

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicants:

Mr K D Jones and Ms C Poole (5A Tudor Court)
Mr A D Hunt and Mrs M A Hunt (6 Tudor Court)
Mr B N Angel and Ms J A Wheeler (6A Tudor Court)

RECEIVED
22 JUN 1998

Respondents:

Twinsectra Limited

Re 5A, 6 and 6A Tudor Court, Castle Way, Hanworth, Middlesex

Dates of tenants' notices: 26 June 1996 (5A), 27 June 1996 (6), 18 September 1996 (6A)

Applications to the tribunal dated 18 October 1996 (5A and 6),
20 January 1997 (6A)

Heard 14 May 1998

Appearances:

Mr M Young (counsel)
Mr J E Kennedy (J E Kennedy & Co, solicitors)
Mr S Jones (tenant of 4B Tudor Court)

for the applicants

Mr S Serota (Wallace & Partners, solicitors)

for the respondent

Members of the leasehold valuation tribunal:

Lady Wilson
Mr D L Edge FRICS
Mr D Wills ACIB

Date of the tribunal's decision: 18 JUN 1998

1. Tudor Court has been the subject of litigation in the Court of Appeal, the County Court, the Lands Tribunal and this tribunal. The background is explained in a decision of the Lands Tribunal (now reported at [1998] 23 EG 134) on an appeal from a leasehold valuation tribunal on an application made on behalf of a number of tenants under Part I of the Landlord and Tenant Act 1987 (LON/PUR/132 - 136) and need not be rehearsed again here. The present applications to enfranchise three houses on the estate were adjourned on 4 June 1997 pending the appeal from that decision to the Lands Tribunal by the freeholder and a cross appeal by the nominated person on behalf of the tenants. Some procedural matters were raised at the first hearing of the present applications which, at the request of the respondent, were also the subject of a written decision. On 23 February 1998 the Lands Tribunal dismissed the appeal and the cross appeal from the leasehold valuation tribunal decision in the 1987 Act application.

2. At the hearing on 14 May 1998 we were asked first to approve the terms of the transfers of Buildings 1 and 4 and Tudor House to the nominated person, and this we did. In respect of the Leasehold Reform Act applications we were asked to decide two issues: the premiums, and the terms of the transfers relating to rights of way over the grounds of the estate.

3. The question of the premiums was straightforward. It was agreed that the valuations fell to be made on the original statutory valuation basis. The three houses are all subject to 125 year terms commencing on 1 January 1977 at ground rents which are currently £25 per annum, rising by £25 every 25 years. It was agreed that the premiums should consist only of the capitalised ground rents, and that the present ground rents should be capitalised at 12½%. The only issue was whether and, if so, at what rate, the rising ground rents should be valued. Mr Maloney FSVA, for the tenants, had in a written valuation put forward alternative proposals for the premiums: either £200 for each

property, based on a capitalisation of the current ground rents at 12½%, or £273.78 for each property, based on the rising ground rents capitalised at 12½% for the current ground rent and at 14% for the future ground rents. Mr Serota said that the present and future ground rents should all be capitalised at 12½%. On this issue we concluded that we should value the rising ground rents at 13%, and that the premium payable for each property is £300, in accordance with the valuation which is attached to this decision.

3. The more difficult issue is the rights of way over the grounds which should be conveyed to the applicants. Tudor Court consists of a number of buildings set in gardens, adjoining which is adjacent land, known throughout these proceedings as "amenity land", with ponds and trees. Of the three properties which are being enfranchised, 5A is a bungalow in what has been described throughout the proceedings as Building 2, and 6 and 6A are terraced houses in Building 3. The leases give the tenants, in common with the all the tenants of the buildings in Tudor Court, the right "...at all times and for all purposes in connection with the permitted user of the demised premises to go pass and repass over and through and along the common parts leading to the demised premises ... provided ... that the lessors shall have the right at any time ... on giving ... at least three months written notice ... to the lessee to exclude from the easement right and liberty granted by this paragraph the use of all or any part or parts of the garden or land forming part of the common parts but not so as to make access to the demised premises impracticable." In January 1992, the previous freeholder of Tudor Court sold the property at auction without offering first refusal to those tenants who were entitled to it. In July 1992 the nominated representative of the tenants served a purchase notice on the new freeholders. By letters dated 23 March 1993, while County Court proceedings relating to the validity of the purchase notice were pending, the freeholder, who is the respondent to the present applications, wrote to each of the tenants on the estate, purporting to give three months' notice terminating their use of

"all or any part or parts of the garden or land forming part of the common parts ... save insofar as the same would make access to the premises demised to you impractical". It is common ground that no steps were taken by the freeholder to enforce compliance with these notices, and the tenants continue to this day to use the land as they did before.

4. This tribunal decided in the proceedings relating to the purchase notice that the transfers to the nominated person of Buildings 1 and 4 should include the rights over the common land given to the tenants in their leases, but not subject to determination by the freeholder, and the Lands Tribunal agreed. Accordingly, the nominated person has now had, or is shortly to have, transferred to him, on behalf of the tenants of Buildings 1 and 4, indeterminable rights of way over the gardens and the amenity land. The tenants of Buildings 2 and 3, however, who include the applicants in the present enfranchisement proceedings, were not parties to the proceedings under the 1987 Act, their claim to be included having been abandoned by counsel in the Court of Appeal in the proceedings relating to the validity of the purchase notice, on the ground, presumably, that neither building contained any flats.

5. Mr Young argued that by section 62 of the Law of Property Act 1925 it would be implied in the transfers that with the freehold there would be passed " ... all ... liberties, privileges, easements, rights and advantages whatsoever appertaining or reputed to appertain to the land, or any part thereof, or, at the time of the conveyance, ... enjoyed with ... the land or any part thereof." Thus, he said, since the tenants in fact used the common land and the amenity land up to the present time, these rights will in any event pass by implication under section 62. Secondly, he argued that by section 10(3)(a) of the Leasehold Reform Act, a conveyance executed under the Act shall include "such provisions ... as the tenant may require for the purpose of securing to him rights of way over property not conveyed, so far as the landlord is capable of granting them, being

rights of way which are necessary for the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy and in accordance with its provisions;". The rights of way over the gardens and amenity land were, he said, necessary for the reasonable enjoyment of the properties. Furthermore, by section 10(5) of the 1967 Act, "Neither the landlord nor the tenant shall be entitled under subsections (3) [rights of way] and (4) [restrictive covenants] ... to require the inclusion in a conveyance of any provision which is unreasonable in all the circumstances, in view (a) of the date at which the tenancy commenced, and the changes since that date which affect the suitability at the relevant time of the provisions of the tenancy; and (b) where the tenancy is or was one of a number of tenancies of neighbouring houses, of the interests of those affected in respect of other houses." It would, he said, be manifestly unreasonable to prevent the three freeholders of the enfranchised properties from enjoying rights which the numerous tenants of Buildings 1 and 4 enjoyed. To do so would be contrary to the principles of good estate management. If three of the tenants were required to cease to use the common land, their contribution toward its maintenance would have to be reduced and an increase made to that of those tenants who were entitled to use it. He agreed that such an adjustment would be possible.

6. Mr Young called to give evidence Mr S Jones, the tenant of 4B Tudor Court (a house in Building 1 but now living elsewhere). He said that had lived at Tudor Court from 1988 until a year ago, and still visited it frequently. He knew the tenant of 5A very well and was aware that he enjoyed exactly the same rights over the common land as all the other tenants did. Questioned by Mr Serota, he agreed that although all the tenants used the gardens, they did not really use the amenity land because it was too overgrown, and that restricting the tenants' use of the amenity land would have no effect at the moment, although the residents planned to clear it and render it usable in the near future. The notices of 23 March 1993 had not affected the way all the tenants used the

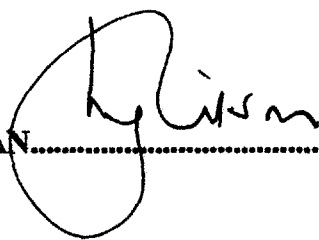
gardens, and it would be completely impracticable to stop people using them. It was customary for tenants to walk and sit on the lawns and generally use them as one would a communal garden. He had walked round the pond on the amenity land about eight times in ten years.

7. Mr Serota said that the fact that the freeholder had not enforced compliance with the 23 March 1993 notices did not mean that the notices were not effective in terminating the rights of way of the tenants of Buildings 2 and 3. Those tenants had been using the gardens not because they had the right to do so, but because the freeholder had not taken steps to restrain acts of trespass. Section 10(5) of the 1967 Act was prohibitory only. It enabled the tribunal to prevent inclusion in the transfers of unreasonable terms. It was irrelevant that the majority of the tenants enjoyed rights over the gardens and the amenity land. The tribunal had no right to make perpetual rights which, under the leases, were terminable. The amenity land was in a separate category in that the tenants had no need to go across it. Questioned by the tribunal as to the freeholder's reasons for seeking to prevent the tenants of the three subject properties from exercising rights of way which many other tenants enjoyed, he said that it was possible that the freeholder might in the future wish to develop the amenity land, and it was in the freeholder's interests that the smallest number of tenants should need to be compensated for losing their rights.

8. On the evidence, we are satisfied that the tenants of 5A, 6 and 6A, in common with the other tenants of Tudor Court, habitually use the communal gardens as one would expect them to use such gardens - for relaxation and recreation and not just to gain access to their properties. We are not, however, satisfied that they use the amenity land regularly or at all, or that it is necessary for them to do so, although we accept that it is possible that they might occasionally use it in the future if the land, which is currently

very overgrown and rather inaccessible, is cleared. The present applications under the 1967 Act are quite distinct from the applications under the 1987 Act, and, much as we see the force of Mr Young's submission that good estate management practice suggests that all the tenants of Tudor Court should enjoy the same rights over the common land as each other, we do not consider that we have a general discretion to include in the transfers all the rights of way which might seem reasonable to us. In our view, the tenants should, under the provisions of section 10(3)(a) of the Leasehold Reform Act have included in the transfers the rights of way over the gardens which were included in their leases, but not so as to be terminable by the freeholder, because such rights are necessary for the reasonable enjoyment of their properties and have been enjoyed by them during their tenancies. We are not satisfied that such rights over the amenity land are necessary for the reasonable enjoyment of the properties or that they have been enjoyed by the tenants of Nos 5A, 6 and 6A during their tenancies. We agree with Mr Serota that section 10(5) is prohibitory only, and does not give us any additional power to include what might otherwise be reasonable. It would remain open to the tenants to argue, if the question arises in the future, that other rights of way, not expressly identified in the transfers, passed by implication of section 62 of the Law of Property Act.

CHAIRMAN.....



18 JUN 1998

5A, 6 & 6A, Tudor Court, Castle Way, Hanworth

Valuation dates:

5A: 26 June 1996
6: 27 June 1996
6A: 18 October 1996

Leases:- 125 years from 1 January 1977
Ground Rents £25 per annum rising every 25 years by £25 per annum

Term 1

Ground Rents	3 x £25	£75	
YP 5 $\frac{1}{3}$ years @ 12 $\frac{1}{2}$ %		<u>3.72</u>	279

Term 2

Ground Rents	3 x £50	£150	
YP 25 years def 5 $\frac{1}{3}$ years @ 13%		<u>3.83</u>	574

Term 3

Ground Rents	3 x £75	£225	
YP 25 years def 30 $\frac{1}{3}$ years @ 13%		<u>0.18</u>	41

Term 4

Ground Rents	3 x £100	£300	
YP 25 years def 55 $\frac{1}{3}$ years @ 13%		<u>0.008</u>	2

Term 5

Ground Rents	3 x £125	£375	
YP 25 years def 80 $\frac{1}{3}$ years @ 13%		<u>0.00005</u>	
			<u>896</u>

Say £900

(ie £300 per property)