



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

Case Reference	:	LON/00BK/OCE/2017/0031
Property	:	125 Bravington Road, London W9 3AT
Applicants	:	Matthew Darwin & Yasser Gado
Representative	:	K Law Solicitors
Respondent	:	T A Adesemowo & V A Adesemowo
Representative	:	In Person
Type of Application	:	Application to determine jurisdiction in respect of a collective enfranchisement claim under the Leasehold Reform, Housing and Urban Development Act 1993 (the Act)
Tribunal Members	:	Mrs H C Bowers – Valuer Chair
Date and venue of Determination	:	2 August 2017 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	2 August 2017

DECISION:

- **The Tribunal has no jurisdiction under section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993.**
 - **The Tribunal strikes out the proceedings under Rule 9(2)**
-

REASONS

BACKGROUND

1. By an application dated 31 January 2017 the Applicants applied to the Tribunal for a determination of the terms of acquisition remaining in dispute relating to the collective enfranchisement pursuant to section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") The application was made in respect of 125, Bravington Road, London, W9 3AT (the subject property).
2. Initial Directions with a Listing Questionnaire were issued by the Tribunal on 1 March 2017. In response a 'Statement of Facts in Support of Freeholder's Case' dated 18 April 2017 was submitted by Atlantic Solicitors acting on behalf of the Respondents. This gave a brief history as to the Respondents' ownership of the Property, its conversion into three flats and the sale of two of the flats on long leases. In summary it is stated that the Respondents had owned the freehold since 1968 and prior to the conversion of the Property into three flats, which occurred in 1983. It is claimed that the Property does not form part of a purpose built block of flats and that the Respondents' children still occupy Flat 1, the ground floor flat as their only home.
3. In a letter of 5 May 2017 the solicitors acting for the Applicants disputed whether the Tribunal has jurisdiction:
 - To determine whether section 10 of the Act might apply, by reason of the Respondents having admitted the claim by their counter-notice or
 - By reason of an exchange of correspondence, it is contended that the terms of acquisition have been agreed.
4. In Further Directions dated 22 June 2017 the Tribunal determined that the question of the Tribunal's jurisdiction should be considered as a preliminary issue. The case was to be dealt with on the papers unless either party requested a hearing. There was no such request and therefore the Tribunal determines this point on the basis of the papers submitted by the parties. The Further Directions set out that if jurisdiction is rejected then the proceedings will be struck out under rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, which is set out in the Appendix to this decision.
5. Initially Atlantic Solicitors were instructed by the Respondents. However, in a letter dated 27 June 2017 the Tribunal was advised that they were no longer instructed. It was confirmed that the Tribunal's Further Directions of 22 June 2017 were forwarded to the Respondents/Landlord.
6. A bundle was prepared by the Applicants' solicitors. Other than the Statement of Facts in Support of Freeholder's Case dated 18 April 2017, there has been no bundle or correspondence from the Respondents.

7. The Initial Notice under section 13 of the Act was dated 6 June 2016 and gave the date for serving a Counter Notice by 13 August 2016. The total premium proposed was £10,000 on the basis that the landlord claims a 999 year leaseback of Flat 1. The Counter Notice was served on 4 August 2017 and admitted that the participating tenant had the right to collective enfranchisement under the 1993 Act and proposed a counter offer of £40,000. As noted above the application to the Tribunal was dated 31 January 2017.
8. In compliance with the Initial Directions, in a letter dated 15 March 2017, the solicitors then acting for the Respondents enclosed a draft transfer and a draft leaseback to Flat 1. The draft transfer shows the consideration as being a peppercorn. In an email dated 29 March 2017 Kirsten von Wedel of K Law approved the draft transfer and leaseback.
9. The substance of the Applicants' case is in their letter to the Tribunal of 5 May 2017. It is submitted that a Counter Notice, admitting the Applicants' right to collective enfranchise was served on 4 August 2016. As such it was not necessary for the Applicants to make an application to the court under section 22(1) of the Act for a declaration that they were entitled to the right to collectively enfranchise.
10. After the service of the Counter Notice negotiations between the parties commenced. In the valuation report of the Respondents' expert valuer, reference was made to the exemption as provided by section 10 of the Act. But the reference was caveated that 'solicitors to verify'. On 6 December 2016 the Respondents' solicitors wrote to state that they were no longer proceeding with the enfranchisement and were relying upon the section 10 exemption.
11. It is further stated that in correspondence of 15 March 2017 the Respondents proposed terms which were accepted by the Applicants in the email of 29 March 2017.
12. It is submitted that the Respondents admitted the Applicants' right to collective enfranchisement by giving the Counter-Notice. Whether the Respondents are bound by the Counter-Notice may arise by reason of the doctrines of election, estoppel or because the Respondents failed to comply with the statutory mechanism. However, the point is that the Tribunal no longer has jurisdiction under section 24(1) as none of the terms of acquisition remain in dispute.

THE LAW.

13. Included in the Appendix to this decision are the relevant legislative provisions.

FINDINGS.

14. The first point to consider was the issue raised by the Respondents as to whether the subject property was exempt from collective

enfranchisement as a consequence of there being a resident landlord under section 10. This is not an issue within the overall jurisdiction of the Tribunal. However, the Tribunal does comment on this aspect. The only document in this regard was the 'Statement of Facts in Support of Freeholder's Case' dated 18 April 2017. This document did not include any supporting evidence as to the various statements made. However, on the basis of what was included in that document it would appear that the requirements of section 10 were satisfied. It was stated that the Respondents had owned the property prior to the conversion of the building into the flats, that the building was not a purpose built block of flats and that the Respondents' children still reside in Flat 1. As such it would appear that the subject property was exempt from collective enfranchisement.

15. The next point raised is despite the subject property being exempt, whether the Respondents are bound by the Counter Notice in admitting that the Applicants have a right to collective enfranchisement. Again this issue is not within the jurisdiction of the Tribunal. However, the Tribunal makes the following comments. The Act sets out a very clear mechanism for the collective enfranchisement process. The two-month period from the Initial Notice is a generous period for the investigation of the right to enfranchise. The provision of section 21(2) sets out three options as to how a reversioner may proceed. The reversioner may admit the right to collective enfranchisement; may not admit the right to collective enfranchisement and set out the reasons relied upon or admit or deny the right to collective enfranchisement but state that there is to be an application under section 23(1) for a declaration from the court that the enfranchisement shall not be exercisable by reason of redevelopment. There is a further option suggested in the narrative in Hague on Leasehold Enfranchisement, paragraph 26-09. This option would appear relevant if there is a question about the validity of the notice and this would involve the service of a Counter Notice but on a without prejudice basis. The Respondents had the option to deny the right to enfranchise and potentially to serve a Counter Notice admitting the right but on a without prejudice basis but did not take either of these options. Following the statutory process would seem to be imperative especially as the denial of the right to collective enfranchisement would then have allowed the Applicants to make an application to the court for a declaration that they did have the right, under section 22(1). The implications of taking a particular step are significant to the rights of the Applicants to pursue their case. As such the Tribunal considers that the Respondents are bound by the Counter Notice in admitting the Applicants' right to collective enfranchisement.
16. Underlying these two points is the final issue as to whether any terms of the acquisition remain in dispute and therefore whether the Tribunal retains any jurisdiction in the case. The two relevant documents to conclude this transaction would be the transfer and the leaseback to Flat 1. These were sent to the Applicants on 15 March 2017. In box 8 of the TR1 form the consideration is described as a peppercorn. These documents would appear to be a valid offer to conclude the matter.

There is no suggestion that these documents were sent out on a 'subject to contract' basis or that they were at all conditional. The offer was accepted by the Applicants by means of an email of 29 March 2017. In the opinion of the Tribunal the exchange of these documents are a binding agreement as to terms. As such there are no terms in dispute and therefore the Tribunal no longer has jurisdiction under section 24(1) of the Act.

17. As the Tribunal no longer has jurisdiction under section 24(1), it then strikes out the proceedings under Rule 9(2).

Helen Bowers
Valuer Chair

2 August 2017

ANNEX - 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

Leasehold Reform, Housing and Urban Development Act 1993

Section 10.— Premises with a resident landlord.

(1) For the purposes of this Chapter any premises falling within section 3(1) are premises with a resident landlord at any time if—

(a) the premises are not, and do not form part of, a purpose-built block of flats;

(b) the same person has owned the freehold of the premises since before the conversion of the premises into two or more flats or other units; and

(c) he, or an adult member of his family, has occupied a flat or other unit contained in the premises as his only or principal home throughout the period of twelve months ending with that time.

(2) [...]

(3) [...]

(4) Where the freehold of any premises is held on trust, subsection (1) applies as if—

(a) the requirement in paragraph (b) were that the same person has had an interest under the trust (whether or not also a trustee) since before the conversion of the premises, and

(b) paragraph (c) referred to him or an adult member of his family.

(4A) [...]

(5) For the purposes of this section a person is an adult member of another's family if that person is—

(a) the other's wife or husband; or

(b) a son or daughter or a son-in-law or daughter-in-law of the other, or of the other's wife or husband, who has attained the age of 18; or

(c) the father or mother of the other, or of the other's wife or husband;

and in paragraph (b) any reference to a person's son or daughter includes a reference to any stepson or stepdaughter of that person, and "son-in-law" and "daughter-in-law" shall be construed accordingly.

(6) In this section—

"purpose-built block of flats" means a building which as constructed contained two or more flats.

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 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 rights 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 to be required to acquire in accordance with subsection (4) below;

(d) state which rights (if any) [any] ¹ 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 any property in which he has any interest which the nominee purchaser 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 provisions 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.

(4) The nominee purchaser may be required to acquire on behalf of the participating tenants the interest in any property of [any] ² relevant landlord, if the property—

(a) would for all practical purposes cease to be of use and benefit to him, or

(b) would cease to be capable of being reasonably managed or maintained by him,

in the event of his interest in the specified premises or (as the case may be) in any other property being acquired by the nominee purchaser under this Chapter.

(5) Where a counter-notice specifies any interest in pursuance of subsection (3)(c), the nominee purchaser or any person authorised to act on his behalf shall, in the case of any part of the property in which that interest subsists, have a right of access thereto for the purpose of enabling the nominee purchaser to obtain, in connection with the proposed acquisition by him, a valuation of that interest; and subsection (3) of section 17 shall apply in relation to the exercise of that right as it applies in relation to the exercise of a right of access conferred by that section.

(6) Every counter-notice must specify an address in England and Wales at which notices may be given to the reversioner under this Chapter.

(7) The reference in subsection (3)(a)(ii) to additional leaseback proposals is a reference to proposals which relate to the leasing back, in accordance with section 36 and Schedule 9, of flats or other units contained in the specified premises and which are made either—

(a) in respect of flats or other units in relation to which Part II of that Schedule is applicable but which were not specified in the initial notice under section 13(3)(c)(ii), or

(b) in respect of flats or other units in relation to which Part III of that Schedule is applicable.

(8) Schedule 4 (which imposes requirements as to the furnishing of information by the reversioner about the exercise of rights under Chapter II with respect to flats contained in the specified premises) shall have effect.

Section 22.— Proceedings relating to validity of initial notice.

(1) Where—

(a) the reversioner in respect of the specified premises has given the nominee purchaser a counter-notice under section 21 which (whether it complies with the requirement set out in subsection (2)(b) or (c) of that section) contains such a statement as is mentioned in subsection (2)(b) of that section, but

(b) the court is satisfied, on an application made by the nominee purchaser, that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises, the court shall by order make a declaration to that effect.

(2) Any application for an order under subsection (1) must be made not later than the end of the period of two months beginning with the date of the giving of the counter-notice to the nominee purchaser.

(3) If on any such application the court makes an order under subsection (1), then (subject to subsection (4)) the court shall make an order—

(a) declaring that the reversioner's counter-notice shall be of no effect, and

(b) requiring the reversioner to give a further counter-notice to the nominee purchaser by such date as is specified in the order.

(4) Subsection (3) shall not apply if—

(a) the counter-notice complies with the requirement set out in section 21(2)(c), and

(b) either—

(i) an application for an order under section 23(1) is pending, or

(ii) the period specified in section 23(3) as the period for the making of such an application has not expired.

(5) Subsections (3) to (5) of section 21 shall apply to any further counter-notice required to be given by the reversioner under subsection (3) above as if it were a counter-notice under that section complying with the requirement set out in subsection (2)(a) of that section.

(6) If an application by the nominee purchaser for an order under subsection (1) is dismissed by the court, the initial notice shall cease to have effect at the time when the order dismissing the application becomes final.

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 of two months beginning with the date on which the counter-notice or further counter-notice was so given, [the appropriate tribunal] ¹ 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.

(3) Where—

(a) the reversioner has given the nominee purchaser such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all of the terms of acquisition have been either agreed between the parties or determined by [the appropriate tribunal] ¹ under subsection (1),

but a binding contract incorporating those terms has not been entered into by the end of the appropriate period specified in subsection (6), the court may, on the application of either the nominee purchaser or the reversioner, make such order under subsection (4) as it thinks fit.

(4) The court may under this subsection make an order—

(a) providing for the interests to be acquired by the nominee purchaser to be vested in him on the terms referred to in subsection (3);

(b) providing for those interests to be vested in him on those terms, but subject to such modifications as—

(i) may have been determined by [the appropriate tribunal] ¹, on the application of either the nominee purchaser or the reversioner, to be required by reason of any change in circumstances since the time when the terms were agreed or determined as mentioned in that subsection, and

(ii) are specified in the order; or

(c) providing for the initial notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6);

and Schedule 5 shall have effect in relation to any such order as is mentioned in paragraph (a) or (b) above.

(5) Any application for an order under subsection (4) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is—

(a) where all of the terms of acquisition have been agreed between the parties, the period of two months beginning with the date when those terms were finally so agreed;

(b) where all or any of those terms have been determined by [the appropriate tribunal] ¹ under subsection (1)—

(i) the period of two months beginning with the date when the decision of the tribunal under that subsection becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this section “*the parties*” means the nominee purchaser and the reversioner and any relevant landlord who has given to those persons a notice

for the purposes of paragraph 7(1)(a) of Schedule 1.

(8) In this Chapter "*the terms of acquisition*", in relation to a claim made under this Chapter, means the terms of the proposed acquisition by the nominee purchaser, whether relating to—

- (a) the interests to be acquired,
 - (b) the extent of the property to which those interests relate or the rights to be granted over any property,
 - (c) the amounts payable as the purchase price for such interests,
 - (d) the apportionment of conditions or other matters in connection with the severance of any reversionary interest, or
 - (e) the provisions to be contained in any conveyance,
- or otherwise, and includes any such terms in respect of any interest to be acquired in pursuance of section 1(4) or 21(4).

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1169

Rule 9.— Striking out a party's case

(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or case or that part of them; and

(b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings or case if—

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

(b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or

part of it, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.

(7) This rule applies to a respondent as it applies to an applicant except that—

(a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and

(b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings, or part of them.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.