



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

Case Reference : CHI/00HN/OCE/2019/0049

Property : 54 Southcote Road,
Bournemouth
BH1 3SS

Applicant : 54 Southcote Road Freehold Limited

Representative : Frettons Solicitors

Respondent : Mrs Kim Debnam (also known as Ms Kim
Dye)

Type of Application : Collective Enfranchisement – Section 24
Leasehold Reform, Housing and Urban
Development Act 1993

Tribunal Member(s) : Judge M Davey
Mr I Perry FRICS

Date of decision : 29 October 2020

The Decision

The terms of acquisition, other than as to price, are as contained in the Draft Transfer of 1 October 2019 as amended in red by the Applicant

The price payable for the Specified premises and Additional Freeholds is £17,509.

Reasons for decision

The Application

1. By an application (“the Application”) to the First Tier Tribunal (Property Chamber) (“the Tribunal”), dated 19 December 2019, the Applicant, 54 Southcote Road Freehold Limited, seeks a determination from the Tribunal under section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (“the 1993 Act”) of (a) the premium to be paid and (b) the terms of acquisition in respect of a collective enfranchisement claim to the property, 54 Southcote Road, Bournemouth, BH1 3SS.

Directions

2. Directions made by the Tribunal on 08 January 2020 stayed the Application pending agreement between the parties. Directions, dated 18 February 2020, which set out a timetable to enable the application to be dealt with, lifted the stay. The Tribunal extended the dates for compliance on 12 May 2020. Following a request by the Applicant for further directions, in view of the failure of the parties to reach agreement, the Tribunal issued Directions on 15 June 2020. The Tribunal stated in those Directions that it considered the Application to be suitable for determination on the papers without a hearing, in accordance with Rule 31 of the First-Tier Tribunal (Property Chamber) Procedure Rules 2013. The Direction set out a fresh timetable and specified the documents to be included in the trial bundle. The Tribunal decided that in the light of the evidence provided it was still appropriate for the matter to be dealt with on the papers, without an oral hearing. The Tribunal accordingly considered the matter on 17 September 2020.

The statute law

3. Section 1 of the 1993 Act provides:

(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 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); 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 time 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 occupiers of other premises (whether those premises are contained in the relevant premises or not).

Section 1(7) provides that

“Appurtenant property,” in relation to a flat means any garage, out-house, garden, yard or appurtenance belonging to or usually enjoyed with the flat.”

Background

4. The subject property is a detached building, which was constructed as a two-storey house around 100 years ago and converted into four flats around 30 years ago. It is on a small corner site one mile from Bournemouth town centre. The site includes parking to the front and two gardens to the rear. Flats 1 and 2 are on the ground floor and flats 3 and 4 on the first floor. A garage attached to the right hand side of the building is owned with Flat 1. The freeholder of the building and the site of which it forms a part is Ms Kim Dye (named on the relevant title documentation as Mrs Kim Debnam), who acquired the freehold in 2002.
5. The four flats are held on leases as follows:
 - Flat 1 99 years from 29 September 1990 at a fixed ground rent of £50 p.a. The lessee is Mrs Kim Debnam.
 - Flat 2 179 years from 29 September 2010 at a fixed ground rent of £50 p.a. The lessee is Mr Edward Frewer.
 - Flat 3 79 years from 29 September 2010 at a fixed ground rent of £50 p.a. The lessee is Krzysztof Andrzej Zbierajewski and Kinga Maria Bolunz.
 - Flat 4 99 years from 29 September 2010 at a fixed ground rent of £50 p.a. The lessee is Mrs Kim Debnam.
6. The lessees of all four flats are qualifying tenants under their respective leases. The Applicant, as Nominee Purchaser, made a collective enfranchisement claim to the freehold of the building and (as additional freeholds) the surrounding grounds by a Claim Notice under section 13 of the 1993 Act, dated 16 April 2019. The participating qualifying tenants are the lessees of Flats 2 and 3. Mrs Debnam is a non-participating qualifying tenant (Flats 1 and 4).
7. Mrs Debnam, as freeholder, served a Counter Notice, dated 1 July 2019, under section 21 of the Act. In that notice she accepted that the specified premises (to be acquired under section 1(1)) and the Additional Freeholds proposed to be acquired by virtue of section 1(2(a)) of the Act were as shown on the plan attached to the section 13 notice.
8. The Counter Notice did not accept the proposed purchase price of £16,655.00 for the freehold interest in the premises and £1,000 for the additional Freeholds. Her counter proposal was a total sum of £37,000 for the specified premises and the Additional Freeholds.

9. Furthermore, the Counter Notice stated that the Reversioner (Mrs Debnam) wished to exercise the right to take a leaseback of Flats 1 and 4, of which she was the current leaseholder, pursuant to section 36 and Part III of Schedule 9, with leases granted for a term of 999 years at a peppercorn rent by virtue of Part IV of Schedule 9 of the Act.

10. The Counter Notice also stated that

“The Reversioner desires to retain the following rights over the following property on the grounds that those rights are necessary for the proper management or maintenance of property in which the Reversioner is to retain a freehold or leasehold interest:-

- Rights included in the lease dated 26 October 1990 and supplemental deed dated 27 January 1999 for the benefit of Flat 1, 54 Southcote Road, Bournemouth BH1 3SS

1. Exclusive right to use the garden ground in conjunction with the uses of the ground floor Flat 1 as described in the supplemental deed dated 27 January 1999

2. The rite of passage and running of gas electricity water and soil to and from the Flat and Garage (if any) through the pipes wires and drains in under and upon the Property and to this use of the chimneys as now enjoyed

3. The right at reasonable times and upon reasonable notice (except *(sic)* in an emergency to enter upon any other part of the Property for the purposes of repairing or maintaining the Flat or any pipes wires drains or other installations serving the same).

4. (a) the right to subjacent and lateral support and to shelter and protection from the other parts of the Building as it is not enjoyed

- (b) The benefit of the covenants entered into by the other Lessees in the building

1. The right to erect and maintain television aerial on the roof of the building and to run wires connecting such aerial to the Flat

2. The right to pass with or without vehicles over the forecourt [as coloured yellow on the floor plan annexed to the respective

lease] and the right on foot only to pass over through and along the entrance staircase landings and passageways for the purpose of gaining access to and egress from the Flat and Garage and the communal area [shown coloured brown on the floor plan annexed to the respective lease]

3. The right in common with the other occupiers of the building to make use of the Palladin store.
- Rights included in the lease dated 10th of December 1990 for the benefit of Flat 4:
 1. The rite of passage and running of gas electricity water and soil to and from the Flat and Garage (if any) through the pipes wires and drains in under and upon the Property and to this use of the chimneys as now enjoyed
 2. The right at reasonable times and upon reasonable notice (expect (*sic*) in an emergency to enter upon any other part of the Property for the purposes of repairing or maintaining the Flat or any pipes wires drains or other installations serving the same).
 3.
 - (a) the right to subjacent and lateral support and to shelter and protection from the other parts of the Building as it is not enjoyed
 - (b) The benefit of the covenants entered into by the other Lessees in the building
 4. The right to erect and maintain television aerial on the roof of the building and to run wires connecting such aerial to the Flat
 5. The right to pass with or without vehicles over the forecourt [as coloured yellow on the floor plan annexed to the respective lease] and the right on foot only to pass over through and along the entrance staircase landings and passageways for the purpose of gaining access to and egress from the Flat and Garage and the communal area [shown coloured brown on the floor plan annexed to the respective lease]
 6. The right in common with other occupiers of the Building to use the communal area [shown coloured brown on the site plan annexed to the respective lease] for the parking of

a private taxed motor car or van and to make use of the Palladin store. “

11. The Counter Notice also stated (in paragraph 8) that

“The Reversioner considers that the following provisions should be included in the transfer to the nominee purchaser in accordance with section 34 of, and Schedule 7 to the LRHUDA 1993:

In addition to the matters set out in the above paragraphs of this Counter Notice, the Reversioner requires the following additional covenants to be included in the conveyance to the Nominee Purchaser, for the benefit of the retained leasehold interest:

- 8.1 Not to use the Property for any purposes other than as private dwellings with private garden land and not to do or suffer on the Property or any part thereof anything which shall be a nuisance to the Reversioner or other occupiers of the retained leasehold land
- 8.2 Not to make an (sic) alterations or additions to the existing boundary walls or fences save for maintenance and repair.

Issues remaining in dispute

12. The Applicant stated that five issues remained in dispute.

1. The premium payable for the freehold of the specified premises and Additional Freeholds;
2. The provisions to be contained in the Transfer
3. The Respondent’s claim for leasebacks in respect of Flats 1 and 4;
4. The Respondent’s claim for retained rights;
5. The Respondent’s claim for additional covenants to be contained in the Transfer.

The Applicant’s case

13. In its Statement of Case the Applicant rejects the Respondent’s claim to leasebacks on the basis that the Respondent is not entitled to the same under the 1993 Act. It says that a leaseback under Part III of Schedule 9 is permitted in certain circumstances where the claimant is a “resident landlord” as defined in the Act. That requirement is satisfied where (a) the premises are not “purpose-built”, i.e. it is a converted building (b) the

same party has owned the freehold since before the conversion and (c) that party or an adult member of their family has resided in the subject flat for the 12 months preceding the enfranchisement claim.

14. The Applicant submits that the Respondent does not qualify because she has not owned the freehold of the premises since before they were converted some 30 years ago. She acquired the freehold much later in 2009. The Applicant says that it is also unlikely that the Respondent could be considered resident in Flats 1 and 4 at the same time. Finally, the Applicant noted that the Respondent had highlighted in her Tribunal Statement and supporting evidence that she did not instruct her previous representatives to include such a claim in the section 21 Counter Notice and that she has been advised by her solicitors that she is not entitled to leasebacks.
15. The Applicant also submits that the Respondent is not entitled to the retained rights, which are claimed as being necessary for the proper management or maintenance of Flats 1 and 4, under the 1993 Act. The Applicant says that none of the rights claimed were included in the Respondent's draft Transfer supplied by the Respondent's previous representatives on 1 October 2019 subsequent to the Counter Notice. The Applicant assumed that the Respondent no longer claims the reserved rights.
16. The Applicant asserts that all necessary rights for the proper management and maintenance of Flats 1 and 4 are already granted in the existing leases of the same for the remaining terms thereof. As such, no such reserved rights are required to be granted, in perpetuity, in the Transfer of the freehold. Furthermore, the Applicant says that two of the reserved rights claimed in clause 7 of the counter notice are not necessary for the proper management and maintenance of Flats 1 and 4.
17. The two rights are (a) "The exclusive right to use the garden in conjunction with the use of the ground floor Flat 1" which the Applicant says is not required for the purposes of proper management and maintenance and (b) "The right in common with other occupiers of the Building to use the communal area [shown coloured brown on the site plan annexed to the respective lease] for the parking of a private taxed motor car or van." The Applicant says that this also is not necessary.
18. The Applicant also rejects the Respondent's claim for additional covenants to be contained in the Transfer for the benefit of the leasehold interests in Flats 1 and 4 to be retained by the Respondent. The Applicant says that for a restrictive covenant to be required or permitted in an enfranchisement claim, paragraph 5(a)(ii) of schedule 7 to the 1993 act states that restrictive covenants shall be included in the Transfer of a freehold where such restrictive covenants "are immediately before the appropriate time enforceable for the benefit of other property." The Applicant says that the

subject property is not burdened by restrictive covenants akin to those claimed in the Counter Notice for the benefit of any property and will not be so burdened at the appropriate time. Furthermore, no such other property (as defined in Schedule 7) exists.

The Respondent's case

19. It is clear from the Respondent's Statement of Case that the enfranchisement claim superseded an ongoing dispute between the Respondent and the lessee of Flat 2. The substance of the Statement concerns the Respondent's account of matters relating to that dispute and her explanation of why she had been unwilling to agree to a negotiated settlement of that dispute at the same time as a settlement of the enfranchisement claim, thereby avoiding a Tribunal determination with regard to that latter claim.
20. By the time of the Tribunal deliberations the Respondent's solicitors had ended their retainer with their client following correspondence between them.
21. However, the Respondent concludes her statement to the Tribunal as follows.

"Where one of the participants is subject to unresolved legal action for breaches of the lease, I am seeking the Tribunal's determination of the use of collective enfranchisement to completely erase such breaches of the lease by means of forcing the freeholder into a settlement position that requires them to sign, "simultaneously" to signing the freehold notice of transfer TR1 (Appendix A refers), a settlement agreement (Appendix B) which is to their benefit and not necessarily in the best interests of the freeholder."

Discussion

22. The Applicant in this case is a Nominee Purchaser who has made a claim, under the 1993 Act, to the freehold of the building and grounds at 54 Southcote Road, Bournemouth, owned by the Respondent, Mrs Kim Debnam (now known as Ms Kim Dye).
23. The Applicant's section 13 Claim Notice, served through its solicitors, Frettons LLP, proposed a price of £16,655 for the freehold interest in the building ("the Specified Premises") and £1,000 for the additional freeholds specified in the claim notice. The Respondent's section 21 Counter Notice, served through her solicitors, Dutton Gregory, admitted the claim but proposed a total price of £37,000.00 for the Specified Premises, together with the additional freeholds specified in the Claim Notice. The Counter

- Notice also proposed a number of other terms of the conveyance and purported to exercise a statutory right to a leaseback of Flats 1 and 4.
24. Because the parties were unable to agree the disputed terms, the Applicant has applied to the Tribunal, for a determination under section 24 of the 1993 Act, of the disputed terms of acquisition. Unfortunately, the waters have been muddied by the fact that since the end of 2017 there has been litigation between Ms Dye and Mr Edward Frewer (leaseholder of Flat 2), being one of the participating tenants at the property. The parties to that litigation have recently sought to settle the matter by agreement at the same time as seeking to settle the matter of the terms of acquisition under the 1993 Act claim. As stated above, that outcome has not been achieved. Thus the Tribunal must now determine the 1993 Act application.
 25. An added complication is that Ms Dye is now without legal representation, the engagement between her and her solicitors having ended in June 2020. Ms Dye submitted a Statement of Case, dated 16 July 2020, together with lengthy appendices. Unfortunately, very little of that Statement is directed to the matter within the jurisdiction of the Tribunal under section 24 of the 1993 Act. That is to say the terms of acquisition of the freeholds to be acquired by the Applicant. The statement is mainly concerned with an account of the Respondent's litigation with Mr Frewer and a dispute between Ms Dye and her former solicitors, Dutton Gregory, as to why she felt unable to agree to settle the litigation between herself and Mr Frewer and at the same time settle the terms of acquisition of the freeholds claimed by the Applicant.
 26. Accordingly the Tribunal has only had regard to Ms Dye's submission, with regard to the section 24 Application, in so far as it relates to the disputed terms of acquisition of the freeholds claimed by the Applicant.
 27. With regard to the terms of acquisition, other than the price to be paid, Ms Dye says that although the Counter Notice included a claim to a leaseback of flats 1 and 4, that notice was drafted by her then solicitors, Dutton Gregory, without her input, and the solicitors had subsequently informed her that there was no such entitlement in the circumstances of her case.
 28. The Tribunal agrees that the Respondent is not entitled to a leaseback of flats 1 and 4. An optional leaseback under Part III of Schedule 9 to the 1993 Act is only possible in two cases. The first is where the flat is let to a person who is not a qualifying tenant of it (paragraph 5). The second is where the flat is occupied by freeholder as a 'resident landlord' (Paragraph 6). This requires three criteria to be satisfied. They are (a) that the premises must not be purpose built, i.e. it must be a converted building (b) that the same landlord has owned the freehold since the conversion and (c) that party or an adult member of their family must have resided in the flat for the 12 months preceding the enfranchisement claim (section 10 of the 1993 Act as amended by section 118 of the Commonhold and Leasehold Reform Act 2002).

29. The Respondent does not satisfy either case. First because she is a qualifying tenant of flats 1 and 4 and therefore paragraph 5 of schedule 9 is inapplicable, and second because the building was converted in 1990 whereas the Respondent acquired the freehold in 2009 (and therefore paragraph 6 of the said Schedule is inapplicable).
30. The Respondent's Statement of Case does not address the terms (other than as to price) proposed in the Counter Notice prepared by her solicitors and which were addressed by the Applicant in its Statement of Case.
31. The first was that rights should be retained in the Transfer of the freehold for the benefit of flats 1 and 4 on the grounds that they are necessary for the proper maintenance or management of those two flats (the leasehold titles of which are owned by the Respondent). It is however unclear whether these are still claimed because they were not included in the draft Transfer provided by the Respondent's then solicitors.
32. In any event these claims are misconceived. The Respondent's rights under the leases of flats 1 and 4 will continue on transfer of the freehold of the building because the leases of those flats will continue to bind the freehold. It is only necessary to reserve such rights as may exist for the benefit of *other property* retained by the outgoing freeholder. .
33. In similar vein the Counter Notice claims additional restrictive covenants "for the benefit of the retained leasehold interest." However, this claim is also misconceived because paragraph 5(1)(c) of Schedule 7 provides that the Transfer shall include

'such further restrictions as the freeholder may require to restrict the use of the relevant premises in a way which—

(i) will not interfere with the reasonable enjoyment of those premises as they have been enjoyed during the currency of the leases subject to which they are to be acquired, but

(ii) will materially enhance the value of other property in which the freeholder has an interest at the relevant date.'

The leases of Flats 1 and 4 are not "other property" for this purpose.

34. The Tribunal accordingly finds that the terms of acquisition other than as to price are as contained in the draft Transfer of 1 October 2019 as amended in red by the Applicant
35. That leaves the matter of the price to be paid. The Applicant bases its proposal on a Report, dated 12 July 2020, prepared by Mr Michael George, Harrington, a retired Chartered Surveyor. The price proposed in the Respondent's Counter Notice was based on a report, dated 25 June 2019, by Mr Duncan Matthews, of Romans, Surveyors, instructed by Dutton Gregory.

36. The only material matters in Ms Dye's Statement of Case with regard to the price are her request that the Tribunal have regard to the fact that another year has passed since her valuation and that "some consideration be given to the circumstances that have disallowed me the chance to progress development potential, which may have enhanced the freehold premium."
37. The Valuers appear to agree on the principles of the valuation being the total of the right to receive the ground rent for the balance of the term, a value of the reversionary interest and a figure to represent marriage value.
38. Mr Harrington's report included his detailed calculation of the price to be paid, based on a capitalisation of the existing Ground Rent using 6% Years Purchase and a Present Value rate for the reversion of 5% following *Earl Cadogan and others v Sportelli and another* [2008] UKHL 71. ("Sportelli"). He also provided a detailed analysis of comparable sales used to assess the capital value of the flats at:- Flat 1: £130,000: Flat 2: £130,000: Flat 3: £125,000: Flat 4: £120,000. [SEP]
39. When calculating the marriage value Mr Harrington suggests a figure of 92% for the relativity generated by bringing the interests together.
40. Mr Harrington does not argue why the capitalisation rate of 6% should be adopted. His calculations produce a suggested value of £17,655 in total. Mr Harrington's Report makes no mention of the price to be attributed to the Additional Freeholds to be acquired by the Applicant, but the original section 13 Claim Notice allocates £1,000 of this total figure to the appurtenant property.
41. Mr Matthews' valuation report provides no detailed calculation, although he proposes a capitalisation rate of 5% and a deferment rate of 5%. He does not provide any evidence of comparable sales to support his assertion that the capital values of the flats should be:- [SEP] Flat 1: £165,000: Flat 2: £150,000: Flat 3: £140,000: Flat 4: £145,000.
42. Mr Matthews makes no reference to a relativity rate. He concludes that a fair premium for the freehold interest would be £22,000-£24,000, but suggests a figure for the freeholder's counter notice of £36,915 to include loss of development value. He is silent as to how this development value is to be justified.
43. As already stated in her Statement of Case, Ms Dye has asked that "some consideration be given to the circumstances that have disallowed me the chance to progress development potential, which may have enhanced the freehold premium." She presents no evidence as to what this development might be or how she has been prevented from exploring any such development value.
44. Mr Mathews states in his report "there is very little hope of achieving development value in my opinion given (amongst other factors) that the

freeholder has not shown any inclination in the past of wanting to develop the site.” With no evidence of potential development opportunities or value suggested the Tribunal reaches the conclusion that there is no development value

45. Having considered both reports and the supporting evidence, or lack of the same, the Tribunal finds that the capital values of the flats with long leases are the values suggested by Mr Harrington. The Valuers and the Tribunal agree that a rate of 5% should apply to the reversion, in line with *Sportelli*.
46. Based on the information provided by the two Valuers and using its own experience of the capitalisation rate to apply to relatively low ground rents that are fixed for the whole of the term, the Tribunal decides that a capitalisation rate of 6% should be applied. ^[1]_{SEP}
47. The Tribunal has been given no evidence in support of a relativity rate of 92%, nor has any argument been made against this. Again relying on its own experience the Tribunal decides that this is not an unreasonable figure and therefore adopts that rate in its calculation.
48. The Tribunal finds a few minor arithmetical errors within the calculation provided by Mr Harrington and has revised his calculation sheet. The revised calculation, which is set out in the Annex to this decision produces a premium of £17,509.00. As per the section 13 Claim Notice the Tribunal allocates £1,000 of this total as a nominal sum for the Appurtenant property with the remaining balance of £16,509.00 to be the price for the Specified Premises.

Rule 13 Costs

49. The Applicant, in an application dated 30 July 2020 which appeared for the first time in the bundle provided to the Tribunal, seeks an order from the Tribunal for costs against the Respondent, in the sum of £11,091.20 including VAT, under Rule 13 of the First Tier Tribunal (Property Chamber) Procedure Regulations 2013, on the grounds that the Respondent has behaved unreasonably in defending or conducting the proceedings before the Tribunal.
50. The Applicant says that the application to the Tribunal would not have been necessary had the Respondent entered into a meaningful bona fide dialogue with the Applicant and not acted in a vexatious and uncooperative way. This must refer to the period between 1 July 2019 (the date of service of the Counter Notice) and 19 December 2019 (the date of the section 24 Application).
51. The Applicant then says that once commenced the proceedings could have been settled had it not been for the intransigence of the Respondent and her unwillingness to take the advice of her solicitors (which she disclosed

in her Statement) that were she to persist with the Tribunal proceedings she would fail and the Tribunal would almost certainly order costs against her.

52. The Tribunal considers that the application for a Rule 13 costs order is premature in so far as it was made before the Tribunal's determination of the section 24 Application. Furthermore, it was not appropriate to make such an application by way of including it for the first time in the trial bundle.
53. However, leaving these matters aside, the Tribunal is not willing to exercise its discretion to order costs against the Respondent under Rule 13 of the 2013 Rules. It is clear from the decision of the Upper Tribunal (Lands Chamber) in *Willow Court (1985 Ltd) Management Company v Alexander* [2016] UKUT 290 (LC) that Rule 13 creates a high threshold for an applicant to cross. The applicant must establish that the party complained of has acted unreasonably. This requires the Tribunal to ask itself whether it is satisfied that a reasonable person, in the position of the party alleged to be at fault, would have conducted himself or herself in the manner complained of or whether there is a reasonable explanation for the conduct complained of. Even if unreasonable behaviour were to be established, the Tribunal still has a discretion as to whether to order costs, having had regard to all relevant circumstances.
54. Rule 13 refers to the unreasonable behaviour of a party in "defending" the claim (i.e. the section 24 application) or in the "conduct of those proceedings." The Respondent's alleged behaviour before the issue of the Tribunal proceedings by the Applicant, even if it were to be unreasonable, and that has not been established, is accordingly irrelevant because it does not relate to defending the claim or to conduct of the proceedings.
55. In the present case it can hardly be said that the Respondent, who lives at the premises, has behaved unreasonably in defending the Application to the Tribunal. Section 24 of the 1993 Act says that either the Reversioner or the Nominee Purchaser may apply to the Tribunal if the terms of acquisition remain in dispute at the end of the period of 2 months beginning with the date of service of the counter notice. The parties certainly remained in dispute by 1 September 2019 and therefore it was open to either of them to apply to the Tribunal under section 24 of the 1993 Act and for the other to defend that claim.
56. Can it be said that the Respondent behaved unreasonably in the "conduct of the proceedings?" The proceedings commenced with the Application of 19 December 2019. After a period of unsuccessful negotiations the Applicant requested further Directions on 15 June 2020. The Directions issued on that date required the parties to exchange evidence by 17 July 2020 and for the Applicant to prepare a bundle to be sent to the

- Respondent and the Tribunal by 31 July 2020. Both parties complied with these requirements.
57. The Applicant says that the matter could have been settled, and the Tribunal proceedings discontinued, before 30 July 2020 but for the Respondent's allegedly unreasonable behaviour. That behaviour is said to consist of the Respondent showing "false willing" that she would negotiate "sensibly", which resulted in two stays of proceedings, but then refusing to negotiate either personally or through her advisers.
 58. The Applicant is quite right to say that documents relating to "without prejudice" negotiations should not have been disclosed by the Respondent in connection with the section 24 Application. However, those negotiations are relevant to the Rule 13 application because they relate to whether the Respondent's behaviour admits of a reasonable explanation. Indeed when drawing attention to the Respondent's solicitor's advice to the Respondent, the Applicant makes reference to two of the documents, which it says should not have been disclosed by the Respondent.
 59. It is tolerably clear that the failure of the Applicant and the Respondent to come to a settlement of the enfranchisement dispute was because it had been negotiated alongside an attempt to settle by agreement the quite separate litigation between the Applicant and the Respondent and one of the participating lessees. The Respondent was unwilling to settle these two matters at the same time despite being advised to do so by her solicitors.
 60. Can it be said that this was unreasonable conduct? The Tribunal finds that it was not. The Respondent was genuinely concerned at what she saw as settlement of the enfranchisement dispute as part of a package. She was also clearly confused by the fact that the Counter Notice drawn up by her solicitors contained claims that were no longer relied upon in the light of the attempt to negotiate a settlement and a recognition that in the circumstances they had proved to be without legal foundation. She also had a valuation of the freehold of the Specified Premises and surrounding site higher than that proposed by the Applicant. In these circumstances the Respondent's conduct cannot be said to be unreasonable in the sense attributed to that word by the relevant case law.
 61. The Rule 13 application for costs is therefore refused.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written

application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Annex: Tribunal's Valuation

(A) Value of existing Freehold interest

i) Ground Rents	Flat 1	£50	
	Flat 3	£50	
	Flat 4	£50	
	Total	£150pa	
Years Purchase for 70.5 years a 6%	£16.39		£2,459
ii) Ground Rent Flat 2 ^[SEP]	£50 pa		
Years Purchase in perpetuity at 6%	£16.67		£834
Total Value of Ground Rents			£3,293
iii) Reversion to flats with extended lease			
	Flat 1	£130,000	
	Flat 3	£125,000	
	Flat 4	£120,000	
	Total	£375,000	
Present Value £1 in 70.5 years at 5%	0.0321		£12,028
	Flat 2	£130,000	
Present Value £1 in 170.5 years at 5%	0.000244		£32

Total Value of reversion **£12,060**

Total Value of Freehold **£15,353**

(B) Marriage Value^[1]

1) Landlord's proposed interest _____

Value of participating flats on extended leases

Flat 2 £130,000

Flat 3 £125,000

Total £255,000

Plus value of non-participating flat leases^[1]

Ground rents (2 x £50) £100 pa

Years Purchase for 70.5 years at 6% 16.39 £1,639

Reversion to capital value

£130,000 + £120,000 = £250,000^[1]

Present Value £1 in 70.5 years at 5% 0.0321 £8,025

Value after enfranchisement **£264,664**

^[1]less

^[1]ii) Landlord's existing interest^[1]

Value of flats on existing leases^[1]

Flat 2, no marriage value ^[1] _{SEP}	£130,000	
Flat 3 £125,000 subject to 92% relativity	£115,000	
Value before enfranchisement		£245,000
Enhanced value £264,664 - £245,000 =	£19,664	
Less value of Freehold ^[1] _{SEP}	£15,353	
Total marriage value ^[1] _{SEP}	£ 4,311	
50% split to Landlord or Tenant		£2,156
Total premium £15,353 + £2,156 = £17,509		

