

**CHI/21UD/OCE/2007/0046**

**DECISION OF THE LEASEHOLD VALUATION  
TRIBUNAL ON APPLICATION UNDER PARAGRAPH 2(1)  
OF THE LEASEHOLD REFORM, HOUSING AND URBAN  
DEVELOPMENT ACT, AS AMENDED**

Address: 45 Kenilworth Road, St Leonards on Sea, East  
Sussex, TN37 6BS

Applicant: Kenilworth Leaseholders Limited

Respondent: Mr Paul Curzon

Application: 24 July 2007

Inspection: N/A

Determination 14 September 2007

Appearances: N/A

Members of the Tribunal: Mr I Mohabir LLB (Hons)

**IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**CHI/21UD/OCE/2007/0046**

**IN THE MATTER OF 45 KENILWORTH ROAD, ST LEONARDS ON SEA,  
EAST SUSSEX, TN37 6BS**

**AND IN THE MATTER OF PARAGRAPH 2(1) OF SCHEDULE 5 OF THE  
LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT  
1993**

**BETWEEN:**

**KENILWORTH LEASEHOLDERS LIMITED  
(as nominee purchaser)**

**Applicant**

**-and-**

**PAUL CURZON**

**Respondent**

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**THE TRIBUNAL'S DECISION**

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**Introduction**

1. This application is made by the Applicant, as nominee purchaser, pursuant to paragraph 2(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") to approve the proposed draft Transfer (TR1) of the freehold interest of the subject property.
2. The factual background that gave rise to this application can be set out shortly. The Respondent is the freehold owner of the reversionary interest in the

subject property. It is comprised of 5 self-contained flats located respectively on the basement, ground, first, second and third floors. Each of the flats is demised under a long residential lease exceeding a term of 35 years. It is a matter of common ground that each of the five tenants are “qualifying tenants” within the meaning of the Act. Of those five tenants, only four participate in the application, the exception being Mr Thomas, the leaseholder of the first floor flat.

3. On 21 August 2006, the participating tenants exercised the right to collectively enfranchise by serving a s.13 notice on the Respondent. It appears that he failed to serve a counter notice or to respond at all. By an order made by District Judge Pollard in the Hastings County Court dated 8 January 2007, it was declared, *inter alia*, that the participating tenants were entitled to exercise the right to collectively enfranchise and that the Applicant was entitled to acquire the freehold interest on their behalf at a premium of £4,701.
4. By an order made by Deputy District Judge Hammond sitting in the same Court dated 22 June 2007, the subject property was vested in the Applicant and that the transfer to the Applicant could be executed by Mr Richard Fielding of Streeter Marshall, solicitors, on behalf of the Respondent.
5. On 24 July 2007, the Applicant made this application to the Tribunal limited to the approval of the proposed draft Transfer. The Tribunal issued Directions dated 2 August 2007, which have only been complied with by the Applicant. The Respondent has not responded at all in these proceedings.

## Decision

6. Paragraph 2 of the Tribunal's Directions allocated this matter to the Paper Track, unless either or both of the parties requested a hearing. No such request has been received by the Tribunal. The Tribunal's determination of this application took place on 14 September 2007 and was, therefore, based solely on the documentary evidence before it.
  
7. The terms of any conveyance must comply with the requirements of s.34 and Schedule 7 of the Act, where relevant. In this instance, the proposed draft Transfer, on the face of it, appears to materially conform to those requirements. It correctly recites, the title number, address of the subject property, the names of the parties, the price to be paid in accordance with the court order made on 8 January 2007 and that the Transferor (the Respondent) transfers with full title guarantee.
  
8. At paragraph 12.1, the draft transfer, importantly, contains the mandatory requirement of the following statement: *"This transfer is executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993"*.<sup>1</sup>
  
9. In the absence of any agreement by the parties<sup>2</sup> otherwise, and there is none here, the transfer must comply with the detailed provisions of Schedule 7. It is not necessary to set out those provisions here, as they are self-evident. Essentially, the conveyance cannot purport to convey any better title than the

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<sup>1</sup> s.34, and r.196(1) of the Land Registration Rules 2003

<sup>2</sup> s.34(9)

freeholder has and must preserve, if relevant, any right of support, passage of water etc<sup>3</sup>, right of way<sup>4</sup> and any restrictive covenants<sup>5</sup> that bind the freeholder. Having regard to the Charges Register of the Office Copy Entries relating to the subject property, it is clear that there are a number of restrictive covenants and conditions set out in the Second Schedule that bind the freeholder. Any requirement relating to the preservation of any right of support, passage of water and rights of way, therefore, have no application in this instance. In relation to the restrictive covenants that bind the freeholder, at paragraph 12.2, the Applicant, as transferee, covenants with the Respondent, as transferor, to provide him with a full indemnity arising from any future breach or non-observance of the restrictive covenants and conditions set out in the Second Schedule of the Charges Register. Moreover, that covenant is also given in relation to the obligations and restrictions contained in the leases of the five leaseholders generally. The execution clause of the transfer has also been correctly drafted in accordance with the terms of the court order dated 22 June 2007, whereby Mr Fielding signs the transfer on behalf of the Respondent as transferor.

10. Accordingly, for the reasons given, the Tribunal approves the draft transfer as drawn.

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<sup>3</sup> para.3

<sup>4</sup> para.4

<sup>5</sup> para.5

Dated the 14 day of September 2007

CHAIRMAN.....

Mr I Mohabir LLB (Hons)