RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993: SECTION 24

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	CHI/43UK/OCE/2003/12/13/14
Property:	**Blocks 1, 2 & 3 Gladeside Court** **Succombs Hill** **Warlingham** **Surrey**
Applicants:	Gladeside Court Ltd
Respondent:	Miss Audrey Worth
Date of Application:	21 February 2003
Directions issued:	9 April 2003
Hearing:	17 July 2003
Members of the Tribunal:	Mr P B Langford MA LLB (Chairman) Mr R A Potter FRICS Mr J N Cleverton FRICS
Date decision issued:	14 August 2003

BLOCKS 1, 2 & 3 GLADESIDE COURT, SUCCOMBS HILL, WARLINGHAM

1. The Application

This is an application by Gladeside Court Ltd, as nominee purchaser representing numerous leaseholders in the three blocks at Gladeside Court, under Section 24 Leasehold Reform, Housing & Urban Development Act 1993 ("the 1993 Act") to determine two items of dispute arising from the proposed enfranchisement of the leasehold interests. The first was the extent of the land to be transferred and the second was the appropriate valuation of that land. The Respondent to the application was the freeholder, Miss Audrey Worth.

2. Inspection

We attended at the property on 17 July 2003 and inspected it in the presence of various representatives of the Applicants. We saw three purpose-built three storey blocks built in the 1960s, two of the blocks being divided into six flats each and the main block being divided into eighteen flats. The flats provided accommodation of a sitting room, two bedrooms, kitchen and bathroom/wc. We inspected three of them internally. The flats had originally had galvanised metal windows but many of these had now been replaced by individual leaseholders. There was no communal system of central heating. The three blocks had separate garage blocks and all the buildings were set in spacious grounds which were heavily planted with mature trees. We noted on our inspection the two substantial areas of tree covered garden land which Miss Worth wanted to be excluded from the enfranchisement.

3. The Hearing

At the hearing held at the Harlequin, Warwick Quadrant, Redhill, immediately following the inspection, the Applicant was represented by Miss Galina Ward

of Counsel, instructed by Messrs Attersolls. The Respondent was neither present herself nor represented.

4. **Application for adjournment**

On 5 July 2003 Miss Worth wrote to the Tribunal to request an adjournment as her solicitor had just told her in a letter that he would be away on the 2 days booked for the hearing. The Chairman considered this request against the background that directions given in April 2003 by the Tribunal gave various steps to be taken by the parties, leading up to a hearing in July 2003. On 23 June the parties were notified by the Tribunal of the firm date of hearing, being 17 July 2003 and, if it should be necessary, 18 July 2003. Miss Worth therefore had ample opportunity to prepare herself for the hearing. No good reason was advanced for the solicitors' inability to attend the hearing. It appeared that, if the solicitors had been retained to represent Miss Worth through to the conclusion of the case, then it was their duty to provide representation and the absence of a particular member of the solicitors' firm should prove no great obstacle, since another member of the firm could deal with the case or alternatively Counsel could be instructed. If the solicitors had been properly retained, and they failed to appear, then that was a matter which Miss Worth would have to take up with them if she considered they had not properly carried out her instructions. On the other hand, if the solicitors had acted purely on an ad-hoc basis in assisting Miss Worth to complete the forms of counter notice and had not indicated a willingness to represent her throughout, then there would be no point in adjourning the case, since those solicitors would not be present on an adjourned hearing. It seemed likely that the latter situation was the correct one, since Miss Worth had written to the Tribunal to stress that the solicitors, T G Baines, had refused to sign the forms of counter notice and insisted on her signing the forms. Furthermore, she had written to her solicitors (and sent a copy of that letter to the Tribunal) indicating her refusal to accept the solicitors' advice and contending that they were negligent. On this basis, it appeared that Miss Worth should have taken action long before 5 July to ensure representation by other solicitors whom she trusted. There was no merit in the application for the adjournment and it was decided to refuse the application, unless it was supported by the Applicant's

solicitors. They did not give that support. Subsequently on 14 July, Miss Worth wrote to say that she was feeling ill and did not know whether she would be able to attend herself. She made no further request for an adjournment. We therefore decided to proceed with the hearing.

5. The Case for the Applicant

Miss Ward said that the Respondent in her counter notice had sought to reduce the area of land to be sold with the property by excluding two parcels of land which were edged blue on the plans annexed to the counter notices ("the blue land"). This land formed the two parcels of land which we had seen on our inspection of the property. Section 1(1) of the 1993 Act conferred on qualifying tenants the right to acquire the freehold of their flats. Clause 1(2) of the 1993 Act went on to provide that, where the right to collective enfranchisement was exercised in relation to flats ("the relevant premises") then "the qualifying tenants by whom the right is exercised shall be entitled, subject to and in accordance with this chapter, to have acquired, in like manner, the freehold of any property which is not comprised in the relevant premises but to which this paragraph applies by virtue of sub-section (3). Sub-section 3 then provides that sub-section (2) (a) applies to any property if at the relevant date.....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). Section 1(4) of the 1993 Act then provided that the freeholder could satisfy the leaseholders' demand by granting over that property or any other property "such permanent rights as would ensure that thereafter the occupier of the flat.....has as nearly as maybe 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 there is acquired from the person who owns the freehold of that property the freehold of any other property over which any such permanent rights may be granted". Miss Ward submitted that the Tribunal had no real discretion in the matter as to whether the land should be transferred or not. If the Tribunal were satisfied that the leaseholders did have rights over the blue land, as they undoubtedly did, then the Tribunal would have to order

the transfer of the freehold of this blue land, unless the freeholder was able to put forward satisfactory alternatives under Clause 1(4) of the 1993 Act. Miss Ward went on to point out that, if the Respondent was proposing to satisfy the demands by the leaseholders for the transfer of the garden land by offering suitable alternatives under Section 1(4), then this had to be done in the counter notice. In fact the Respondent had set out no such proposals in the counter notice and none had been made subsequently. In the absence of any such alternative proposals, Miss Ward claimed that the leaseholders' rights under Section 1(3) of the 1993 Act could only be satisfied by the acquisition of all of the land which they currently enjoyed the right to use in common with each other, including the blue land. Access to the blue land was essential for Gladeside to deal with future repairs and upgrade of the common access. She therefore submitted that there was no basis upon which the blue land could be excluded from the proposed acquisition. As the Respondent would not be able to retain any land, there was no basis for the imposition of restrictive covenants or the reservation of rights on the land to be transferred to the Applicants.

6. As to valuation, the parties' respective valuers had, in accordance with the directions given by the Tribunal, prepared a Statement of Agreed Facts and Areas in Dispute dated 19 May 2003. While the Respondent had indicated in correspondence addressed to the Tribunal that she did not agree the contents of that report, her surveyor Mr Jones had confirmed in a letter dated 10 July 2003 that he confirmed the contents of the joint surveyors' report, although he had not been able to obtain his client's acceptance of the recommended settlement. The Applicants had originally proposed the following prices in their initial notice:-

Block 1	£ 67,951
Block 2	£ 23,809
Block 3	£ 23,809
	£115,569

In addition the Applicants had proposed a further £3 for the garages, garden and amenity land, making a total of £115,572. Miss Worth in her counter

notice had suggested that for the three blocks of flats and the smaller area of land she proposed would go with the flats, the following should be paid:-

Block 1	£ 91,643
Block 2	£ 31,679
Block 3	£ 31,679
	£155,001

The joint surveyors' report now disclosed that agreements had been reached at the figure of £125,000, excluding the blue land. The two surveyors simply acknowledged the existence of the dispute regarding the area of land to be transferred and said that, if the blue land was to be included in the transfer, then in Mr Jones' view an extra £5,000 would be payable for "hope value". In the view of the Applicants' surveyor, Mr Richard Inniss, nothing should be allowed for "hope value". Mr Inniss pointed out that an application to develop on this land had previously failed and there was no real chance of planning permission being made available because of a tree preservation order.

7. Miss Ward was not able to give us any details about when the application to develop the blue land was made and about the contents of the application. Miss Ward referred to the flat – Flat 4 – which formed part of the freehold, since no lease had ever been granted. This flat belonged to Miss Worth and the proposal was that there should be a lease-back to her of this flat for a term of 999 years at a peppercorn rent, a proposal which Miss Worth had accepted in her counter notice. In response to questions from the Tribunal, Miss Ward said that she was aware that Miss Worth did have a second flat but a lease had been granted in respect of that flat. It had not originally therefore formed part of the freehold but she believed that Miss Worth had made an application to have the leasehold title of this flat merged in the freehold. She was not aware whether this had been completed. If it had, then the matter could be met by Miss Worth being granted a 999-year lease at a peppercorn rent in respect of that flat too. However both valuers had worked on the assumption that at valuation date, which they had agreed to be 31 October 2002, there was no need for any special provision to be made in respect of this second flat.

8. The Case for the Respondent

We have already indicated that Miss Worth was neither present nor represented at the hearing. She had however written several letters to the Tribunal and we were able to discern from these letters the nature of her case, particularly having seen the counter notices which she served. She drew attention to two particular clauses in the leases. Clause 2(2) provided that the demise to the leaseholders included the following easements – *"A right to the enjoyment at all times as a garden for the lessee, his family, servants and visitors (in common with the lessor and all other persons having the like right) of the garden, lawns and footpaths within the land edged red on the said plan PROVIDED ALWAYS that the lessor shall at all times have the sole discretion in determining which part or parts and how much of the said land edged red shall be used as garden, lawns and footpaths and which part or parts and how much of the same for other purposes".* In this context the "land edged red" included all the garden and amenity land, including what we have referred to as the blue land. Clause 7(3) of the lease provided as follows – *"It shall be lawful for the lessor at any time or times during the said term to erect any new buildings of any nature or of any description and of any height on any part or parts of the land edged red on the plan annexed hereto whether or not any such building shall or may prevent or obstruct or affect the right of the lessee to the enjoyment of such land as a garden as herein before provided or the passage of air or light to the demised premises or any part thereof".* Miss Worth was clearly underlining the fact that the proposed transfer of the blue land took no account of her own substantial rights in the blue land, as are to be found in Clauses 2(2) and 7(3) of the lease. With regard to the valuation of the land, it appeared clear from the letters which Miss Worth had written herself to the Tribunal and from the letter which Mr Mark Jones FRICS of Sinclair Jones, Chartered Surveyors in Bromley, had written to the Tribunal that Mr Jones had been appointed by Miss Worth to represent her. However the letters from Miss Worth to the Tribunal clearly showed that she was not accepting the valuation with Mr Jones had agreed on her behalf. She did not volunteer any alternative valuation and she did not advance any grounds for discrediting the valuation agreed by the valuers, apart from the fact that the

final figure of £125,000 was much closer to the Applicant's original proposal (£115,572) than to her original proposal (£155,001), and in her view negotiation should result in a figure close to the half-way mark. As to the blue land which she felt should be excluded, she merely commented that the figure of £5,000 put forward by Mr Jones on her behalf would be robbery and she referred to a valuation of £150,000 – no details of this valuation being supplied to the Tribunal.

9. Consideration

We have considered first the extent of the land to be included in the transfer. We accept Miss Ward's submission that we do not have any real discretion as to whether or not the blue land should be included in the transfer, unless the Respondent has offered equivalent rights over other land to those enjoyed over the blue land. Since no such equivalent rights have been offered, we have no discretion. However the real difficulty in this case arises from the fact that the leaseholders at Gladeside Court do not enjoy permanent rights of way over the blue land but their rights are precarious and capable of being terminated by the freeholder by her powers under Clause 2(2) of the lease or by her exercising her power to build on the blue land which would effectively bring to an end for all time of the leaseholders' right of way over that particular piece of the blue land. We then look at the alternative course of action open to a landlord in order to preserve this land, namely to grant over property or 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 maybe 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"*. It would appear in the present case therefore that, if the Applicants are right in their submission, Miss Worth has to offer permanent rights in order to compensate for what at the moment can only be regarded as temporary rights i.e., rights which can be brought to an end by action on the part of the freeholder. Miss Ward, when we raised the difficulty with her, said that the simple fact was that the leaseholders did have the right to use the blue land in common with others and at the time when the application was launched the Respondent had not taken any action to prevent

the leaseholders from using all of the blue land. We have with some reluctance concluded that there is nothing in the wording of Section 1(3) which requires the leaseholders' right of use to be permanent. The question we have to ask is simply whether "at the relevant date" i.e., the date on which the original notice was given under Section 13, the leaseholders were entitled to use the blue land in common with others. The answer to that question must be "yes". It follows therefore that Miss Worth is not entitled to have excluded from the transfer the blue land and that her only defence was to have offered an alternative right in her counter notice, which she failed to do. The blue land will have to be included in the transfer. It follows that there can be no justification for including in the transfer restrictive covenants or easements in favour of Miss Worth.

10. Mr Mark Jones had on Miss Worth's behalf agreed a figure of £125,000 for the land, excluding the blue land. From what Miss Ward told us, he had been able to persuade Mr Inniss that the yield of 10% which Mr Inniss had originally adopted in his valuation should be reduced to 9%. Miss Worth in correspondence now makes clear that she does not accept that figure and wants something more. We do not need to determine whether or not Miss Worth is bound by the figure agreed by her own surveyor because, even if she were not so bound, the fact is that she has put forward no alternative valuation and she has put forward no arguments for discrediting the figure agreed by Mr Jones with Mr Inniss. The figure of £155,001 put forward as an aggregate figure in the counter notices has never been justified by any valuation made available to us. Thus there is simply no evidence before us which could undermine the agreed valuation figure of £125,000 for the land, excluding the blue land. We accept the figure of £125,000.

11. Mr Jones has said that, if the blue land is included, this would warrant an additional £5,000 for "hope value". He obviously accepted that the existence of the tree preservation order would make development in the future virtually impossible. Mr Inniss thought this additional land was of no value. In our view, applying our own knowledge and experience, there must be some additional value in the blue land and we accept Mr Jones' figure of £5,000.

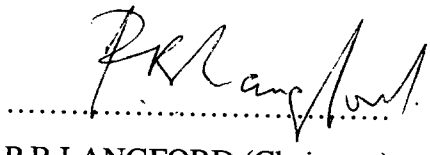
12. Decision

For the reasons we have given, we have determined that:-

(i) The land to be transferred shall be the whole of the land included in the initial notice given by the nominee purchaser, including "the blue land".

(ii) The transfer to the nominee purchaser will contain no restrictive covenants in favour of the respondent and no easements will be reserved in favour of the respondent.

(iii) The price to be paid for the acquisition of the freehold of the land shall be £130,000 (£125,000 plus £5,000).



P B LANGFORD (Chairman)