

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL**

Property : Stoke Poges Manor House, Stoke Poges, Bucks.
& The Bungalow, The Stable Block & West Lodge

Applicant(s) : Robert Paul Camping
Represented by : Daniel Bromilow of Counsel
Solicitors : Saunders Bearman

Respondent(s) : South Bucks. District Council
Represented by : Christopher Heather of Counsel
Solicitors : Veale Wasbrough Vizards

Case number : CAM/11UE/OAF/2010/0007

Type of Application: Leasehold Reform Act 1967("the Act") – to determine
(i) the price payable and (ii) what
provisions ought to be contained in the
conveyance.

**Preliminary
Hearing** : To determine (a) whether or not the jurisdiction of the
Tribunal can be extended to include property which
does not fall within the statutory definition of "house
and premises" and (b) the terms of the transfer which
are not agreed

Hearing date : 18th November 2010

Tribunal Members : David S Brown FRICS MCI Arb (Chair)
Bruce M Edgington
Mrs Indira Butcher

DECISION

UPON THE TRIBUNAL HAVING FOUND that there is no agreement between the
parties as to what property the Applicant's right to enfranchise extends to

and

UPON THE PARTIES HAVING AGREED that -

- a) The county court is the only forum which can decide this issue (Section 20(2)(a) of the Act), and

- b) The Applicant's assertion that he is entitled to a right of way over the Memorial Gardens to Church Lane is disputed by the Respondent, and
- c) The Respondent has failed to serve a valid notice in reply as defined by paragraph 7 of Schedule 3 to the Act and the relevant Regulations

IT IS ORDERED that this application be stayed to enable the parties or either of them to apply to the county court for an order –

1. Defining the "house and premises" to which the right to enfranchise extends, and
2. Declaring whether the said right of way should be granted on enfranchisement, and
3. Declaring whether the right to enfranchisement can be enforced in view of the absence of a valid Notice in Reply, which is expressed by the Act to be mandatory and to be served within 2 months of the Initial Notice.

IT IS FURTHER ORDERED that the Applicant shall pay to the Respondent the sum of £500 towards the costs incurred by the Applicant in connection with these proceedings, under the provisions of paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

STATEMENT OF REASONS

Background

1. By a lease dated 6th August 1982, South Bucks District Council demised to Shannon Properties UK Limited –
"ALL THOSE premises with outbuildings gardens and grounds and known as Stoke Poges Manor House Stoke Poges in the County of Buckingham together with premises known as The Bungalow The Stable Block and West Lodge all of which are shown edged in red on the plan TOGETHER WITH full right and liberty at all times and for all purposes to pass and repass over and along the driveways known as North Drive leading from the Demised premises to Park Road with or without animals or vehicles.....

from 6th August 1982 for a term of ninety-nine years at a rent of a peppercorn.
On 21st August 1987 the lease was assigned to Crane Davies and Partners Limited, with Sheena Alda Crane and Robin Frank Davies as guarantors. At the hearing, the Applicant produced evidence that the leasehold interest was assigned to Sheena Alda Crane and Robin Frank Davies on 21st February 2003.
2. The Office copy of register of title of the Manor House, Title number BM71600, records the present proprietor, since 06.01.2009, to be Robert Paul Camping, the Applicant.
3. The Second Schedule to the Lease includes a reservation of *"the right of the Vicar and his invitees for the time being of St. Giles Church at all times and for the purpose of access to and egress from St. Giles Church to pass and repass over and along the driveways shown coloured brown on the plan with or without animals or vehicles"*.

4. On 21st February 1985 a Deed of Extinguishment and Right of Way diverted this right of way to different driveways.
5. On 9th July 2008, Robin Frank Davis and Sheena Alda Crane gave notice to the Landlord under the Leasehold Reform Act 1967 of their desire to acquire the freehold of the property . The notice was signed by their solicitor as attorney and at the hearing a certified copy of the relevant Powers of Attorney were produced. The benefit of this notice was assigned to the Applicant. The Landlord did not serve a notice in reply in the prescribed form, but wrote a letter to the Applicant's solicitors on 5th August 2008 stating, amongst other things, "*We accept your client's entitlement to enfranchisement of the freehold*" and suggesting a period of three months in which to agree a price, failing which application could be made to the LVT.
6. On 12th July 2010, the Applicant made an application to this Tribunal for a determination of the price payable and of the terms not agreed, under section 21(2).
7. Upon preliminary perusal of the papers, it appeared to the Tribunal Chair that The Bungalow, West Lodge and the Stable Block might not qualify as part of the "house and premises" as defined in the Act and a letter was sent to the Applicant requesting a brief explanation of how those buildings qualify under section 2(3), given that they do not, on the face of it, appear to be outhouses or appurtenances. The solicitors replied that they do not need to go into such matters because both landlord and tenant concede that these properties (which they submit are in fact outhouses and appurtenances) are to be included within the enfranchisement.
8. The Tribunal responded that its jurisdiction is to determine a price and terms in respect of the "house and premises" as defined in the Act. It pointed out that an appurtenance must be within the curtilage of the house and have certain characteristics, as helpfully referred to in *Hague, "Leasehold Enfranchisement"* at 2-16. The relevant buildings may fall within the statutory definition of "house and premises" but the Tribunal must be satisfied on that point and will require it to be demonstrated by the Applicant.
9. Directions were issued, including a requirement for the Applicant to submit a skeleton argument on this point. It was subsequently suggested by the Respondent that there should be an initial hearing to decide all issues bar the valuations, in view of the fact that the Tribunal's determination on the remaining issues would have a direct bearing on the valuation. The Tribunal agreed with this suggestion.
10. It was subsequently noted by the Tribunal members, on perusal of the case bundle, that the Respondent does not appear to have served a notice in reply in the prescribed form under paragraph 7(1) of Schedule 3 to the Act. As a consequence, the parties were given notice that the Tribunal would wish to hear the parties on the question of whether or not this prejudices its jurisdiction.

The Law

11. The statutory provisions relevant to this decision are contained in the Leasehold Reform Act 1967, sections 2 and 8 and Schedule 3, Part II.
12. **Section 2 Meaning of "house" and "house and premises" and adjustment of boundary**
 (3) *Subject to the following provisions of this section, where in relation to a house let to...a tenant reference is made in this Part of this Act to the house and premises, the*

reference to premises is to be taken as referring to any garage, outhouse, garden, yard and appurtenances which at the relevant time are let to him with the house.

13. **Section 2(4)** provides that "house and premises" shall include any other premises let with the house and premises but not at the relevant time subject to a tenancy vested in him (whether in consequence of an assignment of the term therein or otherwise) if the landlord at the relevant time has an interest in the other premises and gives the tenant written notice objecting to the further severance of them from the house and premises and the tenant agrees to their inclusion or the court is satisfied that it would be unreasonable for the landlord to be required to retain them without the house and premises.
14. **Schedule 3, para. 7(1)** provides that where a tenant has given a landlord notice under Part 1 of the Act, the landlord shall within 2 months give the tenant "*a notice in reply in the prescribed form stating whether or not the landlord admits the tenant's right to have the freehold....(subject to any question as to the correctness of the particulars given in the tenant's notice of the house and premises)...*".
15. **Para. 7(4)** provides that a landlord's admission that the tenant is entitled to have the freehold shall be binding upon the landlord...."*but the admission shall not conclude any question whether the particulars of the house and premises in the tenant's notice are correct*".
16. **Para. 7(5)** provides that "*the tenant shall not institute proceedings in the court with a view to enforcement of his right to have the freehold...before the landlord has given his notice in reply or two months have elapsed without his doing so since the giving of the tenant's notice*".

The Inspection

17. We inspected the Property on the morning of the hearing, in the presence of the Applicant, officials from the Respondent local authority and their respective representatives. In the light of the decision to refer all issues other than valuation to the county court, we do not need to refer here to any details of our inspection.

The Evidence

The lack of a notice in reply in the prescribed form

18. With regard to the Tribunal's jurisdiction in the light of the Respondent's failure to serve a notice in reply in the prescribed form, both parties contend that there is no jurisdiction point arising from this omission. Reference was made to *Hague* at 5-19 which expresses the opinion that failure to serve a valid Notice in Reply "has no practical adverse consequences for the landlord".
19. Mr Bromilow contended that as there is no sanction set out in the Act, there is no sanction.
20. **We are not persuaded that the failure to serve a valid Notice in Reply has no consequences for the landlord. Service of a Notice in Reply is mandatory. There would be no point in stipulating a mandatory requirement if failure to comply with it carried no sanction. In view of the fact that a number of other issues are to be referred to the county court, we consider it appropriate for that court to rule on this issue also.**

The Tribunal's jurisdiction in respect of "house and premises"

21. On the issue of whether or not our jurisdiction can be extended to include property which does not fall within the statutory definition of "house and premises", the parties have submitted skeleton arguments.
22. For the Applicant, Mr Bromilow states that The Bungalow, West Lodge and Stable Block form part of the premises which are the subject of the application because the parties agree that they do. He refers to paragraph 7(4) of Schedule 13 (but obviously meaning Schedule 3) and stresses that the landlord's admission is not binding, as far as the extent of the land to be acquired is concerned, *on the landlord*.
23. He contends that the extent of the house and premises remains, primarily, a matter to be determined by the parties through agreement just as the other provisions of the transfer such as the price and terms of acquisition are, primarily, left to the parties to decide. The Tribunal's jurisdiction is to resolve matters in default of agreement – section 21(1). Where there is no dispute the Tribunal has no jurisdiction to determine matters which the parties have agreed. He states that section 2(4) does not apply in this case.
24. He concludes that The Bungalow, West Lodge and the Stable Block therefore form part of the house and premises which will form the subject of the statutory contract because the parties have agreed that they do. Section 2(4) makes it clear that the issue of what constitutes a house and premises is primarily an issue for the parties to decide and the Tribunal only has jurisdiction if the parties cannot agree.
25. At the hearing, he contended that all of the buildings referred to in the Notice of Claim do, in fact, constitute "house and premises" as defined in the Act.
26. For the Respondent, Veale Wasborough Vizards state in their skeleton argument that the Respondent agrees that the Outbuildings are part of the demise but denies that it was agreed that they are part of the "house and premises" to be enfranchised. The parties agreed to conduct the matter "outside of the Act" and negotiations proceeded on the basis that the Outbuildings would be included in the conveyance to the Applicant. Such negotiations would necessarily have been on the basis that they were without prejudice to the parties' rights to have the claim determined under the Act at a later stage. The party-party correspondence since July 2008 demonstrates that the parties have failed to agree on the extent of the "house and premises" and the terms of the proposed conveyance.
27. They agree that section 2(4) does not apply.
28. They go on to state, at paragraph 14 of the skeleton argument, that "*in the interests of expediency and the saving of costs*" the Respondent will agree to include the Outbuildings provided that the conveyance contains a restrictive covenant in favour of the Respondent and the remainder of its land, restricting the use of the premises to a single dwellinghouse and specifically that the Outbuildings may only be occupied as a residence by those in the employment of the occupier for the time being of the house. In such case, the Tribunal should only be concerned with the outstanding matters between the parties. The Respondent is concerned to ensure that the Applicant cannot enfranchise then sell off some or all of the Outbuildings and thereby receive a windfall, which the respondent believes is not the intention behind the Act.
29. Mr Heather submitted a further skeleton argument at the hearing in which he asserts that there has not been a concession by the Council that all of the buildings comprise

"house and premises". He contends that the concession recorded by the correspondence between the parties is that the Manor House is a *house*, it does not relate to the question of premises.


30. At the hearing, Mr Bromilow referred to the concession in paragraph 14 of the Council's skeleton argument and stated that the Applicant had indicated, in the Schedule of terms of the draft transfer not agreed, that he is prepared to accept the restrictive covenant referred to in paragraph 14 and so there has been agreement between the parties as to the extent of the house and premises.
31. Mr Heather responded that the previous correspondence began with an agreement to negotiate outside the Act. In a letter dated 10 August 2010 (Section C, page 41 of the bundle) the Applicant's solicitors acknowledged that this issue had not been raised before. In a reply dated 12 August (page 42) the Respondent's solicitors stated that "*the question of whether all of the buildings and land is capable of being enfranchised has therefore not been agreed.*" He commented that the concession offered in paragraph 14 was misguided and the reference to the Tribunal only to be concerned with outstanding matters was an invitation to the Tribunal to decide outside the Act the terms of the conveyance.
32. At this point, we adjourned to consider the evidence and make a decision on this issue. **We find that the offer to agree contained in paragraph 14 of the skeleton argument by the Respondent's solicitors was a concession and not an acceptance of the extent of the Applicant's statutory right to enfranchise and so there is no agreement between the parties regarding to what property his right extends.** Section 20(2)(a) of the Act provides that the issue can only be determined by the county court and so these proceedings will have to be stayed in order to give the parties time to make an application to the court.
33. In the light of this decision, the Applicant requested that all issues, save the valuation, be referred to the county court. The Respondent made no objection and so the Tribunal agreed to stay the application.
34. Even if there had been agreement about the extent of the property to be included within the definition of "house and premises", the Tribunal's view, as subsequently supported by Mr. Heather on behalf of the Respondent, is that the Tribunal cannot include property which is not within the statutory definition of "house and premises" in view of **Essex County Council v. Essex Incorporated Congregational Church Union [1963] 2 WLR 802**

Costs

35. Mr Heather made an application for an order that the Applicant should pay £500 to the Respondent towards the costs of the proceedings in view of the unreasonable behaviour of the Applicant in failing to provide the hearing bundles as directed, as a result of which the original hearing date had to be vacated.
36. Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 provides that a leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in any circumstances falling within sub-paragraph 2. These circumstances include where the party has, "*in the opinion of the tribunal acted...unreasonably*" in connection with the proceedings. Subsection (3) limits the order to a maximum of £500.

37. The Directions required the Applicant to provide four copies of the hearing bundle to the Tribunal office at least ten days before the hearing, which was initially arranged for 14th October. The Applicant failed to do so. On 6 October, his solicitors faxed the office to say that the bundles would be delivered within 24 hours; they were not. A fax on 8th October stated that they would be delivered on 11th October; they were not. That afternoon, the Case Officer telephoned the solicitors and was told that they would arrive the following day. Given that the case involved legal arguments on disputed issues and a considerable amount of documentation, the Tribunal decided that it would have insufficient time to prepare properly for a hearing on 14th October and so that date was vacated.
38. Mr Heather asserted that the late delivery of the bundles was unreasonable behaviour by the Applicant, as a result of which abortive costs were incurred by the Respondent, including a brief fee of £3,500 and solicitors fees of £1,400 for liaising with the client, witnesses and the Tribunal office in respect of the vacated date and fixing a new hearing date.
39. Mr Bromilow questioned the amount of the fees claimed but accepted that, in view of the statutory 'cap' of £500, he could not resist the application..
40. **We find that the behaviour of the Applicant in failing to deliver the bundles until such a late stage was unreasonable. We questioned the amount of £1,400 solicitor's fees but accept that a reasonable brief fee alone would be in excess of £500 and we therefore make the order as applied.**

Signed:



Date: 25th November 2010

D S Brown FRICS MCI Arb (Chair)