



Residential
Property
TRIBUNAL SERVICE

**Ref LON/ENF/1710/05
LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 24 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Property: 22a-40a Lynmouth Road, Stamford Hill,
London, N16 6XL

Applicant: Lynmouth Road Residents Ltd

Represented by: Juliet Bellis & Co.

Respondent: The Mayor & Burgesses of The London
Borough of Hackney

Represented by: Hackney Directorate of Law & Democratic
Services

Application date: 6th December 2006

Hearing date: 12th July 2006

Members of the Leasehold Valuation Tribunal:

**Mr. S. Carrott LLB
Miss. M. Krisko BSc(EsrMan) BA FRICS
Dr. A.M. Fox DSc PhD MCI Arb**

**Date of Tribunal's
decision:** 18th December 2006

1. This is an application under the Leasehold Reform, Housing and Urban Development Act 1993 to determine the terms of acquisition of a collective enfranchisement of premises known as 22a to 40a Lynmouth Road, Stamford Hill, London N16. The Applicant is Lynmouth Road Residents Limited and the Respondent is the London Borough of Hackney.
2. At the hearing of the application the Applicant was represented by Ms Cate Rosser of Juliet Bellis and Co and the Respondent was represented by Mr D Parry of Counsel.
3. **Matters in Dispute**
The were three issues in dispute between the parties -
 - (1) the extent of the enfranchisement of the land to which the Applicant was entitled;
 - (2) the premium to be paid;
 - (3) The Respondent's reasonable costs.
4. There was also an issue as to the terms of the garage leaseback but this was resolved by agreement between the parties during the day of the hearing.
5. **The Extent of the Enfranchisement**
Although the parties had agreed that there should be leaseback of the garages, the parties could not agree what should happen to the land edged green on the plan produced for the Tribunal which comprised an access road turning to the garages. Ms Rosser told the Tribunal that in respect of one of the properties there was an overhang of approximately one metre over the green land and that historically the residents had always been charged a service charge for the upkeep of the green land.
6. The Tribunal heard from one of the residents, Mr Glick. He told the Tribunal that at the moment the green land was a cause of

considerable concern for the residents and that they wished to own the green land not only because of its proximity to the subject property but so that they could maintain it. There had been considerable problems of anti-social behaviour, mainly of fly tipping and graffiti. One of the causes was that those who responsible were not residents and that the Respondent Council was slow to react.

7. On behalf of the Council, Mr Parry argued that the Applicant was had accepted that the green land was not appurtenant and was not therefore entitled to purchase it. The Applicant would be entitled to an easement over the land and that would be sufficient to safeguard its interests. The Respondent Council wished to maintain control over the land simply for purposes of management.
8. No evidence of the use other than access made of the disputed land by the residents or garage occupiers was given by either party.
9. In the Tribunal's view this issue did not turn upon the conduct of the parties or indeed their future intentions. Whether or not the Applicant's right of enfranchisement extended to the green land was purely a point of statutory construction. If it did, then they were entitled to acquire that land. The correct starting point was a consideration of the terms of the 1993 Act itself.
10. Section 1(3) of the 1993 Act extends the right of enfranchisement to appurtenant property if it is demised by the lease held by the qualifying tenant of a flat contained in the relevant premises or it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupier of other premises (whether those premises are contained in the relevant premises or not).
11. Appurtenant property in relation to a flat means any garage, outhouse, garden yard or appurtenances belonging to, or usually enjoyed with, the flat. In this instance the Respondent has agreed to transfer the

entire block to the Applicant, including all the maisonettes and underground garages. The balconies at the rear of the block overhang the area edged green and would without the transfer of that area, require a flying freehold.

12. There is no dispute that the individual lessees each paid a contribution to the maintenance of the land in question even though it was held by the Respondent under a different title. It would be wrong in those circumstances to say that the land was not appurtenant or that it was not enjoyed by the lessees under the terms of their respective leases.

13. Accordingly the Tribunal determined that the lessees were entitled to acquire the freehold of land edged green.

14. **The Purchase Price**

The difference between the parties was small. The Applicant, in its initial notice, put the purchase price at £1000 based on a yield rate of 7.2%. The Respondent, in its counter-notice, contended that the correct price was £2000. Although written valuation evidence was obtained by the Applicant, none was produced by the Respondent.

15. The Tribunal had the opportunity to inspect the subject property and taking into account the evidence produced by the Applicant and the absence of any evidence from the Respondent agreed that the purchase price of £1000 advanced by the Applicant's valuer was correct.

16. **Section 33 Costs**

The Applicant objected to the costs claimed of £1500 by the Respondent. Evidence was given that some 15 hours was taken to complete the work in question, including correspondence with different departments, including the service charge department, perusal of a voluminous file and the consideration of the leases of 11 flats, the transfer and the terms of leaseback in respect of the garages and three

of the flats. The fee earner's charging rate was £87.50 per hour to £120 per hour.

17. Whilst Ms Rosser did not question the charging rate, she questioned the time taken by the Respondent and argued that this should be reduced.

18. The Tribunal considered that the charging rate for the Respondent's in house legal officer was low. There could be no complaint on that ground. As to the length of time taken by the Respondent's legal officer, the Tribunal considered that this was more than reasonable given the matters that the Respondent had to deal with. There were 11 leases to check as well as researching and advising on the terms of the transfer and the leaseback. The overall charge was therefore clearly reasonable.

19. **Decision**

Accordingly the Tribunal Determined as Follows

- (1) The Applicant was entitled to acquire the entire land including the land edged in green subject to the leaseback of the garages.
- (2) The purchase price to be paid is £1000.
- (3) The Respondents costs assessed at £1500 were reasonable.
- (4) The parties shall have liberty to apply within six weeks of the date of this decision to make written representations as to the form transfer if no agreement is reached by them.

Chair 

Date 15/12/06