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

Case Reference : **GM/LON/00BJ/OCE/2017/0220**

Property : **Putney Park House, 69 Pleasance Road, London SW15 5HJ**

Applicant : **Putney Park House Limited**

Representative : **Ms Ellodie Gibbons (Counsel)
instructed by Sykes Anderson Perry Limited**

Respondent : **(1) Mr Ravindra Bountra
(2) Assethold Limited**

Representative : **Mr Stephen Pritchett (Counsel) for
the First Respondent instructed by
Taylor Emmett LLP**

Type of Application : **Application under section 24(1) of
the Leasehold Reform, Housing
and Urban Development Act 1993**

Tribunal Members : **Mr Jeremy Donegan – Tribunal
Judge
Mrs Helen Bowers MRICS – Valuer
Member**

**Date and venue of
Hearing** : **06 February 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **31 March 2018**

DECISION

Decisions of the tribunal

The Tribunal's determination of the disputed terms of the draft transfer deed ('the Transfer') are set out at paragraphs 84 of this decision.

The background

1. The application concerns a collective enfranchisement claim for part of Putney Park House, 69 Pleasance Road, London SW15 5HJ ('the Estate'). The Estate comprises a converted, detached house containing eleven flats and extensive grounds. The first respondent ('Mr Bountra') is the freeholder of the Estate. The second respondent holds a headlease of the house and a small area of land surrounding the house (together referred to as 'the Property')
2. The 11 flats are all let on long leases. The leaseholders of 10 of these flats ('the Tenants') served an initial notice on Mr Bountra on 01 February 2017, pursuant to section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act'). This claimed the freehold of the Property and the applicant was named as the nominee purchaser.
3. The initial notice proposed the following purchase prices:
 - (a) £61,228 for the freehold interest in the specified premises, being the house;
 - (b) £100 for the additional freehold specified in paragraph 2 of the notice, being the surrounding land; and
 - (c) £18,396 for the second respondent's leasehold interest in the Property.
4. The initial notice was accompanied by three plans; Plan 1 showed the Property, with the specified premises shaded red and the surrounding land shaded green. Plans 2 and 3 showed other parts of the Estate with "*the accessways*" shaded yellow and "*the parking area*" shaded orange on Plan 2 and "*the garden area*" shaded brown on Plan 3.
5. Section 3 of the initial notice proposed various rights under section 13(3)(a)(iii) of the Act, including:

"4. The right to go pass and repass at all times and for all purposes with or without vehicles over and along the accessways shown shaded yellow on Plan 2

5. *The right to park private motor vehicles (including motor bikes) in the parking area shown shaded orange on Plan 2*

6. *The right to use the garden area shown shaded brown on Plan 3”*

6. On 18 April 2017 the respondents served a counter-notice, admitting the enfranchisement claim but disputing the various proposals in the initial notice. In relation to the prices, they counter-proposed £200,000 for the freehold (which was not apportioned) and £30,000 for the second respondent’s leasehold interest.

7. In relation to the rights, the respondents made the following counter-proposals:

“(iii) The participating tenants have no right to pass and repass at all times and for all purposes with or without vehicles over and along the access way shown shaded yellow on plan 2 as per number 4 of section 3 – rights to be acquired.

(iv) The participating tenants do not have any right to park private motor vehicles (including motorbikes) in any alleged parking area shown shaded orange on plan 2 within the initial notice and no such rights will be granted.”

8. No counter-proposal was made in relation to the proposed right to use the garden area referred to in the initial notice.

The Tribunal application and directions

9. The Tribunal received an application under section 24(1) of the Act, on 21 September 2017. This sought a determination of the price of the specified premises, the additional freehold and the second respondent’s leasehold interest, as well as determinations of the rights to be granted to the applicant and the terms of the conveyance.

10. Directions were issued on 09 October 2017. Following completion of listing questionnaires, the application was listed for hearing on 06 and 07 February 2018. The parties were notified of the hearing dates in letters dated 08 December 2017.

11. Paragraphs 2-4 of the directions dealt with the terms of the Transer and required Mr Bountra to submit a draft by 23 October 2017, which the applicant was to return by 06 November with any amendments in red. Mr Bountra was then to provide the applicant with a list of disputed terms by 13 November.

12. Paragraph 11 dealt with the hearing bundles, the contents of which were to be agreed by the parties. The applicant was responsible for the preparation of the bundles and was to send copies to the respondents and the Tribunal at least one week before the hearing dates.

13. Paragraph 12 provided:

“Each party having been given the opportunity to make representations as to the hearing date it will be postponed only in exceptional circumstances. Any request for a postponement must be made either at a postponement hearing or at the start of the first day that the case is listed for hearing in accordance with the tribunal’s guidance.”

14. The relevant legal provisions are set out in the Appendix to this decision. The relevant lease provisions are referred to below.

The leases

15. The headlease of the Property was granted by Mr Bountra to Bayhurst Securities Limited (‘Bayhurst’) on 09 July 2013, for a term of 999 years from 25 March 2007

16. At paragraph 4 of the particulars, the Demised Premises are described as *“Putney Park House Pleasance Road London SW15 5HJ as shown edged red on the Plan”*. At paragraph 5 the Estate is described as *“Putney Park House and grounds as edged green on the Pla”*

17. The definitions are to be found at clause 1 and include:

“the Accessways” means the private roads footpaths and access areas forming part of the Estate and any footpaths and access areas substituted therefore

“the Common Parts” the Estate other than the Properties, the Demised Premises and the Saleable Units

“the Estate” means the Estate specified in paragraph 5 of the Particulars and more particularly described in the First Schedule hereto

“the Lessee’s Proportion” means the proportion specified in Paragraph 9 of the Particulars and as varied by the Lessor (acting reasonably) from time to time payable by the Lessee in

accordance with the provisions of the Seventh Schedule hereto

“the Estate Expenses” means the costs incurred in carrying out the Lessor’s obligations contained in the Fifth Schedule as are applicable hereto”

18. The demise is at clause 2 and includes *“the rights set out in the Third Schedule hereto to the exclusion of any implied rights pursuant to Section 62 of the Law of Property Act 1925”* and an obligation for the Lessee to pay *“on demand by way of further or additional rent the Lessee’s Proportion of the Estate Expenses”*.

19. The rights granted by the headlease are set out in the third schedule and include:

“5. The right for the Lessee and the tenants or occupiers of the Demised Premises and his or their employees or visitors (in common with the Lessor and all other persons similarly entitled) to go pass and repass at all times and for all purposes with or without vehicles (as appropriate) over and along the Accessways (to the extent that such Access Ways are designed for the movement of traffic)”

20. The services to be provided by the Lessor are detailed in the fifth schedule and include:

“2. Keeping the landscaped areas of the Estate including the water feature roads accessways and open parking spaces in good repair and clean and tidy and clearing snow from the same when and where necessary PROVIDED THAT there shall be no liability upon the Transferor to carry out such snow clearance unless requested by not less than 75% (or thereabouts) of the persons entitled to the use of the said area”

21. The Lessee’s covenants are at part I of the seventh schedule and include:

“2. To comply with all terms and conditions subject to which planning consent has been or may within the perpetuity period be granted insofar as they affect the Demised Premises (save in respect of the original construction thereof)

...

14. *Not to sub let the Demised Premises or any part of it without such sub lease containing covenants on the part of the tenant*

similar to and consistent with the terms of this Lease and in a form which the Landlord shall approve (such approval not to be unreasonably withheld or delayed)”

22. Part II of the seventh sets out various obligations and restrictions to be observed by the Lessee, who is not to:

“1. Use the Demised Premises other than for the Permitted Used and not to create a nuisance nor carry on or upon the same any business or trade nor use the same for any illegal or immoral purpose and not park or allow to be parked any vehicle other than a private motor vehicle on any part of the Estate or in any other parking space outside the Demised Premises

...

7. Permit any vehicle of any description or any articles to obstruct any part or parts of the Estate

8. Park at any time on the Demised Premises or the Estate any boat lorry commercial vehicle of any description trailer caravan house on wheels or other chattel”

23. The 11 flat leases are all underleases and were granted on various dates between 26 October 2010 and 19 December 2012. A sample underlease for Flat 1 was included in the hearing bundle. This was granted by Bayhurst to Mark Alexander Langfield and Winifreed Poon on 16 March 2012 for a term of 250 years, from and including 01 January 2010. The Tribunal assumes that all underleases are in substantially the same form but notes there are shorter terms, of 125 years for Flats 6 and 10.

24. The definitions are at clause 1 and include:

“1.1 “the Accessway” the vehicular accessways within the Estate and serving the Development

1.5 “the External Common Parts” the walkways footpaths landscaped areas entrance gates boundary walls and fences of the Estate required for access to the Development and the Service Media (but excluding any within and exclusively serving any Flat) communal television aerial cable television and such other areas and facilities which may from time to time be provided for the common use

and enjoyment of the occupiers of the Development and their visitors but excluding (for the avoidance of doubt) the Accessway and the Estate (if any)

1.7 "the Development"

the Lessor's estate at Putney Park House on which the Building is constructed and is currently comprised in Title Number TGL315437 (the extent of which may be varied from time to time by the Lessor)

1.26 "the Superior Lease"

the Lease by virtue of which the Lessor holds the Development which is dated 9th July 2008 and made between Ravindra Bountra (1) and the Landlord (2)

1.28 "the Estate"

the Estate as defined in the Superior Lease"

25. The demise is at clause 4, which includes the following passage "*the Lessor with full title guarantee (subject to the proviso below) HEREBY DEMISES unto the Lessee ALL THAT the Property TOGETHER WITH (to the exclusion of all other easements rights and privileges) the easements rights and privileges set out the Second Schedule*".

26. The relevant sections of the second schedule are are:

"So far as the Landlord can grant the same these rights for the Lessee and all persons authorised by the Lessee in common with the Lessor and all other persons who have or may during the Perpetuity Period have hereafter the like rights:-

1. *At all times and for all usual and reasonable purposes (and subject to any regulations made by the Lessor) to use:-*

(a) with or without motor and other vehicles the Accessway

(b) on foot only the Internal Common Parts and

(c) on foot only the External Common Parts

for the purpose for which they are intended PROVIDE ALWAYS that nothing therein shall prevent the reasonable use of perambulators or wheelchairs when required to be used

...

5. *To use for the purpose of recreation (but subject to any regulations made by the Lessor) the External Common Parts so far as the same are laid out for and are capable of being put to such use”*

The hearing

27. The hearing took place on 06 February 2018 and commenced at approximately 10.15am. The applicant was represented by Ms Gibbons, who was accompanied by her instructing solicitor. Mr Bountra attended and was represented by Mr Pritchett, who was accompanied by his instructing solicitor. The second respondent did not appear and was not represented, as it had agreed settlement terms with the applicant.
28. The Tribunal was supplied with a hearing bundle that contained copies of the application, directions, initial notice, counter-notice, various title documents, the Transfer, the agreed transfer deed for the headlease and other relevant correspondence and documents. The bundle did not include any valuation evidence but there was a summary of issues in dispute, which were stated to be:

“1.-The terms of the transfer from the First Respondent to the Applicant and, in particular:-

(a) The rights to be granted to the Applicant;

(b) Whether the transfer to the Applicant ought to contain any restrictions on the Applicant or covenants or rights in favour of the First Respondent, particularly given that the First Respondent failed to specify any such conditions in his counter-notice and, if yes, what those ought to be; and

(c) Whether there ought to be a restriction entered on the register of the Property at HM Land Registry in the First Respondent’s favour.

2.- The premium payable to the First Respondent has been agreed, although it is noted that the First Respondent has only instructed their valuer to negotiate on the basis that no parking rights were

included. If parking rights are awarded, then the parties have agreed that the agreed premium could be affected.”

29. Immediately before the hearing the Tribunal was supplied with helpful skeleton arguments from Ms Gibbons and Mr Pritchett. Ms Gibbons' skeleton explained that the premium had been agreed at £63,751.49, subject to determination of the disputed transfer terms.
30. At the start of the hearing, Mr Pritchett made an application to postpone the hearing. The grounds of the application were:
 - (a) the hearing bundle had not been produced in the timescale stipulated in the directions and Mr Pritchett had only received his copy the previous day;
 - (b) the copy of the Transfer in the bundle was unclear and it was difficult to make out each party's position on the disputed clauses;
 - (c) It was unclear whether the summary of issues was agreed; and
 - (d) Mr Bountra's aspirations for the Transfer were not matched by the wording of the counter-notice.
31. Mr Pritchett primarily relied on ground (d). His client was seeking to reserve various rights in the Transfer and include a number of restrictive covenants. However, these had not been included in the counter-notice. Mr Pritchett had only recently been instructed and pointed out the omissions to his instructing solicitors, after reading his brief. The brief was delivered on 18 January 2018 and he raised the issue on Tuesday 31 January. His instructing solicitors had then notified their professional indemnity insurers and a letter had been delivered to Mr Bountra on Friday 03 February, notifying him of the problem.
32. Mr Pritchett submitted that a postponement was necessary to give his client an opportunity to seek independent legal advice on the omissions in the counter-notice, which might give rise to a negligence claim. He accepted there was no mechanism to amend the counter-notice and his client was restricted by the counter-proposals in that document. This meant there was no basis for reserving rights or including restrictive covenants in the Transfer.
33. Mr Pritchett explained that his client was willing to engage in settlement discussions. However, his instructing solicitor was reluctant to get involved as any advice could be tainted by the prospect of a potential negligence claim. If the postponement was refused then the solicitor might have to stand down, due to the potential conflict of

interests. If so, Mr Pritchett would have to withdraw as he is not qualified to accept direct access instructions. This would leave Mr Bountra to continue the case as a litigant in person, putting him at a considerable disadvantage.

34. Ms Gibbons opposed the postponement application, which she had only learned of that morning. She submitted that both parties were responsible for the delayed production of the bundles and no prejudice had been identified by Mr Pritchett. She also submitted that the Transfer was a workable document and the issues were clear.
35. Ms Gibbons pointed out that Mr Pritchett's duty was to his client, rather than his instructing solicitor. This meant he could continue with the hearing if the postponement was refused. The spectre of a negligence claim and the involvement of insurers should not prevent the hearing from going ahead. Any prejudice to Mr Bountra would be limited. He could not amend the counter-notice to include the rights and restrictive covenants he was now seeking if a postponement was granted. Further, these are not provisions you would normally expect to see in a transfer deed.
36. Ms Gibbons also referred to the significant additional costs that her client would incur if the hearing was postponed, which might not be recoverable. She and her client were ready to proceed and their valuation surveyor was available, if expert evidence was required.
37. In response, Mr Pritchett pointed out there was no witness evidence regarding the extent of the disputed rights. He also pointed out that the agreement on the freehold price was conditional on there being no parking rights. No alternative figure had been agreed, if parking rights are to be granted and this would require the involvement of the valuation surveyors. These factors reinforced the need for a postponement. If this was refused then his client would be forced to fight the case with solicitors that he no longer wished to instruct.
38. After a short adjournment, the Tribunal refused Mr Pritchett's application. It informed the parties that hearing would proceed and would give its reasons for the refusal in its written decision. In brief, the reasons are:
 - (a) The late production of the bundles did not cause any prejudice, as the parties were already familiar with the documents in the bundles.
 - (b) The copy Transfer in the bundle was a workable document and it was clear what the issues were. The Tribunal could determine the disputed terms as a preliminary issue and deal with valuation issues at a further hearing, if necessary.

- (c) The hearing dates had been fixed back in x and the omissions in the counter-notice should have been identified long before the hearing.
 - (d) The postponement application was made very late in the day and could and should have been made earlier. At the very latest, it should have been made shortly after the brief was delivered on 18 January 2018. Further, Mr Bountra's solicitors should have notified the applicant's solicitors of the potential conflict of interest, as soon as it became apparent.
 - (e) A postponement would result in substantial additional costs for both parties and would be a waste of the Tribunal's limited resources.
 - (f) If the postponement was granted then the applicant would be prejudiced. It was ready to proceed and had incurred the cost of legal representation at the hearing that it might be unable to recover. If the postponement was refused then there would be little prejudice to Mr Bountra, for the reasons identified by Ms Gibbons.
 - (g) Mr Pritchett did not refer to any professional conduct rule that would him from continuing to represent Mr Bountra, if the hearing went ahead. His client was present and could give instructions. The solicitor's involvement could be limited to sitting in at the hearing and any meetings and taking a note.
 - (h) The directions made it clear that a postponement would only be granted in exceptional circumstances. The grounds relied upon by Mr Pritchett did not fall into that category.
39. The Tribunal then granted a short adjournment to give the parties an opportunity to reflect on the postponement decision and discuss the issues. Mr Pritchett subsequently informed the Tribunal that he could continue to represent his client. Further adjournments were granted for settlement discussions and the parties narrowed the issues in dispute. However, they were unable to agree final terms and the Tribunal then proceeded to hear the outstanding issues.
40. The hearing of the disputed Transfer terms lasted from approximately 2.30 to 4.15pm. The Tribunal subsequently wrote to the applicant's solicitors on 01 March 2018, requesting written representations on the effect of paragraphs 3 and 4 of schedule 7 to the 1993 Act. This had been specifically addressed by Mr Pritchett in his skeleton argument and oral submissions. Ms Gibbons provided written representations dated 07 March 2018, which expanded on brief oral submissions she had made on the morning of the hearing.

The issues

41. The Tribunal is asked to determine the disputed clauses in the Transfer, a copy of which is appended to this decision. This turns on the relevant provisions in the Act and the terms of the headlease and underleases.
42. Both counsel made helpful concessions during the hearing. Mr Pritchett acknowledged that clauses 12.7.1, 12.7.2, 12.8, 12.8.1-12.8.11 inclusive, 12.9.4, 12.9.5 and 13 should be deleted. Ms Gibbons conceded that clause 12.5 should remain.
43. The remaining issues involve the rights to be granted for the benefit of the Property. Some of these were agreed in principle and require no determination, namely clauses 12.6.1 and 12.6.2. The clauses to be determined by the Tribunal are:

“12.6

(a) At all times and for all usual and reasonable purposes to use:-

with or without motor vehicles the Accessway

on foot only the External Common Parts for the purposes for which they are intended PROVIDED ALWAYS that nothing shall prevent the reasonable use of perambulators or wheelchairs' when required

...

(f) The right to park private motor vehicles (including motor cycles) in the parking area shown shaded orange on Plan 2

(g) The right to use for the purpose of recreation the External Common Parts so far as the same are laid out for and are capable of being put to such use.

...

12.6.4 The right for the Transferee and the tenants and occupiers of the Property and their employees or visitors (in common with the Transferor and all other persons similar entitled) to go pass and repass at all times and * all purposes with or without vehicles (as appropriate) over and along the Accessways* (to the extent that such Accessways* are designed for the movement of traffic)”*

44. Mr Pritchett sought the substitution of clause 12.6.4 for 12.6 (a), (f) and (g). Ms Gibbons wanted (a), (f) and (g) to remain, in which case 12.6.4 could be deleted.

45. The Tribunal also has to determine the definition of the Accessway/s, at clause 12.1 of the Transfer. The Applicant's proposal is:

"the vehicular accessways within the Estate and serving the Property and shown shaded yellow and orange on the Plan"

46. This wording was agreed save that Mr Pritchett sought the deletion of the words "*and orange*", if the Tribunal disallowed 12.6 (f).
47. There was no witness evidence. Rather, Ms Gibbons and Mr Pritchett made oral submissions on the disputed issues. Having heard these submissions and considered all of the documents provided, including both skeleton arguments and Ms Gibbons' written representations, the Tribunal has made the determinations set out below.

Rights to be granted under the Act

48. Mr Pritchett referred the Tribunal to paragraphs 3 and 4 of the schedule 7 to the Act. He submitted that the rights proposed at 12.6 (f) and (g) of the draft transfer, being a right to park and a right to use the External Common Parts for the purposes of recreation, are not capable of being created under these paragraphs. They do not come within the limited categories of rights identified at paragraph 3(1)(a)-(d) and are not rights of way within paragraph 4.
49. There was no dispute that the rights proposed at 12.6 (a) or 12.6.4 are rights of way within paragraph 4.
50. Ms Gibbons conceded that paragraphs 3 and 4 were not applicable to the right to park (12.6 (f)). She did not explicitly concede the same point for 12.6 (g) but this was implicit from her submissions.
51. Ms Gibbons relied on section 1(4) of the Act. She acknowledged this was more commonly used by landlords, to avoid transferring the freehold of appurtenant or other property under section 1(3). However, there is nothing in section 1(4) to suggest it cannot be relied on by the Tenants to claim rights in lieu of the freehold of appurtenant/other property.
52. At the time the initial notice was served, the tenants had, at least the right "*to go pass and repass at all times and for all purposes with or without vehicles (as appropriate) over and along the Accessways (to the extent that such Access Ways sic. are designated for the movement of traffic)*". This is provided by paragraph 5 of the third schedule to the headlease. As a consequence, the Tenants had the right to acquire the freehold of "*the Accessways*", pursuant to section 1(2)(a), being property falling within section 1(3)(b). They did not claim this freehold in the initial notice, as they knew Mr Bountra wished to retain it with a

view to developing the Estate. Rather than go through the convoluted procedure of claiming the freehold and being offered rights in lieu, they simply claimed rights in the first instance.

53. Ms Gibbons did not explicitly deal with the right proposed at 12.6 (g) but the same principle applies.
54. Ms Gibbons pointed out that Mr Pritchett did not dispute the tenants' entitlement to claim rights under section 1(4). Rather, his challenge focused on paragraphs 3 and 4 of schedule 7.

The Tribunal's decision

55. The right proposed at 12.6 (f) and (g) of the draft transfer are capable of being granted under section 1(4) of the Act.

Reasons for the Tribunal's decision

56. The proposed rights do not fall within any of the categories at paragraph 3(1)(a)-(d) of schedule 7, nor are they rights of way within paragraph 4. However, they could be covered by section 1(4). This section is normally relied on by landlords wishing to retain appurtenant or other property on an enfranchisement claim but the wording of section 1 does not preclude it from being used by the Tenants.
57. There is a dispute over the extent of the Tenants' rights of way over the Accessways, which is dealt with later in this decision. At the very least, they had rights matching those at paragraph 5 of the third schedule to the headlease. This means they could have claimed the freehold of the Accessways within the initial notice, pursuant to section 1(3)(b). It is property they are entitled to use under the terms of their underleases.
58. There is nothing in section 1 that required the Tenants to claim the freehold of the Accessways, as a precondition to the grant of rights over this land. Rather they could proceed straight to claiming rights under section 1(4)(a). The initial notice did not explicitly state that rights were claimed under this section but this was not challenged in the counter-notice or by Mr Pritchett.
59. The same principle applies to the right proposed at 12.6(g), save there was a fundamental dispute whether the Tenants had any rights over the External Common Parts. If they do, then such rights are also caught by sections 1(3)(b) and 1(4)(a).
60. Any rights granted under section 1(4)(a) are to be "*such permanent rights as will ensure that thereafter the occupier of the flat referred 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". This is addressed in more detail at paragraphs 90 and 91 below.

The rights to be granted for the benefit of the Property

61. Not surprisingly, both counsel focused on the disputed right to park. Ms Gibbons took the Tribunal through the relevant provisions in the headlease and underleases. The underleases do not explicitly grant a right to park but the right of way at paragraph 1 of the second schedule is a right to "use". This entitles the grantee to stop, to load and unload and to use the way for all other purposes by which property adjoining a street would normally be accommodated, provided that such use does not interfere unreasonably with the use of that way by its owner or those equally entitled: ***Snell & Prideaux Ltd v Dutton Mirrors Ltd [1995] 1 EGLR 259***. The authors of ***Gale on Easements*** say that description includes parking, so long as the right does not obstruct the use of the right of way by others (paragraph 9-13).
62. The right of way permits the use of the Accessway "*with or without motor and other vehicles*". Separately, there is the right "*To use for the purpose of recreation...the External Common Parts so far as the same are laid out for and are capable of being put to such use*" at paragraph 5 of the second schedule.
63. Ms Gibbons relied on various photographs in the bundle, which show cars parked in the orange horseshoe area in Plan 2 appended to the Transfer. There are no marked parking bays but this area forms part of the Accessway and parking is permitted by paragraph 1 of the second schedule to the underleases. This area also forms part of the Common External Parts and can be used for the purposes of recreation under paragraph 5. Ms Gibbons submitted that such use would also extend to parking.
64. Ms Gibbons referred to the well-known summary of construction principles at 259F of ***BCCI v Ali [2002] 1 A.C. 251***, where Lord Bingham of Cornhill said

"To ascertain the intention of the parties the court reads the terms of the contract as a whole, giving the words their natural and ordinary meaning in the context of the agreement, the parties' relationship and all the relevant facts surrounding the transaction so far as known to the parties. The ascertain the parties' intentions the court does not of course inquire into the parties' subjective states of mind but makes an objective judgment based on the materials already identified."
65. When looking at the contract as a whole, one should also consider the terms of the headlease. Ms Gibbons relied on the right of way over the

Accessways at paragraph 5 of the third schedule and the definition of Accessways at clause 1. The orange horseshoe forms part of the Accessways.

66. Ms Gibbons also relied on the obligation to keep "*the open parking spaces in good repair and clean and tidy*" (paragraph 2 of fifth schedule) and the headlessee's covenants, obligations and restrictions in the seventh schedule. Paragraph 14 of part I and paragraphs 1, 7 and 8 of Part II all refer to parking. Further the lease-plan includes schematic drawings of parked cars in the orange horseshoe.
67. Ms Gibbons submitted that paragraphs 1, 7 and 8 would be otiose if there was no right to park. Further the headlessee has to contribute to cost of cleaning and repairing the parking spaces by virtue of clause 2. This would make no sense if it has no right to park in these spaces.
68. In terms of context, the headlease was granted shortly after planning permission was granted for the conversion of the house into flats and before the underleases were granted. The Land Registry entries for the headlease indicate that the first underlease was granted on 27 September 2010.
69. Ms Gibbons referred the Tribunal to the planning history, which should be taken into account when looking at the factual matrix when the headlease was granted.
70. The bundle contained copies of various planning documents, including two planning permissions dated 23 March 2005 and 23 May 2007, respectively. Ms Gibbons relied on paragraph 11 in both permissions, which imposed the following condition

"The parking area(s) shown on the approved plans shall be provided before the occupation of any part of the development and shall be retained for parking purposes for the users of the development and for no other purpose. To ensure adequate arrangements are made for off-street parking."
71. Ms Gibbons also relied on the Planning Application Committee minutes of 23 June 2006, which included a recommendation "*Parking is to be provided and retained.*" She also referred to the plan that accompanied these minutes, which is very similar to the head-lease plan and also showed cars parked in the orange horseshoe.
72. Ms Gibbons acknowledged that the planning documents did not alter the terms of the headlease but suggested they lent support to there being a right to park. If there is no right to park then the headlessee has a right to drive all over the gravel driveway, being the areas

coloured yellow and orange on Plan 2, as there is nothing else this land could be used for.

73. As to the right proposed at 12.6 (g) of the Transfer, Ms Gibbons relied on the express right at paragraph 5 of the second schedule to the underleases but accepted there was no corresponding right in the third schedule to the headlease.
74. Mr Pritchett acknowledged the principles of construction summarised in *BCCI* but said the primary resource was the express words used in the leases, which should be given their natural and ordinary meaning and cannot be altered by inference. In relation to the underleases, the definition of “Accessway” suggested that vehicles could use these areas for access. However, there was no reference to parking spaces in this definition and no reference to a right to park anywhere in the document.
75. Clause 4 makes it clear that the rights granted by the underlease are limited to those in the second schedule. Paragraph 1 granted rights to “use” the Accessway, Internal Common Parts and External Common Parts but made no mention of parking. Nor did the other paragraphs in this schedule. The draftsman could easily have included a right to park, had this been the parties’ intention.
76. Mr Pritchett relied on the opening words “*So far as the Landlord can grant the same*” in the second schedule to the underleases. The headlessee could only grant rights it enjoyed under the headlease. Further the right at paragraph 1 is qualified by the words “*for the purpose for which they are intended*”. Mr Pritchett submitted that there was nothing in the underleases to suggest that the Accessway was intended for parking use.
77. Mr Pritchett then analysed the rights the headlessee could grant, by reference to the headlease. The “Accessways” were not defined with reference to the lease plan and there was no yellow or orange shading on the plan. The headlessee’s right over the Accessways (paragraph 5 of third schedule) is “*to go pass and repass*”, which are words of movement. This is a right of passage and is limited to those parts “*designed for the movement of traffic*”, which would exclude any areas allocated to parking. A right to park on the Accessways would be inconsistent with the right of passage, as the two are mutually exclusive
78. Mr Pritchett acknowledged that the right of passage probably includes an implied right to stop and unload for short periods, based on the decision in *Bulstrode v Lambert* [1953] 1 W.L.R. 1064. However, this does not extend to a right to park. It was impossible for Bayhurst to grant a right to park in the underleases because it had no such right in the headlease. Insofar as the rights in the underleases differ from

those in the headlease, the headlease must take precedence and this is explicitly contemplated the opening words of the second schedule.

79. In relation to seventh schedule to the headlease, Mr Pritchett submitted that negative obligations on the part of the headlessee could not be extrapolated into a positive grant of a right to park. This was inconsistent with the absence of any express right to park and the exclusion of section 62 of the Law of Property Act 1925.
80. Mr Pritchett rejected the suggestion that paragraphs 1, 7 and 8 of seventh schedule would be otiose, if there was no right to park. These impose restrictions on certain types of parking but are not permissive and there could be other reasons for the restrictions. For example, the parties might have intended that parking spaces would be let to Bayhurst on separate terms, once the development was completed. If so, these restrictions would apply to the use of those spaces. Mr Pritchett said the Tribunal should not look for contra indications when the headlease was clear.
81. In response to a query from the Tribunal, Mr Pritchett submitted that paragraph 2 of part I of the seventh schedule was a covenant of indemnity. This required the headlessee to comply with the conditions on the planning permissions but does not give rise to a right to park. Condition 11 in the permissions can be complied with in other ways. Again, the second respondent could let the parking spaces on separate terms.
82. Turning now to 12.6(g) of the Transfer, Mr Pritchett's starting point was that no such right was sought in the initial notice. The rights in the Transfer should be limited to the rights granted in the headlease and there is nothing which goes anywhere near the right sought. Paragraph 5 of the second schedule to the underleases contain a right that mirrors 12.6(g) but this is subject to the opening words referred to at paragraph 76. The headlessee could only grant rights that it enjoyed, which did not include a right to use the External Common Parts.
83. Mr Pritchett invited the Tribunal to delete 12.6(a), (f) and (g) of the Transfer and to replace them with 12.6.4.

The Tribunal's decision

84. The Tribunal makes the following determinations on the disputed Transfer terms:
 - (a) The first definition at clause 12.1 shall read:

“Accessways: “the vehicular accessways within the Estate and serving the Property and shown shaded yellow and orange on Plan 2”

- (b) The definition of “*External Common Parts*” at 12.1 is deleted.
- (c) 12.6 (a), (f) and (g) is deleted and replaced with the following clause:

“12.6.4 The right for the Transferee and the tenants and occupiers of the Property and their employees or visitors (in common with the Transferor and all other persons similar entitled) to go pass and repass at all times and for all purposes with or without vehicles (as appropriate) over and along the Accessways (to the extent that such Accessways are designed for the movement of traffic)”*

Reasons for the Tribunal’s decision

- 85. Unfortunately there are inconsistencies between the headlease and the underleases. The form of the underleases should have been approved by Mr Bountra, pursuant to paragraph 14 of part I of the seventh schedule to the headlease. During the hearing he said that no approval had been sought but there was no formal evidence on this point.
- 86. The Tribunal agrees with Mr Pritchett that the rights in the headlease should prevail. Bayfield could only grant rights that it enjoyed under the headlease, at the time the underleases were granted. This is a matter of simple contract law and is made explicit in the opening words of the second schedule to the underleases.
- 87. The rights enjoyed by Bayfield were clearly set out in the third schedule of the headlease and do not include an express right to park. The restrictions at paragraphs 1, 7 and 8 of part II of the seventh schedule would lend some support for an implied right to park if the rights were unclear. The same is true of the plans and condition 11 on the planning permissions. However, the wording in the third schedule is clear. There is no need to look elsewhere to construe the rights in this schedule.
- 88. Paragraph 5 gave Bayfield had a right “*to go pass and repass...over and along the Accessways*”. This is a right to pass and repass only and does not extend to parking. As stated at paragraph 9-129 of **Gale** “*The grant of a right to pass and repass” does not per se include a right to park, neither does a “right of access” nor does a “right of carriageway”.*” In **Moncrieff v Johnson [2007] UKHL 42**, which involved a property at the bottom of a steep escarpment that was bounded by the sea, a right to park was a necessary incident to a right

of access. However, the facts were described by the House of Lords as “quite exceptional” and are very different from the present case.

89. The headlease could have included an express right to park but did not. It could have granted Bayfield a right to “use” the Accessways, which might extend to parking but did not. Bayfield had no right to park when the underleases were granted and was in no position to grant such a right to the Tenants. Rather the only right it could grant was that at paragraph 5 of the third schedule of the headlease, which is the wording used at clause 12.6.4.
90. 12.6 (f) is disallowed as the Tenants did not enjoy a right to park on the date the initial notice was given. This means the applicant is not entitled to a permanent right to park, pursuant to section 1(4)(a) of the Act and this clause must be deleted.
91. 12.6(g) is disallowed for the same reason. There is no right to use the External Common Parts in the headlease, whether for recreation or otherwise. The Tenants did not enjoy such a right when they gave the initial notice and the applicant is not entitled to this permanent right under section 1(4)(a). This means that 12.(g) and the definition of External Common Parts must also be deleted. There is another reason for disallowing 12.6 (g). The wording is different to that proposed in the initial notice, namely “*The right to use the garden area shown shaded brown on Plan 3*”. The applicant is limited to the rights proposed in the initial notice and cannot seek alternative rights now.
92. The Tenants had a right to “*go pass and repass...over and along the Accessways*” when the initial notice was given. The applicant is entitled to a right of way over and along the Accessways, pursuant to paragraph 4 of the seventh schedule to the headlease and this is provided for at 12.6.4. The only remaining issue is the extent of the Accessways. The Tribunal has used the plural, rather than the singular to correspond with the wording in the headlease. The Accessways include the orange horseshoe on Plan 2, as well as the yellow area, as this forms part of the private roads and access areas at the Estate. The Tenants have rights of way over the yellow and orange areas, so both should be included in the definition.

Name: Tribunal Judge Donegan **Date:** 31 March 2017

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 1 The right to collective enfranchisement

(1) This chapter has effect for the purpose of conferring on qualifying tenants of flats contained in premises to which this Chapter applies on the relevant date the right, exercisable subject to and in accordance with this Chapter, to have the freehold of those premises acquired on their behalf -

- (a) by a person or persons appointed by them for the purpose, and
- (b) at a price determined in accordance with this Chapter;

and that right is referred to in this Chapter as “the right to collective enfranchisement”.

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

- a) the qualifying tenants by whom the rights 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); and
- (b) section 2 has effect with respect to the acquisition of leasehold interests to which paragraph (a) or (b) of subsection (1) of that section applies.

(3) Subsection (2)(a) applies to any property if at the relevant date either –

- (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 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).

(4) The right of acquisition in respect of the freehold of any of such property as is mentioned in subsection (3)(b) shall, however, be taken to be satisfied with respect to that property, if on the acquisition of the relevant premises in pursuance of this Chapter, either –

- (a) there are granted by the person who owns the freehold of that property –
 - (i) over that property, or
 - (ii) over any other property,

such permanent rights as will ensure that thereafter the occupier of the flat referred to in that provision has as nearly 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; or

- (b) there is acquired from the person who owns the freehold of that property the freehold of any other property over which any such permanent rights may be granted.

(5) A claim by qualifying tenants to exercise the right to collective enfranchisement may be made in relation to any premises to which this Chapter applies despite the fact that those premises are less extensive than the entirety of the premises in relation to which those tenants are entitled to exercise that right.

...

Section 13 Notice by qualifying tenants of claim to exercise right

(1) A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving notice of the claim under this section.

(2) A notice given under this section ("the initial notice") –

(a) must

- (i) in a case to which subsection 9(2) applies, be given to the reversioner in respect of those premises; and
- (ii) in a case to which section 9(2A) applies, be given to the person specified in the notice as the recipient; and

(b) must be given by a number of qualifying tenants of flats contained in the premises as at the relevant date which –

- (i) ...
- (ii) is not less than one-half of the total number of flats so contained;

...

(3) The initial notice must -

(a) specify and be accompanied by a plan showing –

- (i) the premises of which the freehold is proposed to be acquired by virtue of section 1(1),
- (ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and
- (iii) any property over which it is proposed that rights (specified in the notice) should be granted in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a)

...

Section 21 Reversioner's counter-notice

(1) The reversioner in respect of the specified premises shall give a counter-notice under this section to the nominee purchaser by the date specified in the initial notice in pursuance of section 13(3)(g).

(2) The counter-notice must comply with one of the following requirements, namely –

- (a) state that the reversioner admits that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises;
- (b) state that, for such reasons as are specified in the counter-notice, the reversioner does not admit that the participating tenants were so entitled;
- (c) contain such a statement as is mentioned in paragraph (a) or (b) above but state that an application for an order under subsection (1) of section 23 is to be made by such an appropriate landlord (within the meaning of that section) as is specified in the counter-notice, on the grounds that he intends to redevelop the whole or a substantial part of the specified premises.

(3) If the counter-notice complies with the requirement set out in subsection (2)(a), it must in addition

- (a) state which (if any) of the proposals contained in the initial notice are accepted by the reversioner and which (if any) of those proposals are not so accepted, and specify –
 - (i) in relation to any proposal which is not so accepted, the reversioner's counter-proposal, and
 - (ii) any additional leaseback proposals by the reversioner;
- (b) if (in a case where any property specified in the initial notice under section 13(3)(a)(ii) is property falling within section 1(3)(b) any such counter-proposal relates to the grant of right or the disposal of any freehold interest in pursuance of section 1(4), specify –
 - (i) the nature of those rights and the property over which it is proposed to grant them, or
 - (ii) the property in respect of which it is proposed to dispose of any such interest, as the case may be;
- (c) state which interests (if any) the nominee purchaser is required to acquire in accordance with subsection (4) below;
- (d) state which rights (if any) any relevant landlord desires to retain–
 - (i) over any property in which he has any interest which is included in the proposed acquisition by the nominee purchaser, or

- (ii) over which any property in which he has any interest which the nominee purchase is to be required to acquire in accordance with subsection (4) below,

on the grounds that the rights are necessary for the proper management or maintenance of property in which he is to retain a freehold or leasehold interest; and

- (e) include a description of any provision which the reversioner or any other relevant landlord considers should be included in any conveyance to the nominee purchaser in accordance with section 34 and Schedule 7.

...

Section 24 Applications where terms in dispute or failure to enter contract

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser -

- (a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or
- (b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period two months beginning with the date on which the counter-notice or further counter-notice was so given, the appropriate tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser

...

Section 34 Conveyance to nominee purchaser

...

(9) Except to the extent that any departure is agreed by the nominee purchaser and the person whose interest is to be conveyed, any conveyance executed for the purposes of this Chapter shall -

- (a) as respects the conveyance of any freehold interest, conform with the provisions of Schedule 7, and
- (b) as respects the conveyance of any leasehold interest, conform with the provisions of that Schedule (any reference in that paragraph to the freeholder being read as a reference to the person whose leasehold interest is to be conveyed, and with reference to the covenants for title implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 being read

as excluding the covenant in section 4(1)(b) of that Act (compliance with terms of lease).

SCHEDULE 7

CONVEYANCE TO NOMINEE PURCHASER ON ENFRANCHISEMENT

...

Rights of support, passage of water etc

3 (1) This paragraph applies to rights of any of the following description, namely –

- (a) rights of support for a building or part of a building;
- (b) rights to the access of light and air to a building or part of a building;
- (c) rights to the passage of water or of gas or other piped fuel, or to the drainage or disposal of water, sewage, smoke or fumes, or to the use or maintenance of pipes or other installations for such passage, drainage or disposal.
- (d) rights to the use or maintenance of cables or other installations for the supply of electricity, for the telephone or for the receipt directly or by landline or visual or other wireless transmissions;

and the provisions required to be included in the conveyance by virtue of subparagraph (2) are accordingly provisions relating to any such rights.

(2) The conveyance shall include provisions having the effect of –

- (a) granting with the relevant premises (so far as the freeholder is capable of granting them) –
 - (i) all such easements and rights over other property as are necessary to secure as nearly as may be for the benefit of the relevant premises the same rights as exist for the benefit of those premises immediately before the appropriate time; and
 - (ii) such further easements and rights (if any) as are necessary for the reasonable enjoyment of the relevant premises; and
- (b) making the relevant premises subject to the following easements and rights (so far as they capable of existing in law), namely –
 - (i) all easements and rights for the benefit of other property to which the relevant premises are subject immediately before the appropriate time; and
 - (ii) such further easements and rights (if any) as are necessary for the reasonable enjoyment of other property, being property in which the freeholder has an interest at the relevant date.

Rights of way

4 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 rights 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.

...

HM Land Registry
Transfer of part of registered title(s)

TP1

Any parts of the form that are not typed should be completed in black ink and in block capitals.

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

Remember to date this deed with the day of completion, but not before it has been signed and witnessed.

1	Title number(s) out of which the property is transferred: TGL109752
2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any: TGL254516
3	Property: Putney Park House, 69 Pleasance Road, London SW15 5HJ The property is identified <input checked="" type="checkbox"/> on the attached plan marked Plan 1 and shown edged red: <input type="checkbox"/> on the title plan(s) of the above titles and shown: And being part of the land registered under title number TGL109752
4	Date:

Give full name(s) of all the persons transferring the property.

Complete as appropriate where the transferor is a company.

Give full name(s) of all the persons to be shown as registered proprietors.

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with HM Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

5	<p>Transferor:</p> <p>Ravindra Bountra</p> <p><u>For UK incorporated companies/LLPs</u></p> <p>Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u></p> <p>(a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
6	<p>Transferee for entry in the register:</p> <p>Putney Park House Limited</p> <p><u>For UK incorporated companies/LLPs</u></p> <p>Registered number of company or limited liability partnership including any prefix: 10458178</p> <p><u>For overseas companies</u></p> <p>(a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
7	<p>Transferee's intended address(es) for service for entry in the register:</p> <p>C/O Sykes Anderson Perry Limited, 5th Floor, Salisbury House, London Wall, London, United Kingdom EC2M 5QQ</p> <p>And</p> <p>Flat 2, Putney Park House, 69 Pleasance Road, London SW15 5HJ</p>
8	<p>The transferor transfers the property to the transferee</p>

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.

9 Consideration

The transferor has received from the transferee for the property the following sum (in words and figures):

£ [TBA] ([] thousand pounds).

The transfer is not for money or anything that has a monetary value

Insert other receipt as appropriate:

Place 'X' in any box that applies.

Add any modifications.

10 The transferor transfers with

full title guarantee

limited title guarantee

The covenants implied under the Law of Property (Miscellaneous Provisions) Act 1994 are modified so that:

(a) the covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to costs arising from the Transferee's failure to:

i) make proper searches; or

ii) raise requisitions on title or on the results of the Transferee's searches; and

(b) the covenant set out in section 3 of the Law of Property (Miscellaneous Provisions) Act 1994 will extend only to charges or incumbrances created by the Transferor.

Where the transferee is more than one person, place 'X' in the appropriate box.

11 Declaration of trust. The transferee is more than one person and

they are to hold the property on trust for themselves as joint tenants

they are to hold the property on trust for themselves as

tenants in common in equal shares

they are to hold the property on trust:

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
 - in the first box, or
 - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, or
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to *Joint property ownership* and practice guide 23: *private trusts of land* for further guidance. These are both available on the GOV.UK website.

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

12. Additional provisions

12.1 The following definitions apply in this transfer.

Accessway: the vehicular access ways within the Estate and serving the Property and shown shaded yellow and orange on Plan 2 the private road footpaths and access areas forming part of the Estate and any footpaths and access ways substituted herefor;

Common Parts: the walkways footpaths landscaped areas of the Estate required for access to the Property and the Service Media (but excluding any within and exclusively serving the Property) and such other areas and facilities which may from time to time be provided for the common use and enjoyment of the occupiers of the Property and their visitors;

Estate: the land and premises known as Putney Park House other than the Property comprised in the Transferor's titles and shown edged blue on Plan 2a3 is registered under title TGL108752;

Estate Regulations: any rule or regulation made by the Transferor from time to time for the benefit and (general) convenience of occupiers of the Estate and the use and

enjoyment of the Estate)

External Common Parts: the walkways, footpaths, landscaped areas, entrance gates, boundary walls and fences of the Estate required for access to the Property and the Service Media (but excluding any within and exclusively serving the Property) and such other areas and facilities which may from time to time be provided for the common use and enjoyment of the occupants of the Property and their visitors but excluding (for the avoidance of doubt) the Accessway and the Estate)

Lease: means the lease dated 9 July 2008 and made between the Transferor (1) and Bayhurst Securities Limited (2) for the term of 999 years from 25 March 2007 and as is registered under title number TGL315437

Plan 1 means the plan numbered 'Plan 1' attached to this transfer

Plan 2 means the plan numbered 'Plan 2' attached to this transfer)

Property: has the meaning as described in Panel 3 above

Retained Land: the land edged in blue on the Title Plan of Title No. TGL 109752 attached)

Service Media: installation the eaves, eppits, sewers, drains, channels, pipes, channels, passage ways, watercourses, gutters, mains, wires, cables, pillars, towers, poles, soakways and any other apparatus (whether underground or overhead), for the supply of water, electricity, gas, telephone and television signals and other services or for the disposal of foul and surface or rain water which serve the Property)

12.2 This Transfer is executed for the purposes of Chapter I of Part I of the Leasehold Reform, Housing and Urban Development Act 1993

12.3 The disposition effected by this transfer is subject to but with the benefit of as the case may be but only insofar as they relate to the Property :

(a) any matters contained or referred to in the entries or records made in registers maintained by Land Registry under title number TGL 109752 as at [date] 27 February 2017 timeed at 9.47.47, other than financial charges and also excluding entry number 4 in the Schedule of Personal Covenants and entries numbered 6, 10, 14 and 15 in the Charges Register)

(b) any matters discoverable by inspection of the Property;

(c) any matters which the Transferor does not and could not reasonably know about;

(d) any matters, other than the financial charges, disclosed or which would have been disclosed by the searches and enquiries which a prudent buyer would have made before entering into a contract for the purchase of the Property;

(e) any notice, order or proposal given or made by a body acting on statutory authority;

(f) any matters which are unregistered interests which override first registration under Schedule 1 to the Land Registration Act 2002;

(g) the Lease and all rights granted by and obligations on the part of the Transferor as lessor contained in it but only insofar as the Lease relates to the Property.

12.4 All matters recorded at the date of this transfer in registers open to public inspection, are deemed to be within the actual knowledge of the Transferee for the purposes of section 6(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1994, notwithstanding section 6(3) of the Law of Property (Miscellaneous Provisions) Act 1994.

12.5 The Property will not by virtue of this transfer have any rights, easements or the benefit of any other matters over land retained by the Seller other than those (if any) which are expressly granted by the transfer and a provision that Section 62 of the Law of Property Act 1925 will not apply to the transfer.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Rights granted for the benefit of the Property

~~None~~

-12.6

~~(a) At all times and for all usual and reasonable purposes (a) use~~

~~with or without motor vehicles (the Accessway)~~

~~on foot only (the External Common Parts)~~

(or the purposes for which they are intended PROVIDED ALWAYS that nothing shall prevent the reasonable use of perambulators or wheelchairs when required to be used)

(b) 12.6.1 The right in common with the Transferor and all other persons similarly entitled to the free and uninterrupted passage and running of water soil electricity gas telephone television signals and other services from and to the Property through the Service Installations forming part of the Estate together with all easements rights and privileges necessary and proper for inspection cleaning repairing and maintaining and replacing the same and for the disposal of soil and surface water or any of them through and from the Service Media which run over or over the Estate)

(c) 12.6.2 The right of support shelter and protection for the Property by and from the other parts of the Estate

(d) a right to the passage of light and air over the Estate for the benefit of the Property)

(e) 12.6.3 Such rights of access to and entry upon the other parts of the Estate as are necessary for the proper performance of the lessee's obligations under the lease or for the repair renewal decoration maintenance or inspection of the Property or the Service Media and in exercising such rights causing as little damage and inconvenience as reasonably possible and making good any damage caused to the reasonable satisfaction of the Transferor)

(f) The right to park private motor vehicles (including motor cycles) in the parking area shown shaded orange on Plan 2)

(g) The right to use for the purpose of recreation the External Common Parts so far as the parts are laid out for and are capable of being put to such use)

12.6.4 The right for the transferee and the tenants and occupiers of the Property and their employees or visitors (in common with the Transferor and all other persons similarly entitled) to go pass and repass at all times and all purposes with or without vehicles (as appropriate) over and along the Accessways (to the extent that such Accessways are designed for the movement of traffic)

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Rights reserved for the benefit of other land

X

(12.7.1) The right of support, shelter and protection for the other parts of the Estate by and from the Property)

(12.7.2) Such rights of access to and entry upon the Property as are necessary for the proper performance of the transferor's obligations relating to the other parts of the Estate for the repair, renewal, decoration, maintenance or inspections of other parts of the Estate the person exercising such rights causing as little damage and inconvenience as reasonably possible and making good any damage caused)

None)

Include words of covenant.

Restrictive covenants by the transferee

(12.8) The transferee covenants with the Transferor for itself and its successors in title so as to bind the Property and benefit the Estate)

(12.8.1) Not to dispose of the Property or any part thereof) without procuring that the transferee covenants with the Transferor to pay the sums due pursuant to clause (12.9.4)

(12.8.2) Not to create a nuisance nor carry on upon the same any business or trade nor use the same for any illegal or immoral purpose and not park or allow to be parked any vehicle other than a private motor vehicle on any part of the Estate or in any other parking space outside the Property)

(12.8.3) Not to permit to be done any act or thing in or upon the Property or any part thereof or any part of the Estate which may be or grow to be a damage, nuisance or annoyance to the Transferee or any of the occupiers of any parts of the Estate or to their neighbourhood)

(12.8.4) Not to do or permit to be done any act or thing in or upon the Property or any part thereof or any part of the estate which may render void or voidable any policy of insurance of any other part of the Estate or may operate to increase the premium payable in respect thereof)

(12.8.5) Not to erect or permit to be erected on the Property any external wireless or television aerial, satellite dish or similar apparatus for the reception or transmission of radio or television signals upon the Property)

(12.8.6) Not to erect or permit to be erected on the exterior of the Property save that an alarm box may be erected as discreetly as possible on the side or rear elevation of the Property)

(12.8.7) Not to add to or alter any building on the Property in any way so as to affect substantially the exterior)

~~appearance thereof and in the event of any rebuilding it shall so far as reasonably be possible in conformity with the building which it renews or replaces)~~

~~12.8.8) Not to permit any vehicles of any description or any articles to obstruct any part or parts of the Estate)~~

~~12.8.9) Not to park at any time on the Property or the Estate any boat, lorry, commercial vehicle of any description, trailer, caravan, house on wheels or other chattel)~~

~~12.8.10) Not to permit any animal kept on the Property to become the cause of nuisance of whatsoever nature on the Estate or any part thereof)~~

~~12.8.11) Not to object to the local planning authority or the Secretary of State or make any claim referring to)~~

~~a) any application for planning consent submitted to the Transferor or)~~

~~b) any appeal by the Transferor against a deemed refusal or actual refusal of such planning application)~~

~~Include words of covenant.~~

Restrictive covenants by the transferor

None.

Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on.

Other

12.794 The Transferee for itself and its successors in title: covenants with the Transferor to the intent that this covenant shall be binding on the Property into whosoever hands it may come as follows:

12.794.1 to observe and perform the covenants, agreements, restrictions, stipulations, provisions, conditions and other matters contained, mentioned or referred to in the register of

title TGL109752 (excluding

(a) financial charges, (b) entry number 1 in the Schedule of
Perpetual Covenants and

(c) entries numbered 8, 10, 14 and 15 in the Charges)

regardless insofar as they are still subsisting and capable of
taking effect do not affect this Property)

12.794.2 to observe and perform the covenants on the part of
the Transferor contained in the Lease but only insofar as they
relate to the Property and

12.794.3 to keep the Transferor fully indemnified at all times
against all actions, proceedings, claims, demands, losses,
costs, damages, expenses and liabilities arising from any
failure on the part of the Transferee to comply with its
obligations under 12.794.1 and 12.794.2

12.9.4 to pay the rateable or due proportion of the cost from
time to time of maintaining, repairing, cleansing and renewing
such conduits and other things intended for the joint
accommodation of the Property and the Estate)

12.9.5 to observe and perform the Estate Regulations)

13. The parties apply to the Chief Land Registrar for the
registration of a restriction in the proprietorship register of the
Property in the following terms)

"No disposition of the registered estate (other than a charge) by
the proprietor of the registered estate or by the proprietor of
any registered charge not being a charge registered before the
entry of this restriction, is to be registered without a certificate
signed by a conveyancer that the provisions of 12.3.1 of the
transfer of the Property dated _____ (and
made between Ravindra Bountra (1) and Putney Park House
Limited have been complied with)

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

If there is more than one transferee and panel 11 has been completed, each transferee must also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to Joint property ownership and practice suite 21: private trusts of land for further guidance.

Remember to date this deed in panel 4.

13 Execution

Executed as a Deed
by Ravindra Bountra

in the presence of:
.....

Signature of Witness

Name of Witness
.....

Address of Witness
.....
.....
.....

Occupation of Witness
.....

Executed as a Deed
by
Putney Park House Limited,
acting by
a director

in the presence of:
.....

Signature of Witness

Name of Witness

.....

Address of Witness

.....

.....

.....

Occupation of Witness

.....

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

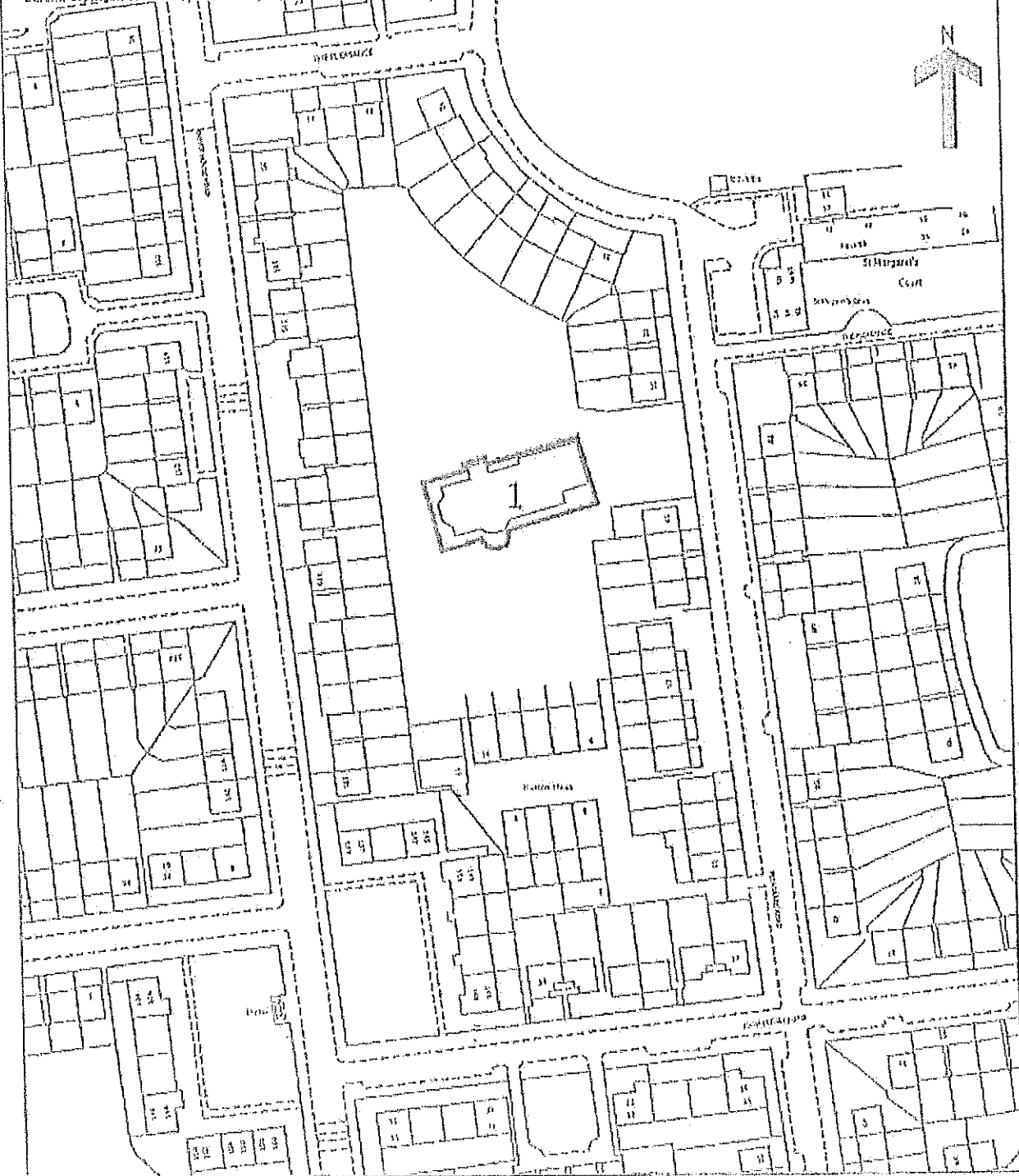
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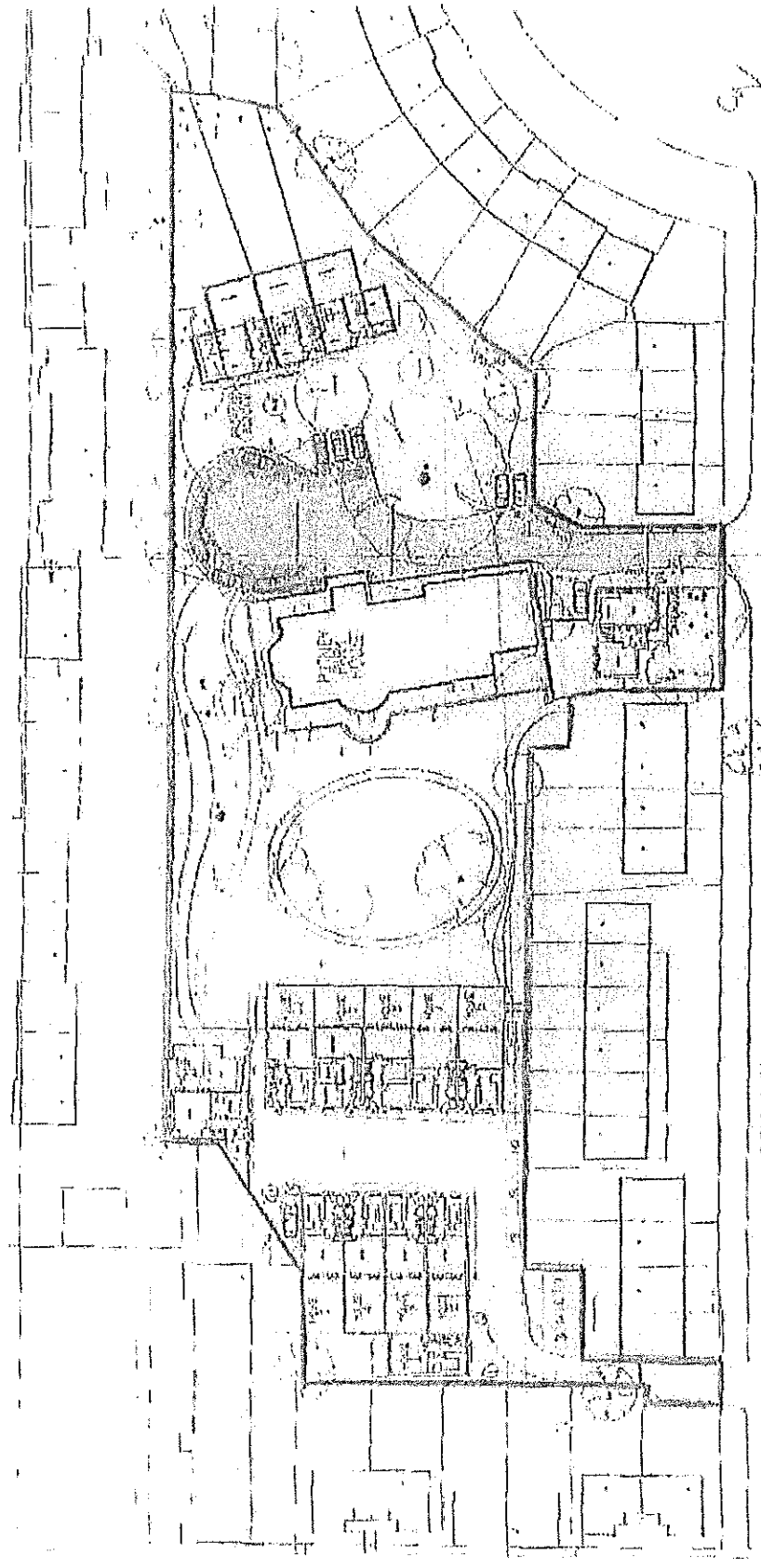
HM Land Registry
Official copy of
title plan

Title number TGL315437
Ordnance Survey map reference TQ2274NE
Scale 1:1250
Administrative area Wandsworth



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64

645 646

PLEASANCE ROAD

50'

PLAN 2

PROJECT NO. 512-1
 PROJECT NAME IS RUINEY PARK HOUSE
 DATE 10/15/11
 DRAWN BY: [illegible]
 CHECKED BY: [illegible]
 NOTES: [illegible]