



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

Case Reference	:	LON/OOAM/OCE/2021/0056
Property	:	8 9 & 10, Osborn Close, London, E8 4JZ
Applicant	:	8 to 19 Osbourn Close Limited
Representative	:	Trowers and Hamlin
Respondent	:	The Mayor and Burgesses of the London Borough of Hackney
Representative	:	
Type of Application	:	Application for determination of the Terms of Acquisition Remaining in Dispute
Tribunal Member	:	Judge Jim Shepherd Sarah Phillips MRICS
Date of Decision	:	26th April 2022

DETERMINATION

1. In this case the Applicants, 8 to 10 Osborne Close Limited (“The Applicants”) are seeking a determination by the Tribunal in relation to the terms of a collective enfranchisement. The Respondents are the Mayor and Burgesses of the London Borough of Hackney (“The Respondents”). The premises

concerned are flats 8, 9 and 10 Osborne close London E84JZ (The property). The Respondents are the freeholders of the property and the Applicants are the leaseholders of two of the flats, flat 8 and flat 10.

2. The enfranchisement claim was made by an initial notice served under section 13 of the Leasehold Reform Housing and Urban Development Act 1993 (“The Act”). The notice was served on the Respondents on the 4th of March 2014. By a counter notice dated the 29th of May 2014 the Respondents admitted that the participating tenants were entitled to exercise their right of collective enfranchisement. The counter notice accepted some of the Applicants’ proposals and made counterproposals including a proposal that a leaseback of flat 9 must be granted to the reversioner for a term of 990 years at a peppercorn ground rent on terms similar to those of the flat leases referred to in the schedule to the initial notice. In addition, it was required that the leaseback of flat 9 must provide for the heating arrangements to flat 9 to be a separate and independent arrangement to be managed and maintained by the lessee. Significantly the counter notice failed to include any provision under which the Respondents sought to retain any rights over the premises.
3. The negotiations between the parties thereafter hit a wall and the Applicants were forced to make an application pursuant to part 8 of the Civil Procedure Rules. The application was made to the County Court under section 24 (3) of the Act (see Appendix attached).
4. It is significant that the application was made under this provision which limits itself to an application to the county court unlike section 24(1) where an application can be made to *the appropriate tribunal* which would include the First Tier Tribunal Property Chamber.
5. The Applicants’ claim under CPR Part 8 was submitted on the 24th of February 2015 and on the 6th of May 2015 the Respondents filed an acknowledgment of service enclosing an agreed form of Tomlin order. The Tomlin order approved by District Judge Langley sitting at central London County court provided at paragraph 3 that:

The claimant and defendant having agreed to the terms set out in the schedule below it is ordered that all other proceedings in this claim be stayed except for the purposes of carrying such terms into effect. Liberty to apply as to carrying such terms into effect.

6. The agreed terms defined in the schedule to the Tomlin order were such terms mentioned in the counter notice which are relevant for inclusion in the transfer deed. Further the Tomlin order stated the following:

the transfer deed will include the agreed terms and such other terms as may be agreed between the parties failing which the claimant has liberty to apply to the court or the FTT as applicable as to either carrying such terms into effect or determining such terms as may not be in agreement.

7. Accordingly, the Tomlin Order bound the Respondents to the terms of the counter notice. Amongst other things the counter notice served by the Respondents on the 29th of May 2014 stated that the leaseback of flat 9 must provide for the heating arrangements to flat 9 to be a separate and independent arrangement to be managed and maintained by the lessee.
8. Following the Tomlin order the Applicants chased the Respondents' solicitors repeatedly for the transfer documents and finally received a draft transfer leaseback and plans on the 17th of September 2015. There followed negotiations on the documents during 2016 but little progress was made.
9. The Tribunal are asked in the application to resolve the remaining terms in contention. These terms are clause 12.5.2 under which the Respondents want the transfer to include a provision requiring the leaseholders to accept the supply of heat and hot water provided by the Respondents.
10. Presently Flat 10 has no communal supply and flat 8 is switching to an independent supply. Unsurprisingly therefore the Applicants opposed this part of the transfer. They point out quite rightly that the counter notice served

by the Respondents contained no schedules of terms to be included in the conveyance of the property moreover it seems incongruous for the Respondents to suggest this clause when the counter notice appeared to suggest the opposite at least in relation to the leaseback flat.

11. The reason for the Respondents' requirement for the subject clause is unclear because in response to the Application they did not engage with this issue but instead somewhat opportunistically sought to argue that the enfranchisement application was deemed withdrawn pursuant to section 29 of the Act (see appendix attached) because all of the terms had not been agreed within the required period.
12. The problem with the Respondents, argument is that it overlooks the effect of the Tomlin order that they had agreed. Under the Tomlin Order the Applicants were entitled to apply to the County Court or the Tribunal to carry agreed terms into effect or to seek a determination as to disputed terms.
13. It was for the Respondents to raise any issues of deemed withdrawal at this stage but they did not do so indeed quite the contrary they agreed in the form of the Tomlin Order to allow the Applicants to make an application to the Tribunal Which in itself runs directly contrary to their right to argue that there had been a deemed withdrawal because the applicants have not already made such an application.
14. Faced with the provisions of the Tomlin Order the Respondents' attempt to opportunistically disable the enfranchisement application is remarkable. The tribunal has no hesitation in determining that the enfranchisement application remains valid and is not deemed withdrawn. Moreover, because the Respondents have failed to make any cogent arguments in relation to the inclusion of the additional terms they were seeking to impose in relation to the supply of heating and hot water the Tribunal accepts the Applicants' submission that the proposed clauses at 12. 5.2 be deleted.

15. In summary, the Tribunal accepts the transfer terms and leaseback terms in the form proposed by the Applicants.

16. Both sides have made applications for costs pursuant to Rule 13 of the Tribunal Rules. Following the issue of this decision the Applicants are invited to make further submissions in relation to their entitlement to costs. These submissions must include a schedule of costs incurred and must be submitted to the Tribunal and served on the Respondents by 10th May 2022. If the Respondents oppose the application or the level of costs claimed they should make written submissions in response served on the Applicants and the Tribunal by 24th May 2022.

Judge Shepherd

26th April 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Annex – Statutory Provisions

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\(4\)](#).

29.— Deemed withdrawal of initial notice.

(1) Where, in a case falling within [paragraph \(a\) of subsection \(1\) of section 22](#)—

(a) no application for an order under that subsection is made within the period specified in [subsection \(2\)](#) of that section, or

(b) such an application is so made but is subsequently withdrawn,

the initial notice shall be deemed to have been withdrawn—

- (i) (if paragraph (a) above applies) at the end of that period, or
- (ii) (if paragraph (b) above applies) on the date of the withdrawal of the application.

(2) Where—

(a) in a case to which [subsection \(1\) of section 24](#) applies, no application under that subsection is made within the period specified in [subsection \(2\)](#) of that section, or

(b) in a case to which [subsection \(3\)](#) of that section applies, no application for an order under [subsection \(4\)](#) of that section is made within the period specified in [subsection \(5\)](#) of that section,

the initial notice shall be deemed to have been withdrawn at the end of the period referred to in paragraph (a) or (b) above (as the case may be).

(3) Where, in a case falling within [paragraph \(a\)](#) or [\(b\) of subsection \(1\) of section 25](#), no application for an order under that subsection is made within the period specified in [subsection \(4\)](#) of that section, the initial notice shall be deemed to have been withdrawn at the end of that period.

(4) Where, in a case to which [subsection \(5\) of section 25](#) applies, no application for an order under [subsection \(6\)](#) of that section is made within the period specified in [subsection \(7\)](#) of that section, the initial notice shall be deemed to have been withdrawn at the end of that period.

(5) The following provisions, namely—

- (a) [section 15\(10\)](#),
- (b) [section 16\(8\)](#),
- (c) [section 20\(3\)](#),
- (d) [section 24\(4\)\(c\)](#), and
- (e) [section 25\(6\)\(c\)](#),

also make provision for a notice under [section 13](#) to be deemed to have been withdrawn at a particular time.

(6) Where the initial notice is deemed to have been withdrawn at any time by virtue of any provision of this Chapter, [subsections \(4\) and \(5\) of section 28](#) shall apply for the purposes of this section in like manner as they apply where a notice of withdrawal is given under that section, but as if the reference in subsection (4) of that section to the time when a notice or copy is given as there mentioned were a reference to the time when the initial notice is so deemed to have been withdrawn.

(7) Where the initial notice is deemed to have been withdrawn by virtue of [section 15\(10\)](#) or [16\(8\)](#)—

- (a) the liability for costs arising by virtue of subsection (6) above shall be a joint and several liability of the persons concerned; and
- (b) the nominee purchaser shall not be liable for any costs under [section 33](#).

(8) In the provisions applied by subsection (6), “*relevant costs*”, in relation to the reversioner or any other relevant landlord, means costs for which the nominee purchaser is, or would (apart from subsection (7)) be, liable to that person under [section 33](#).