

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Number:** CH1/00HH/OCE/2008/0026

**Decision on an Application under Section 24 of the Leasehold Reform and  
Development Act 1993 as amended by the Commonhold and Leasehold Reform  
Act 2002**

**Applicant:** Lytton House & Waldon Court Ltd

**Respondent:** John David Cullen Sansom

**Re:** Waldon Court, St Lukes Road South, Torquay, TQ2 5PB

**Date of Application:** 19 May 2008

**Date of Hearing:** 9 December 2008

**Venue:** Livermead house Hotel, The Seafront,  
Torquay

**Representation:**

**For the Applicant:** Ms L Spencer, Counsel, instructed by  
Windeatts, Solicitors

**For the Respondent:** Mr G Healey, Counsel, instructed by Bray &  
Bray, Solicitors

**Tribunal Members:** Mr A L Strowger MA (Cantab) (Chairman)  
Mr E G Harrison, FRICS  
Mr P J R Michelmore, FRICS

**Date of Decision:** 3 July 2009

**DECISION**

**The Application and the proceedings**

- 1 The Tribunal is asked to exercise its jurisdiction under section 24 of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") as amended by the Commonhold and Leasehold reform Act 2002 ("the 2002 Act").

- 2 The Applicant company was formed as a nominee company of the lessees of the two blocks of flats and appurtenant premises in St Luke's Road Torquay and known as Lytton House and Waldon Court for the purposes of exercising their rights, as qualifying tenants under section 1 of the 1993 Act, to acquire under that section the freehold interest in and leasehold rights for the benefit of relevant premises. In the event the proposed enfranchisement of Lytton House was withdrawn on 3 October 2008. The present application is in respect of Waldon Court. The Notice specifying the premises sought to be acquired on the plan accompanying it and the counter-notice in response to that Notice were duly and properly served.
- 3 In the Initial Notice the Applicant sought under paragraph 1, the transfer to it of freehold of the premises edged red on the accompanying plan, being the block of flats and garages known as Waldon Court ("Specified Premises") together with the entrance drive and pathways leading to it; a price of £112,000 was proposed.
- 4 The Applicant, under paragraph 2, sought the transfer to it of the freehold of the property edged green on the accompanying plan and known as garden grounds entrances and pathways. The garden is that part of the communal garden adjoining Waldon Court. A price of £12800 was proposed.
- 5 Further the Applicant sought under paragraph 3 the grant of rights over the adjoining property edged yellow on the accompanying plan, being rights of access, parking, services, overhang and rights of access for maintenance and repairs etc. The right to use the gardens and communal area (if any) within the property edged yellow (Lytton House) was also sought.
- 6 In the counter-notice the Respondent accepted that the Specified Premises, (being the block of flats, the garages and driveways and pathways) should be transferred but disputed the price; the counter proposal was that the price should be £319,526. The Respondent did not accept that the freehold of the property described in paragraph 2 should be transferred but proposed that the rights set out in clause 4 of the schedule to the counter-notice should be granted instead. In the event that the freehold of this property was transferred the Respondent proposed that a price of £75,000 should be paid.

## **Background**

- 7 Waldon Court is a block of 24 flats and shares rights with the adjoining larger block of flats known as Lytton House. It would appear that they were developed together in or about 1975 and

share adjacent communal gardens which are not physically divided. The Respondent is the freeholder of the two blocks of flats, the appurtenant property and the communal gardens under Land Registry title number DN 65992. The schedule of notice of leases shows that the leases of the flats in both blocks run for a term of 99 years commencing on 29 September 1974.

### The Leases

- 8 A sample lease of flat 12, Waldon Court was produced and the Tribunal is given to understand that all the leases are in like terms. Under clause 1 the demise is of *"All that Flat (hereinafter called "the flat") Numbered 12 and being on the second floor of the building (hereinafter called "the Building") situate at and known as Waldon Court/Lytton House St Lukes Road South Torquay...."*
- 9 Under clause 2 (2) the Lessee covenanted to pay and contribute to the Lessor a service charge equal to 4.8% of the Lessors' expenses as set out in the subsequent sub-clauses. These include, inter alia, under (v)

*"the cost of keeping and maintaining the communal gardens in and about the Building in good order and condition whilst the same shall remain as such".*

The First Schedule sets out "the Easements rights and privileges included in this demise". The particular one that is relevant to this application and Appeal is set out in clause 4

*" the right in common with thw (sic) Lessor and the other lessees in the Building to use the said communal gardens and pathways leading theretoi (sic) whilst the same shall remain as such".*

- 10 The Declaration under clause 3 includes the following...

*"the Lessor shall have power at all times without obtaining the consent from or making any compensation to the Lessee to deal as the Lessor may think fit with any land or buildings adjoining opposite or near to the Building and to erect or suffer to be erected on such adjoining opposite or neighbouring land any buildings whatsoever and to make alterations and additions to any buildings whether such buildings alterations or additions shall or shall not affect or diminish the light or air which may now or at any time or times during the term hereby granted be enjoyed by the Lessee or other the tenants or occupiers of the Flat or any part thereof".*

### Inspection

- 11 Prior to the Hearing the Tribunal inspected the property in the presence of the parties and their representatives.
- 12 The Tribunal noted that Waldon Court is the smaller of the two blocks of flats that stand on the same overall site and have common means of access off the public highway, together with made-up and split level driveways with various garages. On the opposite side of the two blocks there is a communal garden area with the portion adjoining Waldon Court edged black and coloured pink on the agreed plan ("the Waldon Court garden") and that adjoining Lytton House cross-hatched blue ("the Lytton House garden land"). There is no physical division between the two portions of garden and the occupants of Waldon Court have to walk over the curtilage adjoining Lytton House and down steps to reach ~~the~~ any part of the communal garden. There is a considerable drop from the building to the communal gardens and a further significant fall in the order of 3 metres or more metres to Warren Road. The only access from the Waldon Court garden to Warren Road is by rather dilapidated steep stone steps. There is a high retaining stone wall facing Warren Road. It was also noted that the gardens contain a number of mature trees and in response to questions from the Tribunal at the site inspection it was acknowledged that the trees are subject to a Tree Preservation Order.
- 13 It appears from the inspection of the external curtilage of the building and garages, some of the common areas within the building and the interior of some of the flats to which the Tribunal had access, that alterations and improvements are largely restricted to the replacement of external windows to an enhanced specification and the upgrading of sanitary accommodation and space heating arrangements.
- 14 Overall the Tribunal considers that the state of maintenance of the common parts of Waldon Court together with the grounds, are maintained to an average standard.

### **The Hearing**

- 15 An agreed bundle of documents was provided to the Tribunal by the parties but only at the Hearing. Regrettably no consolidated agreed bundle had been provided beforehand to assist the Tribunal, the documents having been submitted over a period of time.
- 16 At the request of the parties the start of the Hearing was delayed to enable them to have further discussion of the issues. At the outset of the Hearing Ms Spence, Counsel for the Applicant, advised the Tribunal that agreement had been reached on certain matters and the issues had been narrowed; she submitted an

agreed amended plan ("the agreed plan"), on which the property incorrectly included on the original plan was marked with an 'x'. It was agreed that the freehold of the land and buildings, comprising the block of 24 flats held by qualifying tenants, the garages and driveways edged red on the agreed plan should be transferred to the Applicant for the sum of £217,288. Ms Spence put it to the Tribunal that the outstanding issues for it to determine were therefore:

- a) whether the freehold of the communal garden adjoining Waldon Court as outlined in black and coloured pink on the agreed plan should be acquired and if so what price should be paid for it or alternatively
- b) whether rights should be granted to the Applicant over it, as set out in paragraph 4 of the schedule to the counter-notice.

17 The Tribunal noted that neither the rights sought in the Initial Notice over the adjoining property, Lytton House, nor the leaseback proposals in the counter-notice (with the exception of (a) set out above) were in dispute and the Tribunal was not required to make any determination in respect of them.

18 Mr G D Bevans FRICS gave expert evidence to the Tribunal on behalf of the Applicant. Under cross-examination by Mr Healey, he acknowledged that in the Initial Notice the Applicant had placed a value of £12800 on the freehold of the garden, garages and driveways but said that he was not instructed at that stage. He confirmed that he now placed a zero value on the garden as he considered there was no development value at all.

19 Mr S A Higley, BSc FRICS, gave expert evidence on behalf of the Respondent. In reply to questions from Ms Spence he said that the opinion he had given as a value of £50,000 was for the garden land coloured pink and did not include the driveways and garages. On further questioning he said that this was his figure for the whole of the communal gardens and he would probably apportion it as to £20,000 for Waldon Court garden and £30,000 for Lytton House garden. In his opinion a two story structure (possibly flats or town houses) with parking could be developed on the Waldon Court garden without blocking the light or views of the flats. He accepted that the only access to it would be from Warren Road. He could offer no comparables with regard to valuation and he based the figure on a brief evaluation in his mind. In reply to questions from the Tribunal, Mr Higley accepted that he had not consulted the local planning authority and had no experience of dealing with it; he was not aware whether or not it was a conservation area and had not had sight of the original planning consent. No copy of the Local Plan was made available to the Tribunal and Mr

Higley had not specifically looked at it with regard to the development potential of the Waldon Court garden though he believed that the land had no specific zoning. He also pointed out that it was government policy to encourage infill development. He indicated to the Tribunal that he arrived at a value of £50,000, based on site value of £60-70,000 for each of 4 proposed units and allowing an additional £100,000 for site development problems.

- 20 On re-examination, Mr Bevans expressed the view that Mr Higley's allowance for site problems was low; from Mr Bevans' experience, development in conservation areas also presented additional development costs. The Tribunal had, during its inspection of the property and the adjoining area, seen a Notice indicating Conversation Area Consent Applications had been made.
- 21 In submission Mr Healey expanded on his skeleton argument; he maintained that the freehold of the pink garden land should not be transferred at all. He pointed out that what the tenants had at present under the leases was remarkably fragile. The right to use the communal garden only subsisted "whilst the same remained as such". There was also the detailed re-development reservation clause 3 (a) of the leases. He submitted that the rights proposed by the Respondent met the test under clause 1 (4) (a) of the Act. If they did so then the Tribunal has no power to transfer the freehold. The rights offered were permanent in the sense that they were not time limited, unlike leasehold rights, but they were subject to the lessor's right to determine them. The wording of the rights offered in the freehold transfer could not be the same as those in the leases which were a service charge arrangement, but they were the equivalent. Mr Healey said he was not seeking to amend the counter-notice but argued that the counterproposals were not necessarily the final word. Following the Lands Tribunal case of **Shortdean Place (Eastbourne) Resident's Association Ltd v Lynari Properties Ltd**, if the wording in the counter-notice was too terse it was open to the Tribunal to decide and expand it. Mr Healey argued that The Notice requirements under section 21 did not constrain section 1 (4) which says that the right of acquisition shall be satisfied if "on acquisition" permanent rights are granted as nearly as may be the same rights as those enjoyed under the terms of the lease. Mr Healey maintained that the Tribunal had no power to order the transfer of the freehold. However if the freehold of the garden land were transferred then, notwithstanding the absence of planning permission, it could in principle be developed and Mr Higley's valuation was a modest one and should be accepted.

- 22 Ms Spence argued at paragraph 21 of her skeleton argument that the easement offered by the Respondent differs from the

easement granted under the leases in significant respects: whilst the leases provide only one determining event i.e. the garden no longer remaining as such, the proposed easement gives an additional determining event – at the will of the Respondent. The Tribunal noted that at paragraph 32 of her skeleton argument Ms Spence had accepted that the rights offered by the Respondent were permanent, but maintained that they were not ‘as nearly as may be the same rights as those enjoyed in relation to the property’, due to the more onerous payment provisions. The present obligation to pay under the leases is regulated by auditors with an obligation to provide certificates of expenses. As a service charge it is also subject to statutory regulation. The proposed provision did not provide for consultation with regard to work and payment of monies could be demanded in 14 days. However in her oral submission, Ms Spence resiled from her skeleton argument and argued that the terms offered were not ‘permanent’ if the everyday meaning of the word was applied as it should be under the ‘Golden Rule’. She submitted that the freehold of the garden land should be transferred and Mr Bevan’s evidence accepted that there was no development value to be attached to it.

#### **Consideration of the facts and the law**

23 Under the 1993 Act the right to collective enfranchisement is set out in section 1. It is agreed that the property that remains in dispute – the Waldon Court garden – falls within section 1 (3) (b) – *“it is property which such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises (whether those premises are contained in the relevant premises or not”*.

24 Subsection 1 (4) provides

*The right of acquisition in respect of the freehold of any such property as is mentioned in subsection (3) (b) shall however be taken to be satisfied with respect to that property if, on acquisition of the relevant premises of this Chapter, either –*  
*(a) there are granted by the [person who owns the freehold of that property]-*  
*(i) over that property.....*  
*such permanent rights as will ensure that thereafter the occupier of the flat referred to in that provision has as nearly as may be the same rights as those enjoyed in relation to that property on the relevant date by the qualifying tenant under the terms of his lease....*

25 The Tribunal accepts that under section 1 (4) of the 1993 Act if the terms of acquisition set out in 1 (4) (a) are met then the right of acquisition of the freehold is taken to be satisfied and the Tribunal

has no power to order the transfer of the freehold or determine the price to be paid for it.

- 26 In acquiring a freehold title the lessee will have the benefit of the rights granted in his lease but without the time limitation of a lease term. The corollary is that the lessor should not be prejudiced either - and the benefit of rights reserved in a lease should be incorporated in the terms of the transfer of the freehold, the loss of which is compensated by the price paid. The legislation does not provide for a lessee to obtain better rights under the freehold title than those enjoyed under the terms of the lease.
- 27 The Tribunal notes that there are no provisions for amending an initial notice or a counter-notice. However the legislation provides under section 24 (1) that where any of the terms of *acquisition* remain in dispute 2 months after the service of the counter-notice then either party, before the expiry of a further 4 months, may make application to an LVT for the matters in dispute to be determined. 'Terms of acquisition' are defined in section 24 (8). They include under (a) 'the interests to be acquired'. There is the further provision under section 24 (3) (b) that where the terms of *acquisition have been agreed or determined by a LVT* but no binding contract incorporating those terms has been entered into 2 months after the terms have finally been agreed or determined by the LVT (or such period as the LVT may have specified) the (county) court may, on the application of either party make a vesting order incorporating those terms. There is no power for the (county) court under section 24 (4) (b) of the 1993 Act to determine the terms of acquisition. That is a matter for agreement between the parties or determination by the Tribunal. The role of the court is to implement the terms, in default of the parties, by making a vesting order.
- 28 The Tribunal has considered the issue as to whether the Respondent is constrained by the terms set out in the counter-notice from putting forward any further or amended terms. Mr Healey accepted that the legislation made no provision for the amendment of the counter-notice but argued that it was open to the Tribunal to consider 'the terms of acquisition' and that the door was not closed to the Respondent to put forward other terms. Ms Spence submitted a contrary view.
- 29 The Lands Tribunal said in the case of **Shortdean Place (Eastbourne) Residents' Association Ltd v Lynari Properties Ltd** that where a dispute concerned the effects of section 1 (4)(a)(i) – whether the right of acquisition in respect of the freehold of property used in common was taken to be satisfied – “was dependent upon whether the permanent rights offered by Lynari in its counter-notice (our underlining) were such as to ensure that the occupiers of the flats would have as nearly as may be the



same rights as those enjoyed by the tenants under their leases...if the permanent rights offered satisfy the test under section 1 (4)(a)(i), the LVT had no power to determine the freehold of the of the common use property should be transferred to the nominee purchaser..." The Lands Tribunal went on to say "An LVT is not bound to accept the proposals in a landlord's counter-notice with regard to the property used in common. If the permanent rights do not satisfy the test in section 1(4)(a)(i) the tribunal has a discretion."

30 Following the Lands Tribunal decision we find that the door would be closed to the Applicant to acquire the freehold of the Waldon Court garden if the counter-notice offered permanent rights that satisfied the test under section 1 (4). In those circumstances the Tribunal would have had no discretion to make an order for the transfer of the freehold. The subsection does not refer to rights in the counter-notice but the rights offered in the counter-notice would become rights on acquisition. In our view it must follow that if the counter-notice does not satisfy section 1 (4) and there is a dispute over terms giving grounds for an application to the Tribunal under section 24 then it is open to the parties to put forward further proposals and counterproposals that the Tribunal will take into account in exercising its discretion as to the transfer of the freehold.

31 First of all the Tribunal has considered whether the rights proposed by the Respondent in paragraph 4 of the Schedule to the counter-notice to be granted are capable of being permanent rights.... "*The right to use the communal gardens for the purposes of recreation whilst the Transferor allows the same to remain as a garden or until such right is determined by the Transferor....*" The relevant term of the leases with regard to the communal gardens is contained in the First Schedule where clause 4 provides..." *the right in common with thw (sic) Lessor and the other lessees in the Building to use the said communal gardens and pathways leading thereto (sic) whilst the same shall remain as such*" (the Tribunal's underlining).

32 The Respondent's Counsel argued that the rights in the counter-notice mirrored rights in the leases in respect of the communal gardens. He said that in both cases the right is determinable if it ceases to be used as garden. In the case of the lease term, the right would be determined before the expiry of the term of the lease in the event the lessor has another use for the gardens and they cease to remain as gardens. The Respondent's Counsel submitted that the right to use the communal garden offered in the counter-notice is permanent in the sense that it endures indefinitely (as against the arguably lesser right under the term of the lease where the right is time limited and will come to an end with the expiry of the lease). The Tribunal agrees with this

interpretation of 'permanent' in the context of the section. The Tribunal has also noted that Stroud's Judicial Dictionary in its definition of 'permanent' states at (1) "*Permanent*" is a relative term and is not synonymous with "everlasting". In employment terminology for example, a job may be referred to as 'permanent' in that it will continue to retirement age (e.g. a 'Permanent Civil Servant') but it may nevertheless be subject to earlier termination by, for example, misconduct. In conclusion the Tribunal, on this issue, finds that the right proposed as to the use of the garden is a permanent right in that it is not time limited, albeit that it is determinable.

33 The issue then to be considered is whether the permanent rights offered in the counter-notice are as nearly as may be the same as those enjoyed under the leases? The first determining event – "whilst the Transferor allows the area to remain as garden" – whilst not exactly the same wording as in the lease could arguably remain as such" - essentially has the same effect and could arguably be said to be "as nearly the same right" although there is no apparent reason why the Respondent choose not to follow exactly the wording in the lease. The wording chosen has a rather stronger flavour of control.

34 However the second determining event in the counter-notice - "or until such right is determined by the Transferor" – does not in the Tribunal's view mirror the general reservation set out at clause 3 (a) of the lease (and set out in full in paragraph 10 above). This reserves the right to the lessee to 'deal with' adjoining land (which can be taken to include the Waldon Court garden) and to erect/alter buildings etc. Ms Spence in her oral submission was somewhat dismissive of the declaration and made no reference to it in her skeleton argument. She regarded it as no more than a standard generic re-development clause. However the Tribunal considers that a term in a lease has no less effect simply because it is a standard clause. In any event the clause refers to "the Building" which is defined in the lease at clause 1 as "the building situate at and known as Waldon Court/Lytton House St Lukes South Torquay". Purchasers of the flats will (or should) have been made aware by their legal advisors as to the significance of this provision as to the determinability of the use of the communal garden however remote that possibility may have been perceived. Mr Healey argued that the present rights have a degree of fragility in view of their determinability but the reality is that the requirement of planning permission is a protection for the lessees. To make any change of use from the present use as gardens, whether to erect buildings or not, would require planning permission and this offers protection to the lessees.

35 Under the second determining event in the counter-notice, the Transferor could, on a mere whim, without any explanation or

reason, choose to determine the right to use the communal garden. The protective element of the need for planning permission for change of use that underpins the provisions in the leases would be absent. For this reason alone the Respondent has not shown that the rights offered in the counter-notice offer as nearly as may be the same rights as are enjoyed under the leases. The Tribunal also finds that there are other terms in the counter-notice that do not offer rights as nearly as may be the same rights as those enjoyed under the leases. The provisions for payment of all costs and expenses in respect of the communal gardens in 14 days without any process of certification are far less generous than the lease terms. The Tribunal finds that requirement of section 1 (4) (a) is not met and accordingly it has jurisdiction to consider the exercise of its discretion and order the transfer of the freehold of the Waldon Court garden to the Applicant.

- 36 No proposals as to the rights to be granted were the freehold of the Waldon Court garden not to be transferred, other than those set out in the Respondent's counter-notice, were put to the Tribunal at the Hearing. The Tribunal decided to direct the Respondent to put forward detailed draft terms of the rights it proposed to grant and written submissions to support those proposals. In turn the Applicant was directed to respond with a written submission indicating the terms it would accept, the terms it would reject and suggesting any additional terms or amendments. The Tribunal acceded to the request from the parties for an extension of time. Copies of an exchange of correspondence between the parties were forwarded to the Tribunal. Despite the point raised by the Applicant's Solicitors, the Tribunal considers that the directions it issued were clear enough as to what was required.
- 37 The Respondent put forward detailed draft rights that it now proposes to grant. However these relate not simply to the land in dispute (the Waldon Court garden) but also to the land not in dispute. It is, however not difficult to separate them - and they would be part of the same transfer. The Tribunal accepts the point made by Counsel for the Respondent that the comparison to be made is with the rights under the leases and that any additional rights available to lessees under statute - for example the right to challenge service charges under the Landlord and Tenant Act 1985 - is not required to be replicated to meet the requirement of section 1 (4) (a). These are rights enjoyed 'as tenants', not under the leases.
- 38 The Applicant's Counsel made a submission dated 4 May 2009 but it contained no reference to the Respondent's submission and proposals, referring only to the terms of the counter-notice, asserting again that the counter-notice could not be amended. It

took no account of the proposed detailed terms. It is not clear as to whether Counsel had seen the proposals. However the Applicant's Solicitors made a submission the following day, 5 May 2009. It was noted at 2 that the service charge to be paid by the Applicant as a result of the transfer of the property is more weighted in favour of the Respondent but did not specify in what way it was considered this was the case. The Tribunal notes that points 3 and 4 concern rights with the land not in dispute and so are not relevant to the issue of the transfer of the Waldon Court garden. It is unclear as to the objection referred to as numbered 5 (a) of the Respondent's submission.

- 39 The leases are far from satisfactory in many respects but the Applicants are not entitled to look for remedies in the terms proposed by the Respondent. However they are entitled to be granted rights "as nearly as may be the same rights" as they enjoy under their leases. The counter-notice did not offer such rights and the Tribunal has jurisdiction to transfer the freehold to the Applicant. The Respondent has had the opportunity of putting forward further proposals. The Applicant's Counsel still maintained that the Respondent laid out his stall in the counter-notice and is not entitled to a 'second bite at the cherry'. The LVT case of **Holt (Freehold) Limited v Dajeon Investments Limited LON/ENF/1497/05** is cited as a similar case with an identical easement – which the Tribunal accepts it is. However this is not a binding precedent and the Tribunal for the reasons it has given declines to follow it. The case was incidentally appealed to the Lands Tribunal but no decision was made as to the transfer of the communal garden as agreement had been reached between the parties. There is no clear binding case law on this issue. Accordingly and for the reasons it has given, the Tribunal does therefore take into account the further proposals put forward by the Respondent in exercising its discretion.
- 40 However, notwithstanding the terms now proposed which largely mirror the provisions of the leases, the Tribunal finds that there are two proposals relating to 'Covenants of the Transferee' that do not – paragraphs 2 and 3 (incidentally there is no paragraph 1). Under 2 the transferee is to covenant to insure inter alia the communal gardens. There no such term in the leases. Under paragraph 3 the payment of the Service Charge is to be made within 14 days of its written demand. This may not be unreasonable in the view of the Respondent but the fact is that it is not a term of the leases.
- 41 The Respondent has had every opportunity (more than he is entitled to according to the Applicant's Counsel) to offer terms that meet the requirements of section 1 (a) (i). However the right of acquisition of the Waldon Court garden cannot be taken to be satisfied either by the counter-notice or by the further proposals

put forward by the Respondent. The terms offered are not as nearly as may be the same terms as enjoyed under the leases because of these additional terms.

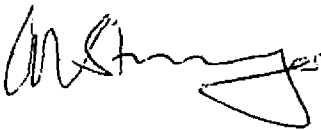
- 42 Accordingly and after taking into account the submissions of the parties and in all the circumstances, the Tribunal exercises its discretion and finds that the land in dispute, the Waldon Court garden should be transferred to the Applicant.
- 43 With regard the valuation of the land the Tribunal has considered the expert evidence and applied its own expertise and professional experience which includes knowledge of the local planning authority. The Tribunal was surprised at the apparent lack of detailed investigation carried out by both professional witnesses. No specific reference appeared to have been made to the Local Plan (which was not made available to the Tribunal), it was not established as to whether or not the site lay within a conservation area; no copy of the existing planning consents was made available and the terms of which were not known to the experts, no contact had been made with the local planning officers to establish in principle whether or not permission might be forthcoming for any development, no contact had been made with the highway authorities as to the possibility of access to the site from Warren road (agreed by both experts as the only possible means of access to the site), no engineering report was available as to the particular problems of developing what both experts agreed was a difficult site with the drop in levels and no specific proposals were put forward on behalf of the Respondent. The experts apparently lacked local knowledge which might have assisted the Tribunal in reaching its findings. It is for a party asserting a claim to provide supporting evidence. The Tribunal did not find that there was evidence to show that there was any real possibility of developing the site.
- 44 Applying its own expert knowledge of the locality and planning law, the Tribunal finds that the only realistic conclusion by any reasonable criteria is that under current planning legislation there is no real likelihood of planning permission being granted. In the Tribunal's opinion any value element is reflected in the figures agreed for the building but no value element should be added for the land. The Tribunal finds the value of the freehold of the land in dispute to be no more than the nominal sum of £1.00.

### **Conclusion and Decision**

- 45 The Tribunal orders that the freehold of the land in dispute, the Waldon Court garden, be transferred to the Applicant for the sum of £1.00 on the terms of the draft but omitting clause 2 of the transferee's draft covenants (the insurance provisions) and deleting

from clause 3 of the draft the words 'within (14) days of written demand by the Transferor.

- 46 The transfer will remain subject to the present rights enjoyed by the Lytton House flats to the shared use of that part of the communal garden whilst it remains as such. The transfer of the Waldon Court building was agreed by the parties and is not an issue before the Tribunal. Therefore it is a matter for the parties to deal with the continuing rights of the Waldon Court lessees to the shared use of the other part of the communal gardens, the Lytton House garden land.
- 47 The Tribunal does not find it appropriate to make any order for costs.

Signed:  Dated: 15 July 2009

**A.L.Strowger, Chairman**