something in the context or subject inconsistent therewith the singular shall include the plural the masculine shall include the feminine and vice versa obligations and covenants by more than one person are joint and several save in respect of the persons named in panel 6 of this Transfer or the trustees for the time being of the Charity in their capacity as the Transferor whose obligations (if any) shall be joint only any reference to a clause is to one so numbered in this panel unless otherwise stated and the following expressions shall have the following meanings:-

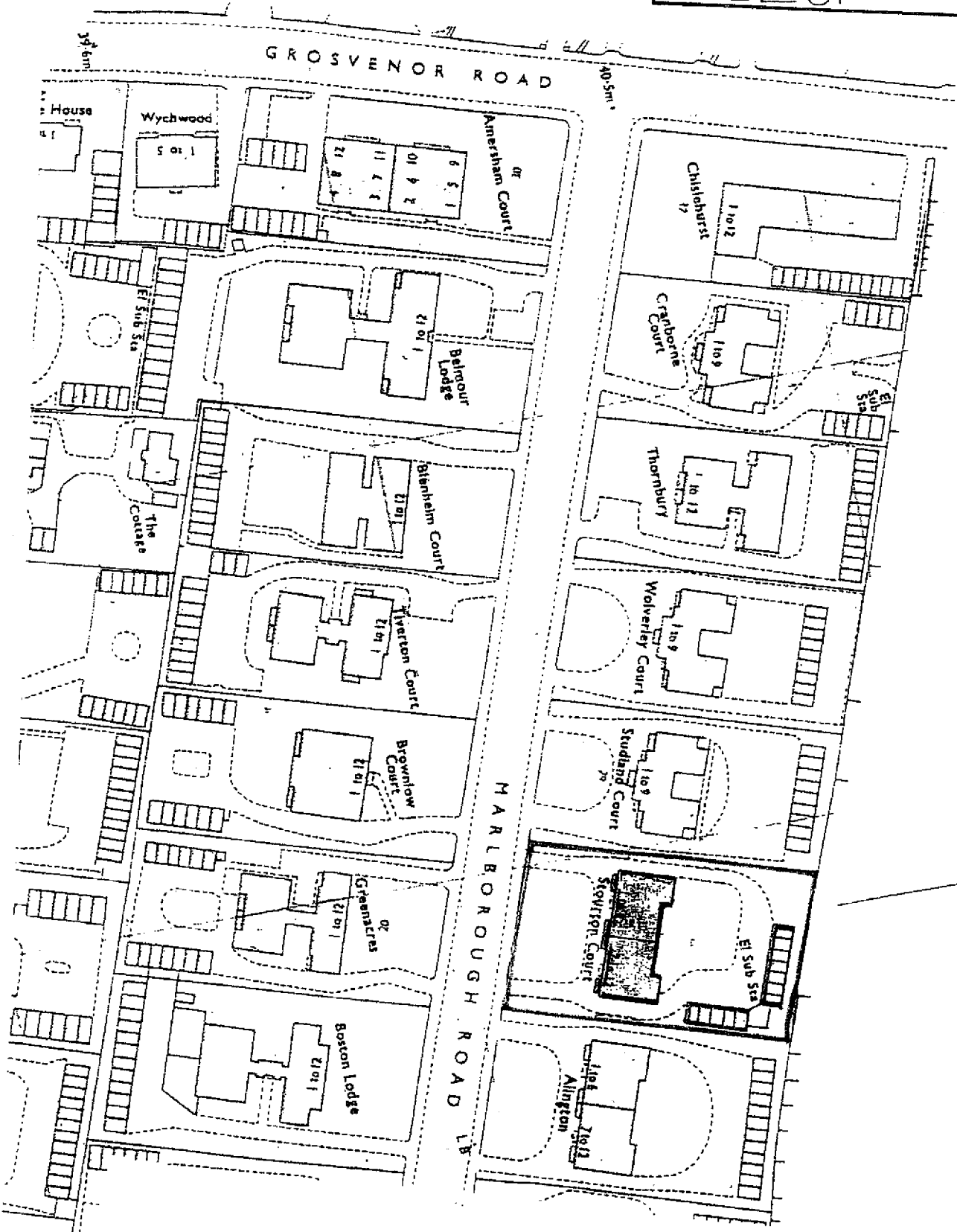
- "the Charity" the A E Cooper-Dean Charitable Foundation
- "the Plan" the plan attached to this Transfer
- "the Estate" the freehold land shown for identification purposes edged with green on the Plan and known as Stourton Court  
27 Marlborough Road Bournemouth
- "the Property" the property hereby transferred
- "the Estate Grounds" the gardens entrances exits grounds drive garage roadway  
pedestrian way and pathways boundary walls borders banks  
hedges and fences and refuse or dustbin stores forecourts  
and electricity sub-station site forming part of and  
belonging to the Estate and shown for identification

COUNTY DORSET

DISTRICT BOURNEMOUTH

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Licence number SR 100020816  
Preston & Redman Solicitors



TRANSFEE PLAN

50

purposes coloured yellow on the Plan

"the Transferor's  
Adjoining Land"

the land and buildings retained by the Transferor being the Estate Grounds as well as all adjoining and adjacent properties belonging to the Transferor

"the Service Media"

all tanks sewers drains pipes wires ducts and conduits together with other mechanical and electrical plant now running or situate in under upon over or through the Estate Grounds

"the Headlease"

the Lease of the Estate dated 20 July 1964 made between Alice Ellen Cooper-Dean and Edith Bethia Cooper-Dean (1) and E & S Darby Investments Limited (2) the title to which is registered under title number DT223396

"the Underlease"

the Underlease of the Estate dated 20 July 1964 made between E&S Darby Investments Limited (1) E&S Darby Construction Company Limited (2) and Stourton Court (Bournemouth) Management Company Limited (3) the title to which is unregistered

"the Sub-Underleases"

the twelve individual underleases relating to the flats numbered 1 to 12 inclusive all of which are comprised in the Property and the titles to which are registered under title numbers DT290213 DT63249 DT39992 DT126116 DT47581 DT265262 DT69964 DT233459 DT120831 DT59689 DT161172 and DT204121 respectively

#### Additional Provisions(s)

13.2 This Transfer is executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993

13.3.1 The covenant set out in Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to the Transferor insofar as it provides that the cost of any action taken in relation to the covenant should be at the Transferor's expense and any such cost shall instead be at the Transferee's expense

13.3.2 The covenant set out in Section 3(3) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to charges or encumbrances created by the Transferor itself only and applies to this disposition of the freehold with related rights only and not further or otherwise and none of the Transferor is to be considered to be aware of an action of another person merely because it is or was known to or notice of it was given to a predecessor in title or a co-trustee or any other person having a proprietary interest in the Property

13.3.3 For the purposes of Section 6(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1994 all matters at the date of this Transfer now recorded in registers open to public inspection are to be considered within the actual knowledge of the Transferee

13.4 The Property is transferred subject to:

13.4.1 the Headlease and the Underlease if and so far as subsisting and to the extent only that the same relate to the Property

13.4.2 the Sub-Underleases

13.4.3 all easements quasi-easements rights of light support and protection and other rights in the nature of easements (whether public or private) as are now or are usually enjoyed over the Property or any part of it

- 13.4.4 such other matters (including but without prejudice to the generality of the foregoing the matters referred to in clause 13.3.3 of this Transfer) as affect the Property or any part of it or are capable of affecting the same at the date of this Transfer

13.5 For the purpose only of giving the Transferor a full and sufficient indemnity the Transferee for the Transferee and the Transferee's successors in title covenants with the Transferor at all times from the date of this Transfer to observe and perform all the covenants stipulations provisions responsibilities obligations liabilities and conditions referred to in clause 13.4 or connected with the matters listed in the said clause in so far as they relate to the Property or any part thereof and are subsisting and capable of being enforced and to indemnify and keep indemnified the Transferor and the Transferor's respective estates and effects from all actions liabilities claims and demands in respect of any future failure to do so

#### Rights granted for the benefit of the Property

13.6 Subject to and conditional upon the full performance at all times by the Transferee of the Transferee's covenants contained in this Transfer relating to the undernoted rights the Property is transferred together with (so far as the Transferor lawfully can or may grant the same and only to the extent to which the Transferor have power to do so) the following rights in connection only with the permitted use and enjoyment of the Property:-

- 13.6.1 The right for the Transferee in common with the Transferor and all others having the like right to use for the purposes only of access to and egress from the Property all such parts of the Estate Grounds as afford access to the Property
- 13.6.2 The right for the Transferee in common with the Transferor and all other persons entitled to the like right to the free passage and running of gas electricity water soil and other services from and to the Property through the Service Media
- 13.6.3 All rights of support and other easements and all quasi-easements rights and benefits of a similar nature now enjoyed or intended to be enjoyed by the Property over any part of the Estate Grounds
- 13.6.4 The right for the Transferee in common with the Transferor and all others having the like right to use the gardens drives paths refuse bin area and forecourts forming part of the Estate Grounds subject to the observance of such reasonable rules and regulations for the common enjoyment thereof as the Transferor or persons authorised by the Transferor may from time to time prescribe
- 13.6.5 Such rights of access to and entry upon the Estate Grounds for the Transferee as are necessary for the proper performance by any lessee of a flat comprised within the Property of such lessee's obligations under the terms of the lease relating to such flat and for the purposes of repair and maintenance of the Property
- 13.6.6 The right to keep and use no more than twelve dustbins in the part of the Estate Grounds assigned by the Transferor for that purpose

#### Rights reserved for the benefit of other land

13.7 There is excepted and reserved out of this Transfer so far as the same relate to the Property or any part thereof the following rights for the Transferor and the Transferor's successors in title and their lessees and occupiers of adjoining and adjacent properties for the benefit of the Transferor's Adjoining Land and each and every part thereof

- 13.7.1 The right to the free passage and running of electricity gas water soil and the like to and from the other parts of the Transferor's Adjoining Land and all other property now or formerly belonging to the Transferor through the tanks sewers pipes wires drains and other conducting media in

under or over the Property

- 13.7.2 The right to keep as an encroachment upon the Property the walls footings foundations gutters eaves and the like as are now existing and form part or parts of the Transferor's Adjoining Land which abut upon the Property and the right to support from the Property (including for the avoidance of doubt all buildings on it) for the adjoining parts of the Transferor's Adjoining Land (including for the avoidance of doubt all buildings on it) with power for the Transferor their assigns and successors in title with or without workmen agents and others upon giving reasonable notice to enter upon the Property for the purpose of constructing connecting to cleansing repairing and renewing all tanks sewers pipes drains cables watercourses other conducting media and the like on the Property and for the purpose of constructing repairing renewing and maintaining the said walls footings foundations gutters eaves and the like (including the power to erect scaffolding upon the Property) the person so entering making good all damage occasioned thereby

**Restrictive covenants by the Transferee**

13.8 The Transferee to the intent so as to bind the Property and each and every part thereof into whosoever hands the same may come hereby further covenants with the Transferor and the Transferor's successors in title for the benefit of such of the Transferor's Adjoining Land and other land of the Transferor in Bournemouth as from time to time remains unsold by the Transferor or other the owner or owners for the time being thereof claiming under the Transferor otherwise than by a conveyance or transfer on sale or has from time to time been sold by the Transferor or any other person claiming under the Transferor as above with the express benefit of this covenant and each and every part of the Transferor's Adjoining Land that the Transferee and the Transferee's successors in title will at all times hereafter observe and perform the following stipulations and restrictions:

- 13.8.1 Not to erect upon the Property or any part thereof any additional buildings walls or fences nor make any alterations in the plans designs elevations or architectural decorations of any of the buildings situated on the Property at the date of this Transfer
- 13.8.2 Not to use the Property otherwise than as twelve self-contained private residential flats and twelve garages for private motor cars only and not to exercise or carry on upon the Property or any part thereof any trade or business whatsoever or permit the same to be used as a school or chapel or permit or suffer any public sale or auction to be made therein nor to do upon the Property or any part thereof or in relation to the rights hereby granted anything which may be a nuisance or annoyance to the Transferor and/or to their tenants of other property in the neighbourhood and not exhibit on the Property any board bill sign notice or advertisement or gilt or other lettering or flag or electrical or illuminated sign whatever other than a sign indicating that the Property is for sale or to let or bearing the name of the dwelling
- 13.8.3 Not to do anything which may result in an increased or extra premium being payable for the insurance of any part of the Transferor's Adjoining Land
- 13.8.4 Not to enter into a disposal of any Freehold interest in the Property or any part of it to any person without ensuring that such person has first entered into a deed or will contemporaneously execute a deed in a form acceptable to the Transferor by which that person covenants directly with the Transferor or their successors in title (as the case may be) containing the same covenants obligations and provisions as on the Transferee's part are contained in this Transfer including this clause 13.8.4 Provided that this requirement is without prejudice to and cannot be taken as detracting from the burden falling on any other party to observe and perform those covenants obligations and provisions

and an obligation in the foregoing stipulations and restrictions not to do any act or

thing includes an obligation not to permit or suffer that act or thing to be done by another person

13.9 The Transferee further covenants with the Transferor with intent to bind the Transferee and the Transferee's successors in title the persons for the time being entitled to the freehold of the Property:

13.9.1 to indemnify and keep the Transferor and their successors in title indemnified from and against all claims demands liability and costs which may arise as a result of the exercise of any right granted to the Transferee in this Transfer

13.9.2 to comply with and observe any reasonable regulations which the Transferor may (consistent with the provisions of this Transfer) make to govern the use of the Estate Grounds and Service Media and such regulations may be restrictive of acts done on the Estate detrimental to its character or amenities

13.10 The Transferor and the Transferee with the concurrence of Stourton Court (Bournemouth) Management Company Limited in whom the Headlease is vested as confirmed by its execution of this Transfer agree that the current yearly rent reserved by the Headlease shall be apportioned as from the date of this Transfer so that a yearly rent of £144.00 shall be payable exclusively in respect of the Property and a yearly rent of one peppercorn (if demanded) shall be payable exclusively in respect of the Estate Grounds as if such rents had originally been reserved by separate leases of the Property and the Estate Grounds

13.11 It is hereby agreed and declared that:

13.11.1 the Transferee and the persons deriving title under the Transferee shall not be or become entitled to any right of light or air which shall in any way affect diminish or interfere with the free and unrestricted user for building or other purposes by the Transferor or the Transferor's successors in title of the Transferor's Adjoining Land and this Transfer shall not imply the grant of any such right nor shall the benefit of any restrictive covenants inherent in or annexed to the ownership of any part of the Property pass to the Transferee

13.11.2 the Transferee shall not be entitled to any rights easements or quasi-easements over or against the Transferors' Adjoining Land by virtue of Section 62 of the Law of Property Act 1925 or the Rule in Wheeldon Versus Burrows save in so far as is specifically granted in this Transfer and save in respect of any other necessary easement for such conducting media in relation to water drainage gas electricity telephone or other like services as may benefit the Property at the date of this Transfer and rights of access in relation thereto

13.11.3 the Transferor hereby reserve the right to modify waive or release any of the covenants restrictions or stipulations relating to any part of the Transferor's Adjoining Land and other land of the Transferor in Bournemouth whether imposed or entered into before on or after the date of this Transfer

13.11.4 the freehold interest in the Property is held by or in trust for a charity by the Transferor and the Charity is not an exempt charity and the restrictions on disposition imposed by Section 36 of the Charities Act 1993 apply to the Property (subject to sub-section (9) of that section)

13.11.5 the Transferor certify that as charity trustees they have power under the trusts of the Charity to effect this disposition of the freehold and that they have complied with the provisions of Section 36 of the Charities Act 1993 so far as applicable to it

13.11.6 this Transfer is executed by RUPERT JOHN ALDINGTON EDWARDS and

DOUGLAS JAMES EDWARD NEVILLE-JONES being two of the Transferor as charity trustees and on behalf of all the present charity trustees of the Charity under a general authority given pursuant to the Charities Act 1993  
Section 82

~~Restrictive covenants by the Transferor~~

13.12 The parties hereto apply to the Chief Land Registrar to enter in the title to the Property a restriction in the following terms:

"No disposition of the freehold interest in the registered estate or any part of such freehold interest by the proprietor of the registered estate is to be registered without a certificate signed by the Trustees of the A E Cooper-Dean Charitable Foundation or their successors in title to the Estate Grounds (as the case may be) or (in either case) their solicitors that the provisions of clause 13.8.4 of the Transfer dated [date of this Transfer] referred to in the Charges Register have been complied with"

14. Execution

Signed as a deed by the said )  
RUPERT JOHN ALDINGTON EDWARDS )  
in the presence of: )

Signature of witness  
Name (in BLOCK CAPITALS)  
.....  
Address .....  
.....  
.....



Signed as a deed by the said )  
DOUGLAS JAMES EDWARD NEVILLE-JONES )  
in the presence of: )

Signature of witness  
Name (in BLOCK CAPITALS)  
.....  
Address .....  
.....  
.....

THE COMMON SEAL of STOURTON COURT )  
FREEHOLD LIMITED was hereunto affixed )  
in the presence of:- )

Director . . . . .

Secretary . . . . .

THE COMMON SEAL of STOURTON COURT )  
(BOURNEMOUTH) MANAGEMENT COMPANY LIMITED )  
was hereunto affixed in the presence of:- )

Director . . . . .

Secretary . . . . .