



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

Case Reference : **MAN/00BZ/OCE/2021/0014**

Property : **50, Taunton Avenue, Sutton Leach, St.Helens
WA9 4NU**

Applicants : **Michael James Gibbon & Patricia Anne
Gibbon**

Represented by : **Orme Associates**

Respondent : **Coppen Estates Limited**

Represented by : **Paul Brook Solicitors**

**Type of
Application** : **Application under section 21(2) Leasehold
Reform Act 1967 (“the 1967 Act”)**

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member H Lewis**

Date of Decision : **27 April 2022**

DECISION

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ORDER

1. The Tribunal determines that:
 - (1) the Respondent has failed to satisfy the requirements of section 10(4)(b) and/or (c) of the Leasehold Reform Act 1967 in relation to the restrictive covenants it proposed be included in the transfer of the freehold title to the Property from the Respondent to the Applicants, (“the Transfer”); and,
 - (2) such restrictive covenants are not to be included in the transfer.

BACKGROUND

2. The Applicants are the registered proprietors of the leasehold interest (Title No. LA302697) in the Property.
3. The Respondent is the registered proprietor of the freehold title (Title No. MS264231) to the Property.
4. By a notice dated 5 November 2020, the Applicants gave notice to the Respondent of their claim to acquire the freehold of the Property.
5. No counter-notice was received from the Respondent.
6. By a notice dated 9 February 2021, the Applicants served on the Respondent a request for particulars of rights of way and restrictive covenants by the Respondent as Lessor, together with a draft transfer, (“Transfer 1”).
7. By a response dated 12 February 2021, the Respondent’s solicitors proposed the inclusion in the transfer of certain restrictive covenants contained in the Lease, as set out in an amended transfer, (“Transfer 2”).
8. By an application dated 22 March 2021, the Applicants sought a determination from the Tribunal under s21(2)(a), (what provisions ought to be contained in a conveyance in accordance with section 10), (“the Application”).
9. Directions dated 15 November 2021 provided for the Application to be determined by way of a paper determination unless either party requested a hearing. Neither party requested a hearing.

10. Written submissions in accordance with the Directions were received from the Applicants' representative, Orme Associates.
11. No submission was received from the Respondent.

LAW

12. The following provisions of section 10 of the Leasehold Reform Act 1967, ("the 1967 Act"), are relevant to the Application:

Section 10 Rights to be conveyed to tenant on enfranchisement

(4) As regards restrictive covenants (that is to say, any covenant or agreement restrictive of the user of any land or premises), a conveyance executed to give effect to section 8 above shall include—

(a) ...

(b) such provisions (if any) as the landlord or the tenant may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of the tenancy or any agreement collateral thereto, being either—

(i) restrictions affecting the house and premises which are capable of benefiting other property and (if enforceable only by the landlord) are such as materially to enhance the value of the other property; or,

(ii) restrictions affecting other property which are such as materially to enhance the value of the house and premises;

(c) such further provisions (if any) as the landlord may require to restrict the use of the house and premises in any way which will not interfere with the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy but will materially enhance the value of the other property in which the landlord has an interest.

EVIDENCE

13. The Applicants' submission comprises a report from Mr. Andrew Orme of Orme Associates (also referred to as the Applicants' representative) which states as follows:

- (1) Panel 11 (Additional provisions) of Transfer 1 includes the transfer of rights granted for the benefit of the Property and rights reserved for the benefit of other land by reference to section 10(2)(i) and 10(2)(ii) of the 1967 Act;
- (2) Panel 12 of Transfer 2 proposes alternative provisions, including, without limitation, clause 2(3) as follows:

“ but subject to any restrictions rights and easements in the same terms as those set out in the Lease as if repeated in full in this Transfer to the intent that they shall be freehold restrictions rights and easements appurtenant to each and every part of the remainder of land compromised”;
- (3) the Applicants’ objections to the inclusion of clauses 2(3), (4) and (5) of the Lease by virtue of clause 2(3) of Transfer 2 are as follows:
 - (i) the Applicants want the freedom to manage the Property as far as possible, including the right to develop and/or extend the Property to the side and/or rear of the Property;
 - (ii) their objection to the inclusion of clause 2(3) of the Lease is that it might interfere with development/extension of the Property to the side/rear of the Property “by reason of breach of repair covenant”. It is suggested that the inclusion of the words, “”This clause does not extend to prevent the building works at the property” would address this concern;
 - (iii) further, the Applicants dispute that any of the restrictions in clauses 2(3),(4) and (5), insofar as they seek to restrict development/alteration to the rear of the Property, are “...such as materially to enhance the value of the other property” because “...there are already numerous extensions and alternations [sic] to the rear of the neighbouring houses. There are various designs and different construction materials and there is no observation of any building line to the rear....The properties are not overlooked from the rear and the rear of the houses is not visible to the street”;
 - (iv) the Applicants offer an opinion that “...building control to the front elevation of the properties may satisfy s10(4)(i) 1967 Act”, and that “[I]f this proposal is entertained by the landlord”, they propose the amendment of the covenant to include the words, “such consent not to be unreasonably withheld”.

14. No submission was received from the Respondent.

REASONS

15. Preliminary

- (1) The Applicants' objections, as set out in Mr.Orme's report, are limited to the inclusion in the Transfer of restrictive covenants in the same terms as those set out in clauses 2(3),(4) and (5) of the Lease.
- (2) In the absence of such further or other objections, the Tribunal notes that there is no dispute between the parties regarding the inclusion in the Transfer of any other "restrictions rights and easements in the same terms as those set out in the Lease".
- (3) In the absence of any submission by the Respondent to the Tribunal, there was no evidence before it of any relevant property in which the Respondent has an interest nor of any material enhancement to the value of such property such as to support the inclusion of restrictions in the Transfer in the same terms as those set out in clauses 2(3), (4) and (5) of the Lease.

16. Clauses 2(3), 2(4) and 2(5) of the Lease

- (1) In view of the Respondent's failure to satisfy the conditions set out in s10(4)(b) and/or (c) in respect of the inclusion in the Transfer of restrictions in the same terms as those set out in clauses 2(3), (4) and (5) of the Lease, the Tribunal determines that such clauses are not to be included in any transfer of the freehold title to the Property from the Respondent to the Applicants.

Judge C Wood

27 April 2022