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

<b>Property</b>	<b>Buckstone Hall, Cliffe Drive, Rawdon, Leeds, LS19 6LL</b>
<b>Applicants Representative</b>	<b>Buckstone Hall Limited Mr Gallagher (Counsel)</b>
<b>Respondent Representative</b>	<b>Mary Lindsey Taylor Mr Walder (Counsel)</b>
<b>Case number</b>	<b>MAN/00BU/OCE/2015/0008</b>
<b>Date of Application</b>	<b>17 July 2015</b>
<b>Type of Application</b>	<b>s24 Leasehold Reform Housing &amp; Urban Regeneration Act 1993</b>
<b>Tribunal Members</b>	<b>K M Southby (Judge) S Kendall (Valuer member)</b>
<b>Date of Decision</b>	<b>8 April 2016</b>

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**Decision**

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## **PRELIMINARY**

1. The Applicant is the appointed nominee purchaser for the current leaseholders of three of the four flats (Flats 1, 2A and 3) which make up Buckstone Hall, Cliff Drive, Rawdon, Leeds. The Respondent is the freeholder, and leaseholder of the remaining flat (Flat 2). The Applicant seeks to purchase the freehold of their demises. The principal dispute between the parties is not the valuation of the transfer of the areas demised by the respective leases but is over the terms of transfer.
2. On 19 November 2014 an initial notice was served by the leaseholders of flats 1, 2A and 3 pursuant to s13 of the Leasehold Reform, Housing and Urban Development Act 1992 (the Act') on the Respondent, with the Applicant named as the appointed nominee purchaser.
3. The Respondent served a counter notice pursuant to s 21 of the Act on the Applicant on 23 January 2015.
4. Despite protracted discussions the parties were not able to agree the terms of the proposed transfer of the freehold claimed. Accordingly the Applicant applied to the Tribunal on 17 July 2015 for determination of the terms of acquisition remaining in dispute.
5. A hearing was held at noon on Tuesday, 15 March 2016 at Leeds Employment Tribunal, 4<sup>th</sup> Floor, City Exchange, 11 Albion Street, Leeds LS 1 5ES. The Tribunal reconvened on 8 April 2016 without the parties being present.

## **BACKGROUND AND TITLE**

6. The Respondent is the registered proprietor of the freehold reversion to Buckstone Hall, a collection of land and buildings registered with title numbers WYK515089 and WYK541999.
7. The Respondent also holds a long leasehold interest (with approximately 961 years remaining of the term) of the part of Buckstone Hall known as the West Wing (Flat 2), registered with title number WYK580010, which she occupies.
8. The other occupiers ('Other Leaseholders') of the apartments at Buckstone Hall are as follows:
  - a. Glenn Patterson and Lorraine Agu who occupy Unit 1 (also known as the South East Wing) under a long leasehold interest (with approximately 961 years remaining of the term) registered under the title numbers WYK108255 and WYK152429.
  - b. Richard Haywood who occupies flat 2A under a long leasehold interest (with approximately 961 years remaining of the term) registered under the title number WYK117429.
  - c. Jeremy Hall and Helen Sayes who occupy Flat 3 (also known as the Penthouse) under a long leasehold interest (with approximately 961 years remaining of the term) registered with title numbers WYK122518 and WYK589624.

9. The Tribunal were referred to a plan attached to the draft TP1 document which identifies the areas of land which are of relevance to the dispute. The Tribunal cannot vouch for the accuracy of the plan but having been directed to it by both parties makes reference to it for clarity.
10. The Respondent also owns the freehold interest to three parcels of adjoining land as follows:
  - a. A section of land to the eastern side of Buckstone Hall which is included within the Respondent's freehold title WYK515089, but has been excluded from the Applicant's claim for collective enfranchisement ('the Boundary Strip'). The Applicant has confirmed that this land is not included within this application for enfranchisement. This area is shaded yellow on the plan.
  - b. A section of land to the western side of Buckstone Hall which is registered with title number WYK688610 and was acquired relatively recently by the respondent and described as the 'Tennis Court Land'. This area is edged blue on the plan.
  - c. A section of land to the western side of Buckstone Hall immediately below the Tennis Court Land which is registered with the title number YY42562 described as 'the Additional Land'. This area is edged green on the plan.

## **INSPECTION**

11. The Tribunal inspected the Property on 15 March 2016 in the presence of the parties and their representatives.
12. The Tribunal were shown the Boundary Strip which is a small area of land which has recently been cleared of the shrubs and trees which comprise the remainder of the strip of boundary land adjoining it. The Boundary Strip is currently being put to use by the Respondent as a small flower and vegetable area.
13. The Tribunal were shown the means of access to the Boundary Strip both by passing through the garden of Mr Haywood in Flat 2A, and also by passing via the road. The Tribunal were also shown the retaining wall which borders Buckstone Hall and which varies in height around the Boundary Strip.
14. The Tribunal also inspected the Tennis Court land and observed the current location of the garages.

## **MATTERS NOT AGREED BETWEEN THE PARTIES**

15. The Parties having agreed between themselves matters concerning the Premium Payable and the Leaseback, there were agreed to be two live issues before the Tribunal as follows:
  - a. The Applicant's Claim for extended or additional rights relating to the access to the shared Garage over land forming part of the Tennis Court Land;
  - b. The Respondent's Claim for the reservation of rights over the garden of Flat 2A for the benefit of her Boundary Strip.

## THE LAW

16. Section 1(2) of the Leasehold Reform Housing and Urban Development Act 1993 provides:

“Where the right to collective enfranchisement is exercised in relation to any such premises (“the relevant premises”) –

  - (a) the qualifying tenants by whom the right is exercised shall be entitled, subject to and in accordance with this Chapter, to have acquired, in like manner, the freehold of any property which is not comprised in the relevant premises but to which this paragraph applies by virtue of subsection (3)”
17. Section 1(3) provides:

“(a) it is appurtenant property which is demised by the lease held by a qualifying tenant of a flat contained in the relevant premises; or

(b) it is property which any such tenant is entitled to 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).”
18. By section 1(7) “appurtenant property” means any garage, outhouse, garden, yard or appurtenances belonging to or usually enjoyed with the flat. By section 13(3)(a)(iii) the initial notice must specify any property over which it is proposed that rights (specified in the notice) should be granted in connection with the acquisition of the freehold.
19. By section 21(3)(a)(i) the counter-notice must specify in relation to any proposal which is not accepted, the reversioner’s counter-proposals.
20. By section 34(9) the nominee purchaser and the person whose interest is being conveyed may agree to depart from the remaining statutory provisions. Otherwise, the conveyance of any freehold interest must conform with detailed provisions in schedule 7 to the 1993 Act.
21. Paragraph 4 of schedule 7 provides:

“Any such conveyance shall include –

  - (a) such provisions (if any) as the nominee purchaser may require for the purpose of securing to him and the persons deriving title under him rights of way over other property, so far as the freeholder is capable of granting them, being right of way that are necessary for the reasonable enjoyment of the relevant premises; and
  - (b) such provisions (if any) as the freeholder may require for the purpose of making the relevant premises subject to rights of way *necessary for the reasonable enjoyment of other property, being property in which he is to retain an interest after the acquisition of the relevant premises.*”

22. Therefore, by paragraph 4(b) of schedule 7, the conveyance must reserve such rights of way as the freeholder may require for the reasonable enjoyment of other property in which he is to retain an interest after the acquisition of the relevant premises.

## SUBMISSIONS

### Access to the Shared Garage across the Tennis Court Land

23. It is submitted by the Applicant through their representative that reasonable enjoyment of a garage must include the means of actually getting a car into and out of the garage and then being able to turn around and drive out. The Applicant pointed out that it is the entirety of the shared garage which is to be transferred, both the part which is leased to Mr Patterson in unit 1 and the other part leased to the Respondent.
24. Mr Patterson's lease of his part of the shared garage is registered under title number WYK152429 and has the benefit of a right of way created by the deed of grant dated 12 September 1978. The Applicant argues that the key point is not the existence and continuance of this right of way in respect of Mr Patterson's half of the garage but that the Applicant is entitled to the transfer on enfranchisement of the freehold interest in the appurtenant land, which includes the whole of the shared garage (Mr Patterson's leasehold half and the other half leased to the Respondent). As an incident of that transfer the Applicant is entitled to the grant (out of the Respondent's retained land – the Tennis Court Land) of such rights as are necessary for the reasonable enjoyment of that transferred land.
25. The Respondent's representative argued that it is not necessary to grant a right of way pursuant to Schedule 7 paragraph 4 because an easement to accommodate the passage of vehicles already exists.
26. The access which the Applicant currently has to the garage gives
- “the right to pass and repass at all times and for all purposes in connection with the use of the property with or without vehicles over the land coloured blue on the plan for the residue of the term granted by the registered lease.”*
27. The Respondent accordingly argues that
- a. The easement was created in 1978, so relatively recently
  - b. A right of way with vehicles is expressly recorded – thus the original purpose of the right of way was to accommodate the passage of vehicles
  - c. Whilst the width of the right of way is said to be narrower than a car length it is not narrower than a car width
  - d. The relevant premises for the purpose of the enfranchisement is the land upon which the Garage Unit is situated, not the garage itself. There is nothing to prevent the existing garage unit being moved, resituated or developed in the future.

28. The Respondent argues that because of the existing right of way it cannot be 'necessary' for the tribunal to grant a right of way pursuant to Schedule 7 paragraph 4. It is further argued that the Tribunal should not take a subjective view of the current use which the land is put to but consider the land in general.

### **The Boundary Strip**

29. The Respondent seeks a right of way to access her retained Boundary Strip of land and distinguishes the rights sought by the Respondent from those sought by the Applicant by observing that the Respondent does not already have such rights expressed and recorded and therefore needs such reservations to protect such rights as may be necessary but which had not required express recognition before.
30. The Respondent refers to Paragraph 4(b) of Schedule 7 of the Act and argues that the freeholder under this paragraph is expressly permitted by the Act to require reservation of rights of way in respect of property in which he is to retain an interest, provided those rights are necessary for the reasonable enjoyment of that other property.
31. The rights of way sought by the Respondent in respect of the Boundary Strip is in the following form:
- "A right of way at all times over the Property [being the Green land and Pink Land] and for all usual and reasonable purposes in connection with the proper use and enjoyment of the Retained Land".*
32. The Respondent further suggests that the Boundary Strip is landlocked, at least in so far as it is not possible to access it safely except from across the garden of Unit 2A. It is submitted by the Respondent that any other access to it is via a precarious public right of way which may be stopped up or may simply be an equitable right. In any event the Respondent argues that the position of the wall makes access available only to those able to scale the wall and certainly not to machinery such as the Respondent's sit on mower. The Respondent claims that the wall cannot be altered as it is in a conservation area and removal or alteration of the wall has been rejected by the local planning committee.
33. The Applicant in turn referred the Tribunal to the rights which the Applicant had already agreed to grant – namely rights of access on 7 days notice (save in the case of emergency) for the purpose of maintaining the Boundary Strip along a defined path, on foot and with domestic gardening equipment.
34. The Applicant refers to the rights claimed being in excess of the rights reserved out of the lease of Unit 2A but in any event regardless of where a grant of an 'all times and for all purposes' right of way across the Unit 2A garden would leave the lessee of Unit 2A, the Respondent argues that this is clearly not a right that is necessary for the reasonable enjoyment of the Boundary Strip.

35. The Applicant argues that the land is accessible from Cliffe Drive without passing across the garden of unit 2A in any event. The Applicant provided evidence from the definitive map that Cliffe Drive is a public bridleway, and argues that accordingly it can be assumed that a wheelbarrow or equivalent could be wheeled along Cliffe Drive to the Boundary Strip as needs be. In such circumstances it is argued that access across the Unit 2A garden is not necessary.

### **Other rights claimed**

36. The Tribunal has been asked to rule on other issues which remain in dispute in the draft Transfer. These can be listed as follows:
- a. R wishes to include the right to connect to the water service at the freehold land for the purposes of installing a tap on the Boundary Strip.
  - b. R wishes to include the right to connect to the service media for the benefit of erecting a summer house on the Tennis Court land, and for the benefit of the existing garages.
  - c. R requires the right to maintain the fence between the Tennis Court land and the enfranchised land, and other boundaries fences and gates.
  - d. R requires easements of support from the enfranchised land for the benefit of the Tennis Court Land and the additional 'wedge shape' land edged in green on the plan.
  - e. R wishes to be entitled to charge the Applicants a fair contribution for maintaining any land over which rights are granted for access.
37. The Tribunal did not hear from either party in oral submission on these points at the hearing and so has considered the written representations which it has from both parties and the insight gained upon inspection where the Tribunal was shown the nature and extent of the 'wedge shape' land and the fence referred to above.

### **DECISION**

38. The Tribunal received submissions from the Applicant in respect of s62 Law of Property Act 1925 and makes no decision on this point, having no jurisdiction under the present application to consider the issues alluded to.

### **Rights over the Tennis Court land**

39. The question for the Tribunal is whether the rights claimed are 'necessary for the reasonable enjoyment of other property, being property in which he is to retain an interest after the acquisition of the relevant premises'.
40. The test is a restrictive one – i.e. not access that is 'reasonably necessary for the enjoyment of land', but access that is 'necessary for the reasonable enjoyment of land'.

41. The question is primarily one of fact and the Tribunal must consider the particular circumstances and layout of the property concerned. The Tribunal based its conclusion on the evidence and submissions of the parties and its own inspection of the property.
42. The Tribunal observed the access to the garage, the present layout of the gravel driveway and forecourt which currently give access to the garage under the easement referred to in the submissions above.
43. The Tribunal also observed the shared garage which is on a concrete base. The Tribunal heard from the parties that the doors to the shared garage were originally sliding doors but had been replaced with swinging doors the opening of which extends beyond the extent of the easement as currently granted.
44. The Tribunal also observed the dimensions of the current shared garage and noted that it would be challenging to use a garage of the current dimensions for the storage of a vehicle, and that this was clearly not the current purpose to which the garage was used by either party.
45. The Tribunal finds as a matter of fact that the Applicant already has a right of vehicular access to the land upon which the garage currently sits. The fact that the precise dimensions, location and configuration of the garage make storing a vehicle in there difficult is as much a reflection of the decisions made by those parties involved in constructing the garage, (which appears to post-date the easement), as it is of an inadequacy in the rights afforded to the Applicant.
46. The Tribunal therefore concludes that as a matter of fact additional rights are not necessary for the reasonable enjoyment of this piece of land.
47. Accordingly the Tribunal refuses to require the Respondent to include any provision in the conveyance which makes the relevant premises subject to an additional right of way for the Applicant.

### **Rights over Unit 2A to access the Boundary Strip**

48. The Tribunal has applied the same test, being considering whether the rights claimed are 'necessary for the reasonable enjoyment of other property, being property in which he is to retain an interest after the acquisition of the relevant premises'.
49. The Tribunal accepts the Applicant's evidence that Cliffe Drive is a public right of way, and has received no evidence from the Respondent as to precarious nature of that right of way, or indeed the planning/conservation issues referred to in respect of alterations to the wall.
50. The Tribunal having had the benefit of inspecting the property does not accept the Respondent's assertion that the Boundary Strip cannot be accessed other than through Unit 2A. Indeed the Tribunal members, parties and representatives all stepped up from Cliffe Drive onto the Boundary Strip to



inspect it in detail without needing an additional step, or any alteration to the wall. It would be perfectly practical to access the land with a wheelbarrow via Cliffe Drive, and the height of the wall would not preclude the use of a portable ramp to wheel a barrow.

51. The Tribunal adopts the same approach to the land as it did in respect of the garage unit land, and considers not a subjective consideration only of the current use of the land, but also a potential future use as argued by the Applicant. The Tribunal find it difficult to accept having inspected the Boundary Strip which is small in dimensions, that maintenance of this area would necessitate access by a sit-on mower. The past use of the land has clearly been for many years a shrub and tree boundary to the site.
52. The Tribunal finds as a matter of fact having inspected the site that the rights sought by the Respondent over and above those already offered by the Applicant are not necessary for the reasonable enjoyment of the land.
53. The Tribunal refuses to require there to be included any provision in the conveyance which makes the relevant premises subject to a right of way over and above that which the Applicants have already placed in open offer.

#### **Other Rights Claimed**

54. As set out above (paragraph 36) the Tribunal has been asked to rule on other issues which remain in dispute in the draft Transfer as follows:
  - a. R wishes to include the right to connect to the water service at the freehold land for the purposes of installing a tap on the Boundary Strip.
  - b. R wishes to include the right to connect to the service media for the benefit of erecting a summer house on the Tennis Court land, and for the benefit of the existing garages.
  - c. R requires the right to maintain the fence between the Tennis Court land and the enfranchised land, and other boundaries fences and gates.
  - d. R requires easements of support from the enfranchised land for the benefit of the Tennis Court Land and the additional 'wedge shape' land edged in green on the plan.
  - e. R wishes to be entitled to charge the Applicants a fair contribution for maintaining any land over which rights are granted for access.
55. Paragraph e above referred to maintenance of any land over which access was granted in respect of the shared garages. As the tribunal has determined not to make an order in respect of additional rights of access this issue falls away and the Tribunal does not make the order requested.
56. The Tribunal applying paragraph 3(2)(b)(ii) of Schedule 4 of the Act considered whether the rights claimed were necessary for the reasonable enjoyment of the relevant premises.

57. In respect of matters a to d above the Tribunal having inspected the property considers the requests made by the Respondent at paragraphs a and b above are not necessary for the reasonable enjoyment of the land and therefore the proposed rights are not granted.
58. The Tribunal finds c and d above to be necessary for the reasonable enjoyment of the land and accordingly the Tribunal determines these rights should be granted and the clauses of the Transfer should be amended to reflect these requirements.