



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AG/OCE/2018/0081**

Properties : **226 Finchley Road, London, NW3
6DH**

Applicant : **Freeholders of 226 Finchley Road
Ltd**

Representative : **Mr Stimmler of Counsel**

Respondent : **Barclay Ltd**

Representative : **Mr Silver, Director**

Type of application : **Section 24(1) of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Judge I Mohabir
Mr W R Shaw FRICS**

**Date of determination
and venue** : **24 July 2018 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **18 September 2018**

DECISION

Background

1. This is an application made by the Applicant, as the nominee purchaser, pursuant to section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the purchase price to be paid for the freehold interest of 226 Finchley Road, London, NW3 6DH (the “property”), the terms of the Transfer and the terms of a leaseback of the fifth flat (“Flat 3”) in the property to the Respondent.
2. By a notice of a claim dated 12 July 2017, served pursuant to section 13 of the Act, the Applicants exercised the right to acquire the freehold interest in the property for a proposed purchase price of £17,620 and £100 for appurtenant property.
3. The Respondent freeholder served a counter-notice pursuant to section 21 of the Act dated 28 September 2017 admitting the validity of the claim. The notice counter proposed a purchase price of £90,000 for the freehold interest, £400 for the appurtenant property and claimed an optional leaseback of Flat 3, which was held by the Respondent.
4. On 5 February 2018, the Applicants applied to the Tribunal for a determination of the purchase price for the freehold interest and the terms of the Transfer and leaseback.
5. On 5 April 2018 the Tribunal issued Directions, which had not been complied with at all by the Respondent.

The issues

6. At the hearing, Mr Silver for the Respondent, told the Tribunal that the terms of the Transfer (TR1) prepared by the Applicant’s solicitors was agreed without amendment. Therefore, the remaining issues that fell to be determined by the Tribunal were:
 - (a) the purchase price for the freehold interest.
 - (b) the terms the leaseback of Flat 3 to the Respondent
7. Each of these issues is considered in turn below.

Relevant Law

8. Paragraph 4(1) in Schedule 9 of the Act provides that any new lease granted to the freeholder under a leaseback **shall** (our emphasis) conform with the statutory terms set out in paragraph 8-18 in Part IV of the Schedule. This is a mandatory requirement. It is not intended to set out these terms here, as they are self-evident.

9. All such leases must conform to those terms unless the parties agree to departure or where the Tribunal considers it is reasonable to do so in the circumstances under paragraphs 7(1) and (2) respectively in Schedule 9.

Decision

10. The hearing in this matter took place on 24 July 2018. The Applicant was represented by Mr Stimmler of Counsel. The Respondent was represented by Mr Silver who is a Director.

Procedural

11. At the commencement of the hearing, the Tribunal Judge made the parties aware of a potential conflict of interest on his part regarding the solicitors the Respondent has previously instructed, Russell-Cooke. It was not entirely clear if the Respondent still retained this firm. However, Mr Stimmler said that he had no objection to the Tribunal Judge hearing this case.
12. Mr Silver then made an application to adjourn the hearing to allow the Respondent to file and serve its evidence generally. The Tribunal refused the application on the basis that there was no good reason (admitted by Mr Silver) why the Respondent had not complied with any of the Tribunal's Directions at all. Mr Silver was reminded of the warning contained in the Directions to this effect. For the same reason, the Tribunal refused to admit the additional evidence that Mr Silver sought to adduce on the morning of the hearing. In any event, this "evidence" was not relevant to the issues before the Tribunal and caused the Respondent no real prejudice by not admitting it.

Purchase Price

13. The only valuation evidence before the Tribunal regarding the purchase price was contained in the report prepared by the Applicant's valuer, Mr Row BSc (Hons) MRICS, dated 19 July 2018.
14. The Tribunal accepted the evidence of Mr Row on the basis that it was not challenged by any valuation evidence served in these proceedings by the Respondent and it did not appear to be manifestly incorrect.
15. Accordingly, the Tribunal concluded that the purchase price payable by the Applicant for the freehold interest in the property is £17,710.

Terms of Leaseback

16. The Tribunal then heard submissions from both parties in relation to the disputed terms of the draft lease for Flat 3. Unless stated

otherwise, the references below are to the terms in the final draft prepared by the Respondent's solicitors. Having carefully considered the submissions, the Tribunal made the following findings because they satisfied the test of reasonableness in paragraphs 7(1) and (2) respectively in Schedule 9 to the Act.

LR8 – Prescribed Clauses

17. That this should contain a statement that the lease contains provisions that prohibit or restrict dispositions and, therefore, the non-alienation clauses in paragraph 19 in Part 1 of the Fifth Schedule should also remain. This finding was made on the basis that the other leases in the property contained an identical mirror clause and the inclusion of this clause ensured consistent enforceability and management of the building could take place as between the lessees.

Fourth Schedule – paragraph (iii)

18. This should remain for the same reasons set out at paragraph 17 above.

Fifth Schedule – Part I

19. In paragraph 2, the reference to 'Paragraph 8" should be amended to "Paragraph 13 in Schedule 1".
20. The wording "reasonably in their absolute discretion" referring to the expenditure in the Eighth Schedule should remain for the same reasons set out at paragraph 17 above.
21. In paragraph 4 and 9, the wording "reasonable and proper" should be deleted for the same reasons set out at paragraph 17 above.
22. Paragraph 12 regarding consent to alterations should remain for the same reasons set out at paragraph 17 above.
23. Paragraphs 13, 15-17 were agreed by Mr Silver.
24. Paragraphs 14 and 18 should remain for the same reasons set out at paragraph 17 above.
25. Paragraph 19 has already been dealt with above.
26. Paragraphs 20 and 21 were agreed by Mr Silver.

Fifth Schedule – Part II

27. All of the paragraphs were agreed by Mr Silver save for paragraph 5 regarding acts of nuisance, annoyance or damage to adjoining or adjacent property. He submitted that it was too wide.
28. The Tribunal found that paragraph 5 should remain for the same reasons set out at paragraph 17 above and was in any event subject to the objective test of reasonableness.

Sixth Schedule

29. This was agreed entirely by Mr Silver.

Seventh Schedule

30. This was agreed by Mr Silver save for paragraph 4. He submitted that the word “reasonable” should be substituted for “absolute discretion”. However, the Tribunal rejected that submission for the same reasons set out at paragraph 17 above.

Eighth Schedule

31. This was agreed by the parties.

Ninth Schedule

32. This was agreed by Mr Silver save for the following. His submissions were:
- (a) paragraph 3 and 12 – he wanted references to animals deleted.
 - (b) paragraph 7 – no one cleans the windows.
 - (c) paragraph 9 – costs should be reasonable and proper.
 - (d) paragraph 10 – was irrelevant.
 - (e) paragraph 11 – there was no requirement for a carpet and rubber underlay because there was laminate flooring in Flat 3 with floor insulation to prevent noise nuisance. Instead he proposed that the paragraph should be amended to “all floors of the property shall be suitable covered”.
33. The Tribunal rejected the submissions made by Mr Silver above save for (e) for the same reasons set out at paragraph 17 above.

34. As to paragraph 11 in the Ninth Schedule, the Tribunal was satisfied that the test of reasonableness was met by amending the wording to “all floors in the flat (Flat 3) shall have acoustic underlay and all windows shall be properly curtained”.

Name: Judge I Mohabir

Date: 18 September 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).