

IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

RE: LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

RE: 55/55a FORTESCUE ROAD, CHARMINSTER, BOURNEMOUTH

Applicants:

Pauline Clare Hember, David Sidney James Thorne and Alison Kay Thorne

1. Introduction

- 1.1. This was an application by the Applicants for the determination by the Tribunal under Section 27 of the Leasehold Reform, Housing and Urban Development Act 1993 (hereafter called "the Act") of
 - 1.1.1. the extent of the interests of the freeholder which are liable to acquisition by the applicants under Section 1 of the Act
 - 1.1.2. the amount payable in respect of the purchase price, and
 - 1.1.3. the form of transfer of the freehold interestin respect of the property known as 55/55a Fortescue Road, Charminster, Bournemouth.
- 1.2. On the application of the Applicants to the Bournemouth County Court on 18th September 2003 under Section 26 of the Act (on the basis that the freeholder of the Property could not be found, the freeholder Janet Johnson ("the freeholder") being joined as defendant), the Court ordered (inter alia):
 - 1.2.1. Any interests of the freeholder which are liable to acquisition on behalf of the Applicants be vested in the Applicants upon such terms and at such price as may be determined by the Tribunal to be appropriate and in a form approved by the Tribunal.
 - 1.2.2. The matter be referred to the Tribunal to determine the interests of the freeholder liable to acquisition by the Applicants, the terms of acquisition and the price and the appropriate form of transfer.

2. Background

- 2.1. The entire property is registered to the freeholder at HM Land Registry under Title No DT48193 with Title Absolute subject to the Leases mentioned below and to the restrictive covenants referred to in the Charges Register.
- 2.2. Two of the Applicants, namely David Sidney James Thorne and Alison Kay Thorne are the leaseholders of the Ground Floor Flat known as 55 Fortescue Road by virtue of a lease dated 2nd June 1983 for a term of 99 years from 25th December 1982 at a rent of £1 per annum and a service rent, their title being registered under Title No DT 103099.
- 2.3. The other Applicant, Pauline Clare Hember, is the leaseholder of the First Floor Flat Known as 55a Fortescue Road by virtue of a lease dated 16th May 1986 for a term of 99 years from 25th December 1982 at a rent of £45 per annum, her title being registered under Title No DT 137594.

- 2.4. Each of the leases grants a term of years in respect of the relevant flat together with its own garden area at the rear, the Ground Floor Flat additionally having demised the land coloured yellow, the First Floor Flat having a right of usage of it.
- 2.5. There is a Deed of Covenant dated 7th January 1998 between the respective leaseholders of the two flats concerning mutual enforcement of repairing covenants.

3. Inspection

- 3.1. The Tribunal inspected the property on 25th November 2003 in the presence of the Applicants' valuer Mr S A Higley BSc., FRICS.
- 3.2. The property comprises a two storey building built approximately 90 years ago. The building is constructed of brick with a tiled pitched roof in reasonable condition for its age and character. The building is set a short way back from the road with a footpath access only to the common front door. A path runs to the side of the property giving access to the rear gardens,. The windows are doubleglazed. There is no off-street parking: on-street parking is not restricted.
- 3.3. In or about 1982 the building had been converted into two self contained flats, on the ground and first floors respectively, with a common entrance door and hallway, with a staircase leading to the first floor flat.
- 3.4. The ground floor flat comprises a bedroom, kitchen, living room and bathroom. An extension, of wood construction, was, we were informed by the Tenant, added on to the rear by the Tenant as a result of planning permission in about 1990. The extension provides two further rooms. The garden is paved and also contains a workshop.
- 3.5. The first floor flat comprises a bedroom, kitchen, living room and bathroom. The kitchen and bathroom had, to some extent been modernised. There is partial heating. There is a garden to the rear adjoining that of the ground floor flat.

4. Hearing

- 4.1. The same day, the Tribunal held a hearing at which the Applicants were represented by Ms Heidi Oran. Mr Higley, who had submitted a written report prior to the hearing, gave evidence.
- 4.2. Mr Higley confirmed the contents of his report. He considered the rate of 9% to be appropriate as interest rates are, he submitted, now at the lower end of the cycle. The two flats have a different layout but he submitted this had a negligible effect on value. He took into account that the First Floor Flat has a better layout but the Ground Floor Flat adjoins its own garden. He excluded from his valuation the rear extension and double glazing as Ground Floor Flat tenant's improvements and the bathroom and double glazing as First Floor Flat tenant's improvements. As regards comparable property, he referred to:
 - 4.2.1. First Floor Flat 13 Alington Road including improvements, share of freehold and off street parking which had sold for £104,000 (which the Tribunal viewed externally).
 - 4.2.2. First Floor Flat 10 Fortescue Road, a two bedroom converted flat including garden and share of freehold but no parking, which was on offer at £120,000.

- 4.2.3. First Floor Flat 35 Fortescue Road, a two bedroom conversion including gas central heating and double glazing with no garden or off street parking, sold for £95,000 in August 2003. Mr Higley considered this transaction to be outside the expected range of values for this type of property.
- 4.2.4. First Floor Flat 49a Fortescue Road, a two bedroom converted flat with loft room, sold for £120,000 in summer 2003.
- 4.2.5. Ground Floor Flat 12 Twynham Road, Southbourne, a one bedroom flat with garden and parking sold for £104,000.
- 4.2.6. First Floor Flat 5c Spencer Road Boscombe, a converted one bedroom, doubleglazed flat with no garden or parking with a lease with 93 years unexpired sold for £82,950 in May 2003.
- 4.3. On the basis of these comparables and his other evidence, he submitted that the value of the present leasehold interests were £93,000 for each of the two flats; that on a transfer of the freehold interest the flats would each be worth £95,000. He had submitted his detailed calculation in his report, with the bases of calculation of the price to be paid, in the sum of £2,350.
- 4.4. Terms of Transfer. Miss Oran had provided the Tribunal with a draft transfer for consideration and, at the Tribunal's request, also provided a draft form of covenant for indemnity in respect of the freehold title restrictive covenants should the Tribunal require such a covenant to be included

5. Consideration – The Property to be acquired

- 5.1. By virtue of Section 1(1) of the Act the Applicants are entitled to acquire the freehold of the building as containing the flats.
- 5.2. The other parts demised, being the areas coloured pink, green and yellow and the common parts of the property coloured brown on the respective plans fall for consideration under Section 1(2)(a) as applied by Section 1(4) which gives a landlord discretion on whether to transfer the freehold or to grant permanent rights over those areas. Although the landlord's discretion is unfettered, in the absence of the landlord the Tribunal is required to make a decision in this respect. In coming to its decision, the Tribunal considers there is nothing to be gained for the Landlord by retaining any of the property at all and it is in the interests of the Applicants that they should have the entirety of the property transferred to them.

6. Consideration – The price to be paid

- 6.1. The Tribunal reviewed all the evidence, taking account of its own inspection, its knowledge and experience as well as its external inspection of 13 Alington Road nearby. In respect of that property it particularly noted that the one bedroom seemed to taper in width. That property had off street parking, but in respect of the subject property there was no evidence that on street parking was either restricted or that it was a problem. The Tribunal did not have access to the other comparables referred to. It accepted Mr Higley's opinion that 35 Fortescue Road was outside the expected range of values for this type of property. The Tribunal considered that the same would apply to Flat 5c Spencer Road.
- 6.2. The Tribunal was satisfied that the rear extension to the Ground Floor Flat was a tenant's improvement and under the Act was required to be excluded from its valuation.

6.3. Bearing in mind comparables referred to and particularly that the Ground Floor Flat at the property is smaller (disregarding the extension) and has a poorer layout than the First Floor Flat, the Tribunal considered that the present open market of the flats on their present leases, but including improvements in the Ground Floor Flat of double glazing and in the First Floor Flat, the kitchen, bathroom and double glazing, are:

6.3.1. Ground Floor Flat - £100,000

6.3.2. First Floor Flat - £105,000

6.4. Allowing for those other improvements, which were to be disregarded by the Act, the Tribunal concluded that value of the flats as demised and on the other terms of the leases and the Deed of Covenant are now:

6.4.1. Ground Floor Flat - £98,500

6.4.2. First Floor Flat - £100,000

6.5. The Tribunal considered that the acquisition of the freehold would result in the values of each of the two flats being increased by £2,000 to £100,000 and £102,000 respectively

6.6. The Tribunal accepted the methodology of calculation proposed by Mr Higley and accepted his basic figures save as regards the present and proposed values of the two flats; the Tribunal also applied a more precise PV.

6.7. Accordingly the Tribunal made calculations as to the price payable as follows:

Freehold current interest – ground rent income

Ground Floor Flat	£1 per annum		
First Floor Flat	£45 per annum		
Total	£46 per annum		
YP 78 years 9%	11.0977	£510	
<hr/>			
Reversion to both flats	£198,500		
PV of £1: 79 years @ 9%	0.0012043	£239	£749
<hr/>			

Marriage Value

Proposed interests			
Leasehold Ground Floor Flat	£100,500		
Leasehold First Floor flat	£102,000	£202,500	(A)
<hr/>			
Less existing interests			
Leasehold Ground Floor Flat	£98,500		
Leasehold First Floor Flat	£100,000	£198,500	(B)
Plus Freehold as above		£749	(C)

	Marriage value		
	A-(B+C) =	£3,251	
		50%=	£1,625
Other compensation			Nil

Summary	Freehold	£749	
	Marriage value	£1,625	
	Compensation	£0	
	Total		£2,374

7. Consideration – The terms of the Transfer

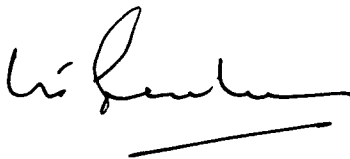
- 7.1. In respect of the issue raised by the Tribunal at the hearing, namely whether a covenant for indemnity should be included in respect of the restrictive covenants affecting the freehold, the Tribunal considers that such a covenant shall be included.

8. Decision.

The Tribunal decides as follows:

- 8.1. that the entirety of the property comprised in Title No DT48193 shall be acquired by the Applicants
- 8.2. that the total price payable for the freeholders interest in the whole property is £2,374.
- 8.3. that the terms of the Transfer, with inclusion of the price of £2,374, shall be in the form annexed to this decision and identified by signature of the Chairman of the Tribunal.

Decision dated 11th December 2003



Chairman

**Transfer of whole
of registered title(s)**

Land Registry



TR1

If you need more room than is provided for in a panel, use continuation sheet CS and attach to this form.

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- ☐ 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) of the Property *Leave blank if not yet registered.*
DT48193

3. Property

55/55a Fortescue Road Charminster Bournemouth BH3 7JU

4. Date

5. Transferor *Give full names and company's registered number if any.*

Janet Johnson

6. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*

Pauline Clare Elizabeth Hember, David Sidney James Thorne and Alison Kay Thorne

Unless otherwise arranged with Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.

7. Transferee's intended address(es) for service (including postcode) for entry on the register *You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.*

55 and 55a Fortescue Road Charminster Bournemouth BH3 7JU

8. The Transferor transfers the Property to the Transferee

9. Consideration *Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.*

- ☒ The Transferor has received from the Transferee for the Property the sum of *In words and figures.*
- ☐ *Insert other receipt as appropriate.*
- ☐ The transfer is not for money or anything which has a monetary value

10. The Transferor transfers with Place "X" in the appropriate box and add any modifications.

☐ full title guarantee ☒ limited title guarantee

11. Declaration of trust Where there is more than one Transferee, place "X" in the appropriate box.

☐ 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 Complete as necessary.

The Transferees are to hold the property jointly and severally on trust for themselves under the terms of a Declaration of Trust of even date herewith.

12. Additional provisions Insert here any required or permitted statements, certificates or applications and any agreed covenants, declarations, etc.

Statutory Statement

This Transfer is executed for the purpose of Chapter 1 Part 1 of the Leasehold Reform Housing and Urban Development Act 1993.

Covenants with the Transferor

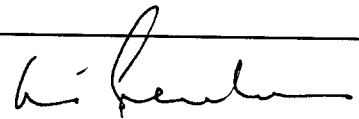
The Transferees jointly and severally covenant with the Transferor henceforth to observe and perform the covenants on the part of the lessor contained in the leases referred to in the Charges Register of the title above mentioned.

The Transferees jointly and severally hereby covenant with the Transferor to observe and perform the covenants and conditions contained in the Charges Register of the above mentioned title and to indemnify the Transferor and her estate and effects of any breaches or non observance thereof.

13. Execution The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them, if there is more than one).

SIGNED and DELIVERED as a Deed by
ROBERT PAUL LONG the President of
the Southern Rent Assessment Panel of the
Residential Property Tribunal Service on behalf
of Janet Johnson pursuant to an Order dated
18 September 2003 made by Bournemouth
County Court in the presence of:-

SIGNED and DELIVERED as a Deed by
the said **PAULINE CLARE ELIZABETH**
HEMBER in the presence of:-



SIGNED and DELIVERED as a Deed by
the said **DAVID SIDNEY JAMES THORNE**
in the presence of:-

SIGNED and DELIVERED as a Deed by
the said **ALISON KAY THORNE** in the
presence of:-