THE LEASEHOLD VALUATION TRIBUNAL for the SOUTHERN RENT ASSESSMENT PANEL.

CHI/29UN/LSC/2005/0082

Commonhold and Leasehold Reform Act 2002

DECISION ON AN APPLICATION FOR LEAVE TO APPEAL RE: CANTERBURY HOUSE, THANET ROAD, WESTGATE-ON-SEA, KENT, CT8 8PB

Applicant: **MR D CANNON**

Respondents: **(1) MR C HOLLIDGE & MISS S CHUBB**
(2) MR L ADLINGTON & MRS D JACKSON

1. The Tribunal has considered the Respondents request for permission to appeal dated 31 January 2006 and determines that permission be refused.

   No grounds of appeal have been set out in the request for permission to appeal and, therefore, the appeal has no reasonable prospect of success.

2. In accordance with Section 175 of the Commonhold and Leasehold Reform Act 2002, the Applicant may make further application for permission to appeal to the Lands Tribunal.

Tribunal: **Mr I Mohabir**
Mr R Athow
Mrs L Farrier

Signed: ..... **Dated: 28.02.06**

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UN/OCE/2005/0082

IN THE MATTER OF SECTION 24 OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

AND IN THE MATTER OF CANTERBURY HOUSE/SELWYN LODGE, THANET ROAD, WESTGATE-ON-SEA, KENT CT8 8PB

BETWEEN:

(1) LEONARD ADLINGTON & DIANE JACKSON
(2) COLIN HOLLIDGE & SHARON CHUBB

Applicants

-and-

DARREN CANNON

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicants pursuant to s.24(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") for a determination of the disputed terms on which they will collectively enfranchise to acquire the freehold interest in the subject property.

2. The First and Second Applicants are the lessees of Flat 3 and 2, Canterbury House respectively. The lessees of Flat 1, Mr and Mrs Andree, do not participate in this matter. The Respondent is the freeholder and occupier of Flat 4, Selwyn Lodge, which is located on the ground floor and forms part of

the property. By an initial notice dated 30 December 2003, the Applicants exercised their right to collectively enfranchise under s.13 of the Act and proposed a purchase price of £4,775 for the freehold interest. It appears the Respondent had challenged their entitlement to do so. On 4 January 2005, HHJ Hicks sitting in Thanet County Court made an order declaring that the Applicants were entitled to enfranchise and that the Respondent was to serve a counter notice pursuant to s.21 of the Ac by 18 January 2005. The Respondent's counter notice served pursuant to the order is dated 17 January 2005 and counter proposed a purchase price of £5,000.

3. On 14 July 2005, the Applicants applied to the Tribunal for a determination of the terms of acquisition that still remained in dispute. The application stated that the parties have agreed the purchase price for the freehold interest at £5,000 and it is no longer necessary for the Tribunal to make any determination in respect of this matter. The remaining disputed terms are:

   (a) the terms of the leaseback of the premises owned by the Respondent pursuant to s.36 and Schedule 9 of the Act.

   (b) the amount of costs payable by the Respondent under s.33 of the Act.

Each of these matters is considered below.

Hearing

4. The hearing in this matter took place on 3 May 2006. Of the Applicants, Mr Hollidge, Mr Adlington and Miss Chubb appeared in person. Mr Hollidge

was the authorised representative for the Applicants. The Respondent also appeared in person.

5. Mr Hollidge made a preliminary application for the Respondent's case to be struck out on the basis that he had failed to comply with any or all of the Directions issued by the Tribunal. In particular, the Respondent had failed to provide copies of any proposed amendments to the leaseback of his flat, had failed to provide copies of his skeleton argument and details of his costs to be determined under s.33 of the Act. The Respondent admitted that he had failed to strictly comply with the Tribunal's Directions and could offer no good reasons for doing so. However, as will become apparent below, it was not necessary for the Tribunal to make a ruling on this matter

(a) Terms of Leaseback

6. There were only two terms of the lease to be granted to the Applicant in issue. Firstly, was the provision for communal parking at the front of the property. In particular, the Applicants asserted that in or about March 2002, the Respondent had repositioned his fence at the front of the property encroaching on the communal parking spaces. The leases provided that the lessees of Flats 1, 2 and 3 could park one car in front of the ground floor communal area and that by repositioning his fence, there was now insufficient space to park two cars. In doing so, the Respondent had derogated from grant.

7. The Applicants proposed that an identical clause be incorporated in paragraph 6 of the Second Part of the First Schedule of the lease to be granted to the Applicant. This provided that:

> *"6. The right to park one private licensed motor vehicle in the car parking area hatched black on plan No.1 and rights of way with vehicles to and from the car parking area and/or the side or rear of the Flat and/or the grounds of the Flat and its appurtenances for such purpose."*

After some discussion, the Respondent agreed to this proposed paragraph being incorporated as a term of the lease to be granted to him which, on the Applicants own case, effectively also granted him the right to park a vehicle in the same area. The Respondent also agreed that the plan referred to in the paragraph was the plan that had been prepared by the Applicants Architect, Mr Pat Jordan, and annexed to the draft lease. The Respondent accepted that the plan had been drawn to scale and was accurate. He agreed that it was therefore possible to determine the original position of his front boundary fence by taking measurements from the plan. This may subsequently require the repositioning of the fence. However, the Tribunal has no jurisdiction to make an order in those terms.

8. The second issue was in relation to the service charge contributions payable by each of the lessees. Under the terms of the existing leases, Flats 1-3 each paid a one fifth contribution towards the overall service charge expenditure. The Respondents flat (No. 4) in Selwyn Lodge has always paid a contribution of

two fifths and was in fact the largest flat. The Applicants submitted that this position ought to continue as proposed in clause 1(2) of the draft lease.

9. The Respondent said that no lease had ever been granted in respect of his flat. When he purchased the freehold, he inherited the service charge contribution of two fifths. The Respondent submitted that the service charge expenditure should now be apportioned equally as between the four flats. The size of his flat should not be a consideration because if that was the case, then the flat belonging to the First Applicants occupied all of the top floor of the property but nevertheless their service charge contribution would be limited to one-fifth of the overall expenditure.

10. The original freeholder and lessor was a Mrs Joan Bury who occupied Flat 4 otherwise known as Selwyn Lodge. She granted leases in relation to Flats 1-3 in identical terms, which included that each of those flats paid a service charge contribution of one fifth of the overall expenditure. Her reasons for doing so are not known to the parties or the Tribunal. However, it is clear that this was a deliberate act on the part of Mrs Bury and it was never intended by her that each of the flats should contribute an equal share of the service charge expenditure, possibly for equitable reasons and even though this arrangement financially prejudiced her.

11. Paragraph 7(1) of Schedule 9 Part IV of the Act provides that any leaseback to the freeholder has to be in accordance with the provisions of Part IV unless the Tribunal consider that it is reasonable in the circumstances (para. 7(2)). Paragraph 14 of Part IV provides that the lease to be granted to the freeholder shall include covenants by the lessor to, *inter alia*, repair and maintain the premises. If the Tribunal varied the service charge provision in the draft lease as contended for by the Respondent, this would leave a shortfall in the total amount of service charge costs that could be collected from the lessees because the remaining three flats would only be liable to contribute a total of three fifths of the cost. This would place the Applicants in the invidious position of being required to repair and maintain the property without necessarily having the means to do so. A consequence of this is that they would almost invariably be in breach of covenant to repair and possibly subject to litigation. Taking all of these matters together, the Tribunal did not consider in the circumstances it was reasonable to vary the service provision as proposed by the Respondent. Accordingly, this provision shall remain as drafted in clause 1(2) of Applicants proposed lease, namely, that the Respondents service charge contribution shall be two fifths of the overall service charge expenditure recoverable under the terms of the lease.

Section 33 Costs

12. This section provides that a nominee purchaser shall be liable for the freeholder's costs of and incidental to the matters set out in s.33(1) of the Act. The Tribunal was able to deal with this matter shortly. Paragraph 3 of the Tribunal's Directions dated 23 February 2006 specifically directed both

parties to set out, in written representations, their respective positions relating to these costs. The Respondent has failed to comply with this direction without good reason. In the absence of any such evidence, the Tribunal finds that no such costs, as defined by s.33(1), have been incurred by the Respondent and are not recoverable by him.

Dated the 30 day of June 2006

CHAIRMAN..... I. Mohabir .....

Mr I Mohabir LLB (Hons)