



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

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| Case reference | : | LON/00AM/OCE/2019/0007 |
| Property | : | 69-79 Moundfield Road London N16 6TD |
| Applicant | : | 69-79 Moundfield Road Limited |
| Representative | : | Piers Harrison of Counsel |
| Respondent | : | London Borough of Hackney |
| Representative | : | Shomik Datta of Counsel |
| Type of application | : | Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) |
| Tribunal members | : | Judge Professor Robert Abbey Kevin Ridgeway MRICS |
| Date of determination and venue | : | 21 May 2019 at 10 Alfred Place, London WC1E 7LR |
| Date of decision | : | 28 May 2019 |

DECISION

Summary of the tribunal’s decision

1. For the purposes of this decision the tarmacked land is the land coloured green on the plan at page 14 in the trial bundle but is to the north of the line in that green land separating garden land to the south from the tarmacked land to the north. The tribunal determines that the tarmacked land be part of the enfranchised property being appurtenant property at the agreed consideration of £10,000 and that the terms in the TP1 are to include provisions that have been agreed by the parties

to deal with the sale by the respondent to the applicant of the tarmacked land.

Background

2. This is an application made by the applicant nominee purchaser pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid for the collective enfranchisement of **69-79 Moundfield Road London N16 6TD** (the “property”) registered at the Land Registry under title number LN58234.
3. By a notice of a claim dated 9 May 2019, served pursuant to section 13 of the Act, the applicant exercised the right for the acquisition of the freehold of the subject property and proposed to pay a premium for the freehold.
4. On 19 July 2018, the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium for the freehold.
5. On 4 January 2019, the applicant applied to the tribunal for a determination of the premium and terms of acquisition.

The issues

Matters agreed

6. Whilst there were significant matters unresolved at the time of the making of the application in January of this year, it was reported to the Tribunal at the time of the hearing that many of these outstanding matters had in fact been agreed prior to the hearing. The following matters were agreed prior to or at the start of the hearing:
 - (a) The consideration for the freehold of the relevant premises in the sum of £21,000. This is the amount agreed for the flats as well as the two small front gardens and the rear gardens.
 - (b) The leaseback of flat 71
 - (c) The terms of the freehold transfer (TP1) save as relate to the appurtenant property as defined in the Act being in this case the tarmacked land
 - (d) If the appurtenant property, the tarmacked land, is to be acquired then the consideration to be paid for that property is agreed in the sum of £10,000

Matters not agreed

7. The following matters were not agreed:

- (a) The terms of the TP1 as they relate to the appurtenant property, the tarmacked land, as defined in the Act
- (b) Whether the tarmacked land to the north of the appurtenant property is to be included in the transfer or is to “satisfied” by the granting of rights in favour of the applicant by the respondent in the TP1

The hearing

- 8. The hearing in this matter took place on 21 May 2019. The applicant was represented by Mr Harrison of Counsel, and the respondent by Mr Datta of Counsel.
- 9. Neither party formally asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination having been supplied with appropriate colour photographs at the time of the hearing.

The right to collective enfranchisement and the extent of the property claimed

- 10. The relevant part of the Act states:-

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 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 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 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 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; 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.

11. The relevant parts of this relating to this dispute are those that deal with appurtenant property. In that regard the Tribunal noted at the start of the hearing that the respondent conceded that the tarmacked land falls within “other property” in section 1 (3) (b) set out above. The outstanding issue is that the applicant seeks to include the tarmacked land in the property to be enfranchised while the respondent wishes to retain the land but satisfy the claim under section 1 (4) (a) by including rights in the TP1.

The tribunal’s determination

12. The tribunal determines that the tarmacked land be part of the enfranchised property at the agreed consideration and that the terms in

the TP1 are to include provisions that have been agreed by the parties to deal with the sale by the respondent to the applicant of the tarmacked land.

Reasons for the tribunal's determination

13. In a collective enfranchisement a reversioner can grant rights over property rather than convey the freehold of that property. However, the counter notice must specify the nature of the rights and the property over which it is proposed to grant them. In the respondents' counter notice there was no mention of any such rights. All that the notice did was to confirm that the respondent did not accept the proposals as to the extent of the property to be acquired and specifically referred to the green land mentioned in the initial notice. It was only late in the day, just before the hearing, that the respondent made it clear that it was offering rights.
14. It is the case that by offering rights the respondent is in effect seeking to introduce alternate arrangements that were not set out in their counter notice. In that regard it should be noted that the Act does not make provision for amendment of a counter notice, so that the reversioner only has one opportunity to state its requirements.
15. Mr Harrison for the applicant put to the Tribunal the authority of *Osman v Natt* [2015] 1 WLR where the Court of Appeal considered the validity of a notice under the Act. The Tribunal accepted that this was good authority for resisting the argument to the contrary put forward by Mr Datta for the respondent. It makes it clear that there is no validity to the assertion that a subsequent alteration to the terms such as the offer of rights can be acceptable if they are not mentioned in the original notice. There is also support for this in the decision of *Greenpine Investments v Howard De Walden Estates* [2016] EWHC 1923 (Ch) where Timothy Fancourt QC at paragraph 33 writes that

“It therefore makes obvious sense of the statutory scheme that the terms of acquisition....are defined by the notice and counter notice....If they are not so defined it is difficult to see how all the terms of acquisition are identifiable...”
16. Similarly there is additional support for this view to be found in the case of *Cawthorne v Hamdan* [2007] EWCA Civ 6 where it was held that if a reversioner failed to specify proposals for a leaseback of a flat within a collective enfranchisement claim then the reversioner is not entitled to seek a leaseback at a later date. This is very much like the case before the tribunal except the point at issue is rights offered rather than a leaseback claimed. However, the principle remains true that the absence of such a requirement from the counter notice means that a later claim for these rights cannot be accepted as it is not authorised under the terms of the Act.

17. Mr Datta for the respondent put to the Tribunal the case of *Cutter v Pry Limited* [2014] UKUT 215 (LC), a decision of Judge Edward Cousins in the Upper Tribunal which appears to lend support to the view that the Tribunal has the discretion to determine terms of acquisition in the event that the reversioner initially fails to set out such terms. However, Mr Harrison countered this assertion by his own assertion that *Osman v Natt* in the Court of appeal clearly took the opposite view and being a decision in the Court of Appeal it held sway. *Cutter* could not be good law in the light of the *Osman* decision. The Tribunal accepted that this was indeed so.
18. Accordingly the Tribunal found Mr Harrison's argument to be persuasive and this enabled it to determine that the tarmacked land should be appurtenant property for the purposes of the Act and thus to be acquired by the applicant for the agreed consideration of £10,000.
19. Appeal rights are set out in an appendix to this decision.

Name: Judge Professor Robert
Abbey

Date: 28 May 2019

Appendix

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).