FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	LON/OOAG/OCE/2021/012
Property	:	9 Chalcot Gardens London NW34YB
Applicant	:	9 Chalcot Gardens Freehold Limited
Representative	:	Ms Muir
Respondent	:	(1) Joanna King (2) Andrew Jonathan King
Representative	:	Mr Harrison
Type of Application	:	Collective enfranchisement dispute
Tribunal Members	:	Judge Shepherd Neil Martindale FRICS
Date of Determination	:	4th August 2022

Determination

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1. In this case the Applicants are seeking to acquire the Freehold of 9 Calcot Gardens London NW3 4Y the ("the premises") pursuant to the Leasehold Reform, Housing and Urban development Act 1993 ("The Act"). The Applicants are 9 Calcot Gardens Freehold Ltd ("The Applicants"). The Respondents are the Freeholders of the premises, Joanna King and Andrew Jonathan King ("The Respondents").

2. The issues for the Tribunal to decide are broadly :

   a) the interest falling to be acquired; and

   b) the valuation of the additional freehold falling to be acquired.

3. The parties agree that the actual premises and the garden demised with the lower ground floor flat fall to be acquired. The parties disagree as to whether any other additional freehold property falls to be acquired. The Respondents say that some of the other additional freehold property either does not fall to be acquired at all as it as it is neither demised nor an area over which there are rights in common (in particular the car parking spaces at the front of the premises) or that the claim to acquire the property which falls within section 1 (3) (b) of the Act (in other words areas over which tenants have rights in common) is defeated by the offer of rights in lieu under section 1 (4) of the Act.

4. The Tribunal were lucky to have been assisted by two counsel who are very experienced in this area, Nicola Muir for the Applicants and Piers Harrison for the Respondents. Mr Harrison was very clear in his submissions that the Respondents are prepared to grant whatever rights may be required, however extensive, in order fully to satisfy the equivalence test in section 1 (4) of the Act (see below).

5. For ease of reference the notice and counter notice which are relevant to this case are attached as Annexes to this judgement.

6. A notice of claim was served on 26 November 2020 seeking to acquire the Freehold of the premises and the leasehold interest in the plantation area, car parking space and rear garden. The leasehold interest is registered in the name of the First Respondent under title number NGL 988091 ("The plantation lease").

7. A counter notice was served by the Respondents on 29 January 2021 the counter notices admitted the right to acquire the specified premises but did not accept the proposal to acquire the additional Freehold property edged and hatched green on the plan attached to the initial notice. At paragraph 3.2 the counter notice did not accept the proposal to acquire the plantation lease. In relation to to the additional Freehold property edged and hatched green on the plan attached to the initial notice the counter notice made counterproposals as follows:

   a) in relation to the close rear garden (which was hatched green on the plan accompanying the counter notice) it was accepted that the freehold fell within section 1 (2) (a) of the Act, the counter notice agreed to the acquisition of the freehold of that part.

   b) in relation to the areas hatched blue on the plan accompanying the counter notice it was accepted that the freehold fell within section 1 (2) (a) of the Act and the counter notice offered to grant over that property, on the acquisition of the specified premises, such permanent rights as would ensure that thereafter the occupiers of the flats that enjoy rights over the blue land would have as nearly as may be the same rights as those enjoyed in relation to the blue land by the qualifying tenants of those flats under their leases. The blue land corresponded to the entrance steps part of the forecourt and the pavement part of Chalcot Gardens.

c) in relation to the area shaded pink on the plan accompanying the counter notice it was not accepted that the freehold fell within section 1 (2) (a) of the Act and the Respondents counter proposed that the nominee purchaser should neither acquire such land nor have any rights over it. The pink land included the lower rear garden, parts of the forecourt Chalcot gardens and the Plantation area. The counter notice also provided that if all or part of this land did fall within section 1 (2) (a) of the Act then the counter notice offered to grant over the parts found to fall within that section, on the acquisition of the specified premises, such permanent rights as would ensure that thereafter the occupiers of the flats that enjoy rights over the pink land would have as nearly as may be the same rights as those enjoyed in relation to the pink land by the qualifying tenants of those flats under their leases.

8. On 16 July 2021 the Applicants applied to the Tribunal for a determination of the price to be paid for the acquisition of the various interests of the property claimed and for a determination of whether the Applicants were entitled to acquire the freehold and leasehold interests in the rear garden, car parking spaces and plantation area. The parties agreed that the price payable for the freehold of the building on the premises excluding any valuable value attributable to the other interests was £24,450.

9. The premises consist of a five-storey semi detached house containing three flats, gardens and parking areas. The freehold of the premises is registered under title number LN219474 in the names of the Respondents. The freehold title includes-

a) the building known as 9 Chalcot Gardens;

b) a paved forecourt in front of the building;

c) that part of the private road known as Calcot Gardens which is immediately in front of the building and the adjacent pavement;

d) an area on the far side of the road which has a tar macadam surface and is known as the plantation area;

e) an area of garden adjoining the building which is demised under the lease of the lower ground floor flat;

f) the lower rear garden which is double width and straddles 9 and 10 Chalcot Gardens;

g) a side path leading to the lower rear garden.

10. This is subject to 4 leases-

a) a lower ground floor flat which was originally owned by the freeholders. The freeholders granted the First Respondent a lease on 25 April 2019 and the lease was sold on 4 October 2019. This flat is not participating in the claim.

b) a ground and first floor flat which is let on a lease made between the Respondents and Stephen and Morag flower dated 12 April 2016 which is an extension of a lease dated 7 February 1991

c) a second and third floor flat which is let on a lease granted by Jonathan Hazel Morfy to Sarah Hyam dated 5 October 1995

d) The plantation lease granted by the Respondents to the First Respondent on 16 April 2019. This lease was granted for a term of 999 years from 7 June 2019. The demised premises are described as "the flat" but the definition of flat is missing there is a description of the demised premises at schedule one which refers to lease plans. These plans show that the lower rear garden and most of the plantation area are within this demised premises. The lease reserves rights to the grantor in relation to all existing easements and quasi easements over the demised premises and specifically in relation to the garden rights granted to the upper ground floor flat.

11. The ground floor lease states that the building where the context so admits includes the grounds thereof the extent of which is for identification only outlined in red on plan number one which building is divided into two flats and two bed sitting rooms.

12. Plan number one shows the whole of the freehold title including the rear garden, the car parking spaces and the plantation area outlined in red thereby comprising the building.

Ground Floor Lease

13. The demise of the ground floor includes the rights in the second part of the first schedule-a right of way in common with the landlord and all others entitled to a like right over and along and through such entrance ways and passageways leading to and from the flat within the building and a right of way along the path coloured brown on plan to the garden as referred to in clause 6 of the second part of the schedule together with a right-of-way in common with others entitled to the like right to pass and re-pass over Chalcot Gardens and over the path or way leading to the building providing access to and egress from it.

14. The right to keep a proper refuse enclosed container in that part of the front area designated by the land and a right of access at all times is also granted to the ground floor flat.

15. The right to use that part of the garden shown coloured green on plan one in common with the other lessees for the purposes only of quiet enjoyment and not for playing a ball or any other games nor the exercising of animals and the case of children only with adult supervision is also given to the Ground Floor Flat.

16. The right to park one private motor vehicle on the parking area at the front of the property (so far as the landlord is able) as may be designated by the landlord from time to time in common with the lessees of the other flat is also given to the Ground Floor Flat.

17. The area shaded green on plan one is the rear garden and the path coloured brown is the pathway leading down the left-hand side of the building from Chalcot gardens to the rear garden

18. The lessee of the ground floor flat is required to pay a service charge representing 2/5 of the amount spent by the landlord in performing its obligations as to external repair, decoration of the common parts, maintenance and insurance. Those obligations include to keep in good order the grounds of the building not included in this demise or in a demise of any part of the building including and without prejudice to the foregoing the maintenance cultivation and cutting of the lawns and communal garden areas.

19. The common parts are defined in clause 9 (IV) as including any part of the building not demised to the tenant of this flat or to the tenant of any other flat in the building including the gardens and fences.

Second and Third Floor Lease

20. The second and third floor the lease is required to pay a service charge representing 2/5 of the landlord's expenditure in carrying out its obligations and those obligations include-

    4 (3): to keep in good order the grounds of the building not included in this demise or in a demise of any part of the building including and without prejudice to the foregoing the maintenance cultivation and cutting of lawns and communal garden areas. The common parts include the communal garden (if any) and fences

Lower Ground floor flat

21. The lower ground floor flat has its own garden. The block is defined as the whole of the freehold title including the rear garden car parking spaces and plantation area and the common parts of such parts of the block as for the time being not comprised or intended to be comprised in any lease or tenancy granted or to be granted by the landlord. The service charge proportion is a fair proportion of the charges for services provided by the landlord pursuant to the covenants in clause 7 and 8 at a starting rate of 10% the external nonstructural parts of the block. The landlord's obligation in clause 7.4 include keeping the common parts those interior and exterior in good repair and decorative condition.

22. The rights granted to the lower ground floor flat include the right-

    to use such facilities (if any) within the block that may from time to time be designated by the landlord for use (with or without others) by the tenants of the block in general...

to access a refuge bin on such part the common parts of the designated by the landlord from time to time for such purposes together with a right-of-way over the common parts on foot only to access the bin store area; and

to park one private motor vehicle at the front of the block (so far as the landlord is able) as may be designated by the landlord from time to time in common with the landlord and other tenants or occupiers of the block.

The rear garden

23. The ground floor flat has rights to use the rear garden as does the tenant under the plantation lease and the second and third floor flat are required to pay service charges in respect of the rear garden.

Car Parking space

24. In terms of car parking spaces there are three car parking spaces at the premises on the forecourt of the building and one over the lane on the plantation area.

The law

25. The relevant statutory provisions are attached as annexes to this judgement.

26. Chapter 1 of part 1 of the Act confers on the qualifying tenants of flats in premises to which the provisions apply, the right to have the freehold of those premises acquired on their behalf by a nominee at a price determined under that chapter. Where the right to collective enfranchisement is exercised,

pursuant to section 1 (2) (a) the qualifying tenants are also entitled to have acquired on their behalf the freehold of any property which is not comprised in the relevant premises but to which the paragraph applies by virtue of subsection (3). Section 1 (3) states:

Subsection (2) (a) applies to a property if at the relevant date either-(a) it is a pertinent 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).

27. The right to acquire the freehold of property described in section 1 (3) (b) may be satisfied by the fulfilment of one of the alternatives in section 1 (4). This provides-

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) their 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.

28. In addition to the freehold the qualifying tenants are also entitled to acquire certain leasehold interests. These are described in section 2 (3) as-

The interests of the tenant under any lease… Under which the demised premises consist of or include-(a) any common parts of the relevant premises (b) any property falling within section 1 (2) (a) which is to be acquired by virtue of that provision where the acquisition of that interest is reasonably necessary for the proper management or maintenance of those common parts… On behalf of the tenants by whom the right to collective enfranchisement is exercised.

29. Where a lease includes parts falling to be acquired and other parts which do not fall to be acquired section 2 (4) provides that the lease is severed and only the former parts are required. Section 2 (4) states-

Where the demised premises under any lease falling within subsection (2) or (3) include any present premises other than-

(a) a flat contained in the relevant premises which is held by a qualifying tenant,

(b) any common parts of those premises, or

(c) any such property as is mentioned in subsection (3) (d) the obligation or as the case may be right under subsection (1) above to acquire the interests of the tenant under the lease shall not exceed to his interests under the lease in any such at the premises.

30. Unsurprisingly there has been case law in relation to section 1 (4) of the Act. The case of *Shortdean Place (Eastbourne) Residents Association Ltd v Lynari Properties Ltd* [2003] 3 E.G.L.R. 147 at [63]) found that provided the rights

offered by the landlord satisfy the test in section 1 (4) the FTT has no power or discretion to order the transfer of the freehold of the land.

31. The exact scope of the rights to be granted under section 1 (4) may be modified by the reversion up after service of the counter notice and even at the hearing; *Cutter v Pry Ltd* [2014] UKUT 215 (LC) at [42].

32. Whether the freeholder has offered rights which are sufficient to engage section 1 (4) is a matter for the Tribunal (*Snowball Assets Ltd v Huntsmore House*
(Freehold) Ltd [2015] UKUT 338 (LC) at [77]) but any objection to the exact scope of the permanent rights to be granted would be decided at the contract stage *Shortdean Place (Eastbourne) Residents Association Ltd v Lynari Properties Ltd* [2003] 3 E.G.L.R. 147 at [64].

33. The transfer may require the grantee of the right to contribute to the upkeep of the land over which rights are granted-*Fluss v Queensbridge Terrace Residents Limited* [2011] UKUT 285 (LC) at [41(11)].

34. In relation to whether land is used in common with the occupiers of other premises for the purposes of section 1 (3) where there are several car parking spaces within the freehold title, but each space is allocated to a particular tenant each allocated space is not used in common with the occupier of other premises-*Cutter v Pry* above.

Car parking

35. The individual leases of the flats in the present case grant various rights over the parking areas. The upper ground floor flat has a right to part one private motor vehicle on the parking area at the front of the property (so far as the landlord is able) as may be designated by the landlord from time to time in common with the landlord and other lessees of the flat. The lease of the

second and third floor flat grants a right in identical terms save for the fact that the last word correctly refers to flats. The lease of the lower ground floor and garden flat grants rights in similar terms to park one private motor vehicle at the front of the block (so far as the landlord is able) as may be designated by the landlord from time to time in common with the landlord and other tenants or occupiers of the block.

36. The Respondents' case is that there are five designated parking spaces. As well as the leases already described the lease of the first floor flat at 10 Chalcot Gardens grants a right to park in similar terms to the flat leases as a result of a deed of variation.

Garden rights

37. In terms of garden rights the close rear garden is demised with the lease of the lower ground floor flat. This is uncontentious. Only the lease of the upper ground floor flat grants a right to use the lower rear garden – see above.

38. The tribunal were assisted considerably by Counsel who prepared an agreed list of questions for the tribunal to address. It is now intended to deal with each question in turn.

Question one

39. This can be summarized as – are the parking spaces allocated to individual flats?

40. The Respondents say the Applicants are not entitled to acquire the parking spaces because each space is not used in common with the occupiers of other premises as required by section 1 (3) (b). The parking area is made up of three areas the forecourt, part of the pavement and the plantation land on the other side of the lane. In schedule 2, para 1 of the leases there are rights of access over the forecourt and the pavement area. The forecourt does not have a

specific path leading to the front of the property, the lower ground floor flat or the side entrance to the rear garden. Access is required over the whole of the forecourt if the requirements of section 1 (4) is to be met the Applicants argue that because the transfer will grant rights on foot over the whole of the forecourt and pavement they are entitled to acquire the whole of the forecourt pavement and the issue of whether there is communal use or allocated spaces of the area other than the plantation land is academic.

41. The car parking rights which each lease grants are described above. At the hearing Mr Burgard the joint tenant of the upper ground floor flat gave oral evidence that he always parked in the same spot which was on the road known as Chalcot Gardens. He knew that he had a right to park there because that was what he was told when he brought the flat. Each of the other tenants parked in their spaces. The tenant of the second and third floor flat parked a mini in the plantation area. Previously both he and Mrs King's mother had parked in that area and it made it difficult for the refuse collection lorry to pass. The tenants of the basement flat parked on the forecourt in the space closest to 10 Chalcot Gardens and had installed a charging station for their electric Peugeot 208. He had in the past on at least one occasion parked on the other space and had been told off doing so by Mrs King. None of the tenants would park in the space used by another tenant. The Respondents say this evidence was consistent with Mrs King's evidence that each tenant parked in a space which had been designated or allocated by the freeholder. They also say that each lease clearly contemplated a single space being designated for each lessee. The Respondents rely on the case of *Cutter v Pry* (see above). where the rights granted was in the following terms-

The right to Park one private motor vehicle in such space forming part of the development as the landlord shall allocate from time to time.

42. In *Cutter* the Judge rejected the contention that the car park spaces fell within section 1 (3) (b) stating-

I find that the car parking spaces do not fall within the provisions of section 1 (3) (b) of the 1993 act. In my judgement the car parking spaces do not form a common pool and each allocated space is not used in common with the occupiers of the premises. Each space is allocated to each tenant and each tenant has a right to park in a specifically marked space allocated by the reversion.

43. The Respondents also rely on *Westbrook Dolphin Sq, Ltd v Friends life Ltd* [2014] L and TR 28. They say that each tenant has the right to use a designated space and there are no areas over which the tenants have common use therefore the claim to acquire the freehold of the car parking spaces fails alternatively they say if the Tribunal finds against them on this point then the claim to acquire the car parking spaces is defeated by the grant of permanent rights in lieu and the transfer should include the grant of such rights.

44. Miss Muir for the Applicants highlighted the fact that in *Cutter* the Tribunal found as a fact that the parking spaces were numbered 1 to 12 on the car parking plan and on the relevant date 10 spaces were specifically allocated to participating tenants. The Tribunal found that each allocated space was not used in common with the occupiers of the premises because each space was allocated to each tenant. Miss Muir says that in *Cutter* the lessee was entitled to have a space allocated; there were numbered spaces marked out on the ground; once allocated the space could only be used by the specific tenant and there was no common pool. She says that none of these factors apply in this case and the wording of the parking easement in the leases is very different. She says that the lease allows a lessee to park one motor vehicle on the parking area at the front of the property and allows the landlord to designate where the parking area at the front of the property should be- *So far as the landlord is able*. She says that the latter phrase must have been included to recognised at the time the leases were granted there were pre-existing rights-of-way and restrictive covenants over the roadway, pavement and the curved

part of the plantation land contained in the 1962 conveyance. The lease provides that the landlord may designate from time to time where the parking area may be and would appear to have done so. The landlords designated that the area will include that part of the forecourt which is not used for bins, the plantation land and the pavement in order to fit in three cars they have granted rights to. She says they could have abided by the restrictive covenants and not include the plantation land in the parking area; they could have only designated the forecourt. It may have been that while there were two flats the forecourt would have been a sufficient parking area at the front of the property to accommodate both cars if the front wall is removed and a dropped curb installed to allow access over the area currently occupied by one of the cars. However, by the time a third flat was granted a larger parking area at the front of the property was required.

45. Miss Muir says that the evidence on allocation of spaces was thin. There was no evidence from the original grantor of the leases and Mrs King had no personal knowledge of what her parents agreed. There was no evidence from any grantees that they had been specifically allocated a space. There was no evidence from the successors in title of the original grantees or from the freeholder that the freeholder had spoken to the successors following their purchase and designated a particular parking space to them. If the parties intended their flat would be allocated to a specific space it would have been a simple matter to put that in the lease but the lease grants are right over a communal area. Since the Respondents acquired the freehold of number 9 they have granted two new leases within number 9 neither of them purports to allocate a space. She says there are no markings on the ground and no obvious locus of the space it is not surrounded by walls for example. She says the evidence was that the leaseholders do not park full square within particular spaces. The lower ground floor flat lessee parks as and where on the forecourt, the second and third floor flat lessee parks as and where on the plantation land and the photographs show different cars at different angles. She says just because leaseholders within a building have sensibly reached an accommodation with each other to ensure that they are likely to be depart

without blocking each other does not mean they are not entitled to use the rest of the parking area. Inevitably if a new leaseholder moves in he will park wherever his predecessor tended to park in order to promote harmony this does not alter the nature of rights. Accordingly, she says that the applicant is entitled to acquire the whole of front parking area which the landlord designated as including the plantation land.

Determination

46. The Tribunal finds that the parking areas which comprise the forecourt, part of the pavement and the plantation land are property which any such tenant is entitled under the terms of his lease of his flat to use in common with occupiers of other premises. This case can be distinguished from *Cutter* where there was a clear allocation of parking spaces. The spaces were numbered and it was intended that particular lessees used particular spaces. The Tribunal finds that the evidence from the Respondents and the lessees goes no further than supporting the fact that there was an expectation that particular lessees would use particular spaces. There was no clear express allocation of spaces to particular lessees. The fact that the lessees in a small building had agreed parking spaces in order to promote harmony and allow the occupiers to avoid conflict (in the tribunal's experience car parking is very often the source of conflict in neighbour disputes) does not mean that there were allocated spaces. If there had been allocated spaces one would have expected these to be numbered and allocated in the lease or at least some form of written express designation giving exclusive rights to use particular spaces. The situation was fluid. The freeholder retained the right to designate where lessees could park generally but there was no allocation of particular spaces. Accordingly, the answer to question one is yes.

Question two

47. This question read as follows: *Is the plantation land or part of it (and if part only, which part)-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-section 1 (2) (a) and 1 (3) (b).*

48. The plantation land is shown on a photograph on page 449 of the bundle. It is a small area on which a car is shown to be parked and where there is a tree.

Determination

49. We have already decided that the parking on the plantation area is part of the shared parking at the front of the building. On its face the parts of the plantation land which are not part of the parking area are not to be acquired. This seems rather impractical and somewhat artificial. In practical terms those parts of the existing freehold of the plantation area which are not the parking space are in any event in common use – they can be seen or walked over by all of the lessees. However, if the Respondents want to retain them they can.

Question three

50. This question does not come into play as far as the Tribunal can see because the forecourt, pavement and plantation land (part of it) fall to be acquired under section 1 (2) (a) for reasons related to car parking.

Question Four

51. This question related to acquisition of the leasehold interest in the Plantation lease.

52. The land intended to be demised in the plantation lease is the rear garden and the car parking space and plantation area at the front of the block. The area demised for car parking is only big enough for a single car. The plantation lease is subject to the rights enjoyed over the garden by the ground floor flat and is not subject to any rights in favour of any occupiers of number 10 Chalfont Garden it is also subject to the parking rights granted to each of the lessees under the three leases in the block.

53. Under section 2 of the Act the Applicant is entitled to acquire the leasehold interests in:

(a) any common parts of the relevant present premises, or

(b) any property falling within section 1 (2) (a) <u>which is to be acquired</u> by virtue of that provision,

Where the acquisition of that interest is reasonably necessary for the proper management or maintenance of those common parts, or (as the case may be) that property, on behalf of the tenants by whom the right to collective enfranchisement is exercised.

54. The Respondents accepted the property falls within section 1 (2) (a) but say that as it is not land which is to be acquired by virtue of that provision because rights in lieu have been offered there is no right to acquire the plantation lease. The Tribunal was offered no authority on this point and therefore it is to some extent a novel area.

55. Section 1 (4) applies to all land falling to be acquired under section 1 (3) (b) in other words property which any qualifying tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises. In the case of a freehold acquisition the Act requires the freeholder to grant equivalent permanent rights to the nominee purchaser. The former freeholder will still be in a direct relationship with the nominee purchaser and the nominee purchaser or its successor in title can enforce those freehold rights against the former freeholder or its successor in title. When the current leases expire the nominee purchaser can include the rights in a new extended term because it enjoys permanent rights from the freeholder.

56. Miss Muir said that in the case of a leasehold interest there is no equivalent to section 1 (4) in the act so in a case like this one where a 999 year lease has been granted the permanent rights granted by the freeholder to the nominee purchaser would be worthless because neither the freeholder nor the nominee purchaser could enforce them. She says that the suggestion that the nominee purchaser could sue the freeholder pursuant to the transfer covenants and the freeholder could then enforce against the intermediate lessee would be cumbersome and make management of the common areas more or less impossible and even if the Act required such convoluted means of enforcement there is no guarantee that the freeholder will have like rights against the immediate intermediate lessee.

57. Miss Muir said there are factors in the drafting of the Act which make it clear that the right to acquire the intermediate lease is not determined by whether or not the freeholder offers permanent rights in lieu under section 1(4). The first is the wording of that section itself. Section 1 (4) provides the right of acquisition in respect of the freeholder of any such property as is mentioned in subsection 3 shall however be taken to be satisfied with respect to that property if permanent rights are granted.

58. The right of acquisition referred to is the right contained in section 1 (2) where subsection (a) refers to the freehold aspect and subsection (b) deals with the acquisition of leasehold interest. Section 1 (4) is only directed to interests to be acquired under subsection (a) and there is no reference to section 1 (4) dealing with interests in subsection (b). She says that if section 1 (4) related to interest to be acquired under section 1 (2) (b) and section 1 (3) (b) it would have said so.

59. Miss Muir says the wording of section 1 (4) is very specific. It says that the right of acquisition is taken to be satisfied if permanent rights are granted it does not say the freeholder can elect to grant permanent rights instead of transferring the freehold; it says the right to have the freehold transfer is deemed satisfied if such rights are granted.

60. Miss Muir says that the Respondent's case is illogical because if the nominee purchaser was acquiring the freehold and would be in a position to perform the landlord covenants itself and enforce the terms of of the intermediate lease it can also acquire the lease but if it was not acquiring the freehold and had to rely on the enforcement of covenants in a transfer against the former landlord who would not be able to acquire the lease of common areas and could not enforce directly.

61. Miss Muir says that the Applicants cannot comply with their obligations in relation to the upkeep of the areas demised by the plantation unless they acquire that lease and suing the former freeholder is not practical but in any event the obligations in the plantation leads do not mirror those in the leases. She says had the Act intended section 1(4) to apply to leasehold interests as well as freehold interest it would have said so.

62. Further Miss Muir states that the acquisition of the lease is necessary for the proper management or maintenance of those common parts. She says that under clauses 4 (1) and 4 (3) of the ground floor and second and third floor leases the landlord is obliged to keep the appurtenances of the building in good and substantial repair. If the Respondents retain the freehold of the appurtenant land the Applicant will be unable to enforce any covenants in the plantation lease as it will not be the freeholder of that. If the plantation lease was not acquired the Applicants have no way of managing or maintaining the appurtenant land.

63. Mr Harrison who was very patient in taking the tribunal through a complex and technical argument sought to argue that the lease of the plantation was not to be acquired. He reminded the Tribunal that the plantation lease demises the lower rear garden and part of the plantation area. The plantation area comprises a raised area which has plants and shrubs and a tar macadam area. The tar macadam area forms a crescent and the tree stands towards the middle of the crescent. Only one third of the tree and roughly half the crescent is within the freehold of 9 Chalcot Gardens.

64. In his closing he pointed out that the Applicants had originally nailed their colours to the mast in arguing for acquisition under section 2 (3) (a) namely that the premises demised under the plantation lease fell to be acquired as common parts. The applicants since accepted that this was not really a runnable argument because the plantation area and the lower rear garden do not constitute common parts. Instead, the applicants rely on section 2 (3) (b).

65. Section 2 (3) (b) applies to property falling within section 1 (2) (a) which is to be acquired by virtue of that provision. Property falling within section 1 (2) (a) is additional freehold property. Mr Harrison states that therefore the right to acquire leasehold property under section 2 (3) (b) is only exerciseable in relation to leasehold property the freehold of which is to be *acquired*. So if the

freehold of land is not to be acquired on section 1 then no lease of that same land can be acquired under section 2(3) (b).

66. Mr Harrison argued that in relation to the plantation area neither of the conditions in section 2(3)(b) are fulfilled because it's not property falling within section 1 (2) (a) because it is neither demised nor an area in respect of which the tenants have rights in common. In the case of the lower rear garden he says that the first condition is fulfilled because the ground floor flat has the right to use the lower rear garden in common with others but the second requirement is not fulfilled because it is not property which is to be acquired by virtue of section 1 (2) (a) because the respondents have offered rights in lieu under section 1 (4).

67. Mr Harrison's central arguments rests on the words *to be acquired*.

Determination

68. This is a difficult area of law which is apparently untested. One needs to look at section 1 (4) which states *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 accordance in pursuance of this chapter* et cetera. The Tribunal read this as a deeming provision so that if permanent rights are granted this will be treated as an acquisition of the relevant premises. Mr Harrison's argument rests on a restricted reading of section 2 (3) (b) to the effect that it refers to any property falling within section 1 (2) (a) which is *to be acquired* by virtue of that provision. He says where the landlord offers rights under section 1 (4) there is no acquisition. The tribunal rejects this argument. Section 1 (4) itself deals with acquisition albeit by a deeming provision. In other words there is an acquisition even if it is met by means of offering permanent rights. Further Mr Harrison is putting the cart before the horse.

The Applicants want to acquire the freehold of the additional land. They consider that they are entitled in this regard. It may be that the landlord can offer additional permanent rights instead but if he does this can't and should not affect legal rights of acquisition with regard to the plantation lease otherwise the cart would be driving the horse!

69. In light of this finding the tribunal therefore finds that section 2(3) (b) is prima facie applicable to the present case. Further it is clear that the acquisition of the leasehold interest in the present case is reasonably necessary for the proper management or maintenance of the common parts or other property. As pointed out by Mr Harrison in his skeleton argument it is the lessee of the Plantation Lease that has responsibility for maintaining the lower rear garden. If the lease remained in the name of the First Respondent the Applicants would have no real control over whether she complied with her responsibilities in the event that they don't acquire the freehold and even if they did it would obviously improve management if they were in control of the lease.

70. Its difficult to see why the Respondents want to retain the freehold of the lower rear garden without any benefit and with only the burden of enforcing the Plantation Lease. The leaseholders do benefit from the Applicants becoming the Freeholder in terms of simplicity of management. At present because the Respondents have imposed a lease of the plantation land between themselves and the leaseholders the latter would have to rely on the freeholder to enforce the covenants in the Plantation Lease. The fact that the freeholder and the Plantation Lessee are the same person (at least in once case) makes this an easier task. If however the Freeholder was still the Respondents and the Plantation Lessee the Applicants enforcement would undoubtedly be more difficult. There is no reason to expect the Respondents to warm to the task of such enforcement. It may be said that its unlikely that the Applicants would fail to maintain the garden but its not certain, leaseholders move on or fall out and the personnel involved with the Applicants may change. It is difficult to see what permanent rights could be

given to the leaseholders to ensure that the freeholder (if still the Respondents) comply with their obligations in relation to maintaining the common areas by taking action against the plantation lessee. As the Tribunal sees it s.1(4) is not open to the Respondents at least in relation to the lower rear garden for the reasons we have given.

71. In answer to the various questions in this section: does the plantation area or part of it fall within section 1 (2) (a) the answer is yes. The answer to 4.2 is yes. The area for the purposes of section 2 (3) (b) would ordinarily be acquired even where the right of acquisition in respect of the freehold of that part is to be taken to be satisfied by the grant of permanent rights under section 1 (4). This is the Tribunal's interpretation of section 1 (4). It is appreciated that this is a novel and complex area however the tribunal considers that the most practical reading is the one that the Tribunal has adopted.

72. In relation to question 4.3 the answer is in principle yes but the Tribunal does not consider that equivalent rights of enforcement can be granted. In response to the question 5.1 it is considered that the acquisition of the leasehold interest is reasonably necessary for the proper management or maintenance of those common parts or as the case may be that property on behalf of the tenants by whom the right to collective enfranchisement is exercised as indicated above.

73. The tribunal have considered the cases and statutory provisions referred to in the questions. It does not appear that either was mentioned during submissions at the hearing. It is not clear why the Tribunal should be considering these cases and authorities. It is not for the tribunal to speculate as to arguments that either party is seeking to make. These arguments should in any event have been made at the hearing It's assumed that the Respondents are concerned about the situation in which their client retains the freehold but the leasehold is owed by the Applicants but this is not clear.

Valuation

74. Matters of valuation can be dealt with in shorter order. The parties have agreed that the value attributable to the lower rear garden is £25,000. The Tribunal considers that there is no value attributable to the parking space demised by the plantation lease or the parking easement or indeed any of the spaces. The spaces have value but only as reflected in their rights to park given in the lease not as separate rights (questions 8-10).

75. The Tribunal believes that the loss of value to the First Floor Flat , 10 Chalcot Gardens is speculative and the Plantation Lease precludes a claim for compensation for the reasons given . The fact that the First Respondent is a joint tenant of the First Floor Flat, 10 Chalcot Gardens does not change this position. In any event the loss would be nominal and Mr Stone's assessment at £500 is correct (questions 11-15).

76. In relation to question 16 no evidence was provided to the Tribunal in relation to these issues by the Respondents save that Mr Cohen said it was "significant". Mr Stone assessed the value at £25000 which the Tribunal accepts.

77. Question 17 is not applicable because no evidence was provided.

Terms of transfer

78. The Tribunal will be willing to look at any remaining issues of transfer terms once the parties have considered this determination.

Judge Shepherd 4th August 2022

ANNEX 1- 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 2 - Notice of claim and counter notice

Initial Notice by qualifying tenants claiming collective enfranchisement

Leasehold Reform Housing and Urban Development Act 1993 as amended by the Commonhold and Leasehold Reform Act 2002 (the Act)

Part I, Chapter 1, Section 13

To: JOANNA MARGARET KING and ANDREW JONATHAN KING of 8 Claigmar Gardens Finchley, London N3 2HR and care of Burton, Woolf and Turk, 22-24 Ely Place, London EC1N 6TE (the **Reversioner**)

From: The Participating Tenants as defined in Section 14 of the Act and being those persons who have signed the attached schedule of participating qualifying tenants (the **Qualifying Tenants**)

1 The premises of which the freehold is proposed to be acquired by virtue of Section 1(1) of the Act are shown edged red on the accompanying plan and are known as 9 Chalcot Gardens, London, NW3 4YB as registered at the Land Registry under title number LN219474 (the **Specified Premises**).

2 The property of which the freehold is proposed to be acquired by virtue of Section 1(2)(a) of the Act is shown edged and hatched green on the accompanying plan.

3 The property over which it is proposed that the rights should be granted under Section 13(3)(a)(iii) of the Act are:

None

4 The grounds on which it is claimed that the Specified Premises are premises to which Chapter 1 of the Act applies are:

4.1 they consist of a self-contained building or part of a building,

4.2 they contain three (3) flats held by qualifying tenants, and

4.3 not less than two thirds of the total number of flats contained in the Specified Premises are held by qualifying tenants.

5 The leasehold interest proposed to be acquired under or by virtue of Sections 2(1)(a) or (b) of the Act is the lease of the Plantation Area, Car Parking Space and Rear Garden at or adjoining the Specified Premises the details of which are as follows:

Date: 7 June 2019

Term: 999 years from 7 June 2019

Parties: Joanna Margaret King and Andrew Jonathan King (1) and Joanna Margaret King (2)

Title Number: NGL968091

Registered Proprietor: Joanna Margaret King

6 The flats or other units contained in the Specified Premises in relation to which it is considered that any of the requirements of Part II of Schedule 9 of the Act are applicable are:

None.

7 The proposed purchase price is:

7.1 £22,300 for the freehold interest in the Specified Premises;

7.2 £100 for the property referred to in paragraph 2 of this notice;

7.3 £500 for the property referred to in paragraph 5 of this notice.

8 The full names of all the Qualifying Tenants of the flats in the Specified Premises with the addresses of their flats and the particulars required by the Act are set out in the schedule to this notice.

The full name of the person appointed to act as the nominee purchaser for the purposes of Section 15 of the Act is 9 Chalcot Gardens Freehold Limited (Company registration number 13042039) whose registered office is situated at Upper Ground and First Floor, 9 Chalcot Gardens, London, NW3 4YB and care of Irwin Mitchell LLP, 40 Holborn Viaduct, London EC1N 2PZ (the **Nominee Purchaser**).

9 The address in England and Wales at which notices may be given to the Nominee Purchaser under Part I, Chapter I of the Act is Irwin Mitchell LLP, 40 Holborn Viaduct, London, EC1N 2PZ (reference: CRB. 05342882 -1).

10 The date by which you must respond to this notice by giving a counter-notice under Section 21 of the Act is: 2 February 2021

11 A copy of this notice is being sent to the following relevant landlords:

N/A

Dated 26th **November 2020**

Schedule

Particulars of the Qualifying Tenants

Non- Participating

Full name of tenant:	Joshua Sali Savinson and Susannah Malka Savinson	
Address of tenant's flat:	Lower Ground Floor Flat, 9 Chalcot Gardens, London, NW3 4YB	
Particulars of tenant's lease:	Date:	25 April 2019
	Term:	990 years from 25 April 2019
	Parties:	(1) Joanna Margaret King and Andrew Jonathan King (2) Joanna Margaret King
	Commencement of Term:	25 April 2019
	Registered title number:	NGL987205

Participating Tenant

Full name of tenant:	**Christoph Burgard and Silke Petzold**	
Address of tenant's flat:	**Upper Ground and First Floor Flat, 9 Chalcot Gardens, London, NW3 4YB**	
Particulars of tenant's lease:	**Date:**	**12 August 2016**
	Term:	**A term commencing on 12 August 2016 and ending on 24 December 2205**
	Parties:	**(1) Joanna Margaret King and Andrew Jonathan King** **(2) Stephen Paul Flower and Morag Ann Flower**
	Commencement of Term:	**12 August 2016**
	Registered title number:	**NGL962649**

The original lease was dated 7 February1991 and made between (1) John Ivor Morfey and Hazel Margaret Morfey and (2) Geoffrey Harold Posner.

Signed by tenant(s): C R Baker

for Christoph Burgard and Silke Petzold

Duly Authorised

Participating Tenant

Full name of tenant:	Herbert Grönemeyer	
Address of tenant's flat:	First, Second and Third Floor Flat, 9 Chalcot Gardens, London, NW3 4YB	
Particulars of tenant's lease:	Date:	5 October 1995
	Term:	125 years 25 December 1995
	Parties:	(1) John Ivor Morphy and Hazel Margaret Morphy
		(2) Sarah Frances Hymen
	Commencement of Term:	25 December 1990
	Registered title number:	NGL732505

Signed by tenant(s): .....C.R. Baker.....

for Herbert Grönemeyer

Duly Authorised

ENGLAND'S LANE
CHALLOT GARDENS
Priory Mansions
Argyll House
1 to 7
1 to 12
10b
10a
11b
11a
10
11
12
12a
13
13a
14
14a
14b
9
14
1
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14a
50

Leasehold Reform, Housing and Urban Development Act 1993 Section 21

COUNTER-NOTICE

In connection with the property known as 9 Chalcot Gardens, London NW3 4YB ("the Specified Premises")

To: 9 Chalcot Gardens Freehold Limited, of Irwin Mitchell LLP, 40 Holborn Viaduct, London EC1N 2PZ

From: Joanna Margaret King and Andrew Jonathan King of 8 Claigmar Gardens Finchley London N3 2HR ("the Reversioner")

TAKE NOTICE THAT:

1 The Reversioner admits that the participating tenants were, on the date the initial notice was given, entitled to exercise the right to collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in relation to the Specified Premises.

2 The Reversioner accepts the following proposals contained in the initial notice:

2.1 The proposal at paragraph 3 to claim no rights over property under section 13 (3) (a) (iii) of the Act.

2.2 The proposal or statement at paragraph 6 that there are no flats or other units in the Specified Premises to which Part II of Schedule 9 of the Act are applicable.

3 The Reversioner does not accept the following proposals contained in the initial notice:

3.1 The proposal at paragraph 2 to acquire by virtue of section 1 (2) (a) of the Act the freehold of the property shown edged and hatched green on the plan accompanying the initial notice ("the Additional Freehold Property").

3.2 The proposal at paragraph 5 to acquire under or by virtue of section 2 (1) (a) or (b) of the Act the lease of the Plantation Area, Car Parking Space and Rear Garden at or adjoining the Specified Premises registered under title number NGL988091 at HM Land Registry.

3.3 The proposed purchase price of £22,300 for the freehold interest in the Specified Premises.

3.4 The propose purchase price of £100 for the freehold of the property referred to in paragraph 2 of the notice.

3.5 The proposed purchase price of £500 for the lease of the property referred to in paragraph 5 of the notice.

4 The Reversioner makes the following counter-proposal to each of the proposals which are not accepted:

4.1 In relation to the proposal at paragraph 2 to acquire the entirety of the Additional Freehold Property, the Reversioner makes the following counter-proposals:

4.1.1 In relation to the area hatched green on the plan accompanying this counter-notice, ("the green land") in respect of which it is accepted that the freehold falls within section 1 (2) (a) of the Act, the Reversioner agrees to the acquisition of the freehold.

4.1.2 In relation to the areas hatched blue on the plan accompanying this counter-notice, ("the blue land") in respect of which it is accepted that the freehold falls within section 1 (2) (a) of the Act, the Reversioner offers to grant over that property, on the acquisition of the Specified Premises, such permanent rights as well ensure that thereafter the occupiers of the flats that enjoy rights over the blue land will have as nearly as may be the same rights as those enjoyed in relation to the blue land by the qualifying tenants of those flats under their leases.

4.1.3 In relation to the areas shaded pink on the plan accompanying this counter-notice ("the pink land"), in respect of which it is not accepted that the freehold falls within section 1 (2) (a) of the Act, the Reversioner counter-proposes that the nominee purchaser should neither acquire such land nor have rights over it.

4.1.4 If, which is denied, the pink land, or part of it, falls within section 1 (2) (a) of the Act, the Reversioner offers to grant over that property, on the acquisition of the Specified Premises, such permanent rights as will ensure that thereafter the occupiers of the flats that enjoy rights over that part of the pink land found to fall within section 1 (2) (a) of the Act, will have as nearly as may be the same rights as those enjoyed in relation to that part of the pink land by the qualifying tenants of those flats under their leases.

4.2 In relation to the proposal at paragraph 5 to acquire under or by virtue of section 2 (1) (a) or (b) of the Act the lease of the Plantation Area, Car Parking Space and Rear Garden at or adjoining the Specified Premises registered under title number NGL988091 at HM Land Registry, the Reversioner counter-proposes that it should not be acquired as it does not fall within section 2 (1) (a) or (b) of the Act.

4.3 In relation to the proposed purchase price of £22,300 for the freehold interest in the Specified Premises the Reversioner counter-proposes £26,600.

4.4 In relation to the proposed purchase price of £100 for the Additional Freehold Property:

4.4.1 If, which is denied, the nominee purchaser is entitled to be acquire the Additional Freehold Property in its entirety, the Reversioner counter-proposes £400 for the Additional Freehold Property;

4.4.2 If the nominee purchaser is entitled to acquire part only of the Additional Freehold Property then the Reversioner counter-proposes as follows for the following parts:

(a) £100 for the green land; and

(b) £100 for the blue land; and

(c) £200 for the pink land.

4.5 In relation to the proposed purchase price of £500 for the lease of the property referred to in paragraph 5 of the notice, if, which is denied, that lease falls to be acquired, the Reversioner counter-proposes £475,000.

5 The Reversioner makes no leaseback proposals.

6 The Reversioner desires to retain the following rights necessary for the proper management or maintenance of property in which he is to retain a freehold interest: As set out in the attached TP1.

7 The provisions which the Reversioner considers should be included in a conveyance to the nominee purchaser in accordance with the Leasehold Reform, Housing and Urban Development Act 1993 Section 34 and Schedule 7 are: as set out in the attached TP1, provided that in general and in particular so far as the rights granted for the benefit of the Property at 12.2 are concerned, the said provisions are subject to such variations and additions (if any) as may be required to satisfy the requirements of Section 1 (4) of the Act. [.

8 The address in England and Wales at which notices may be given to the Reversioner under the Leasehold Reform, Housing and Urban Development Act 1993 Part I Chapter I is YVA House, 811 High Road, North Finchley, London N12 8JT.

9 The Specified Premises are not within the area of a scheme approved as an estate management scheme under the Leasehold Reform, Housing and Urban Development Act 1993 Section 70.

The following copy notices received or given under the Leasehold Reform, Housing and Urban Development Act 1993 Sections 42 or 45 accompany this counter-notice: [*none*]

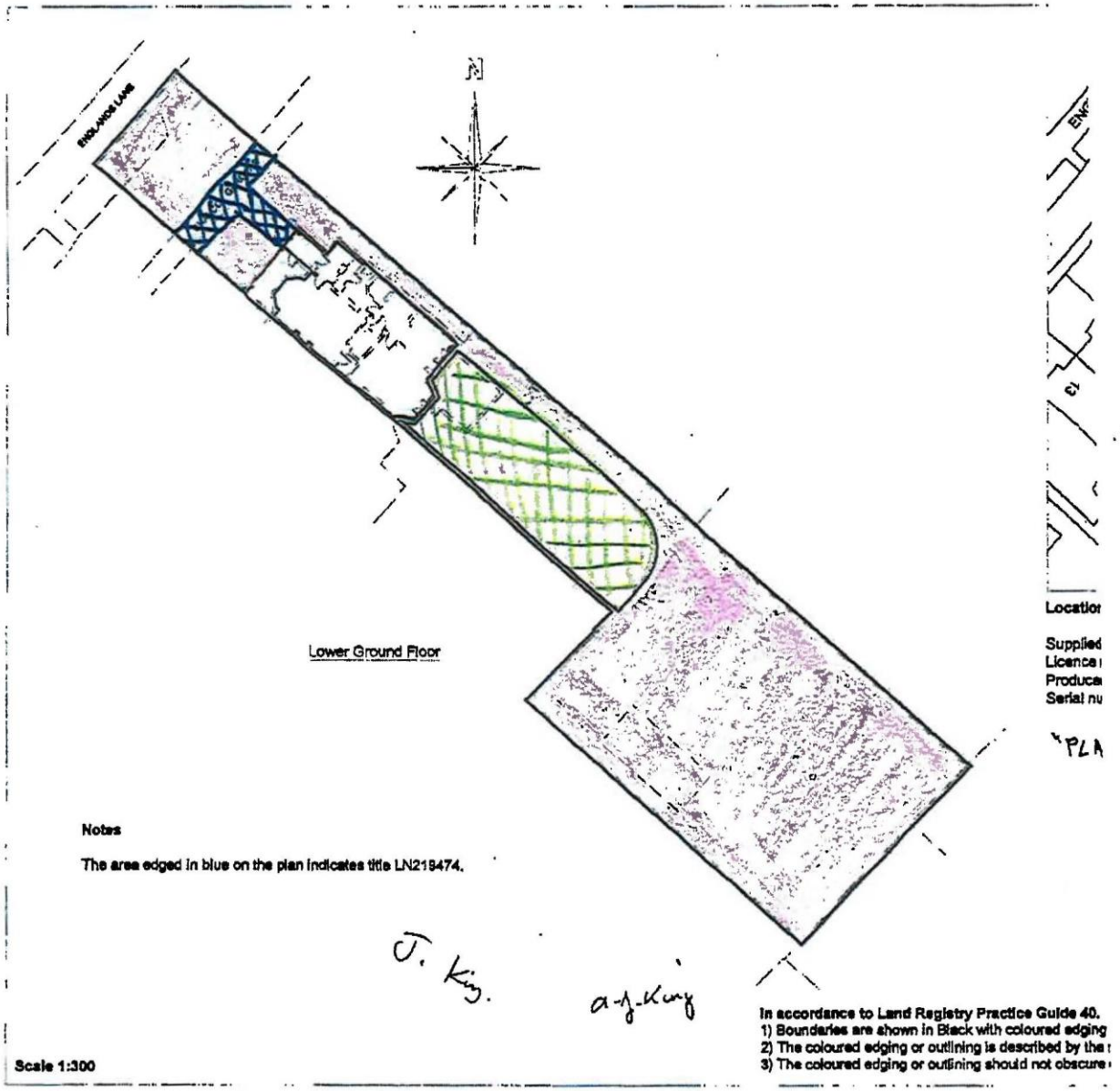
Dated: 29 January 2021

Signed: [*signature of or on behalf of reversioner*]
Angela Alexiou of YVA Solicitors on behalf of the Reversioner
[*on duplicate*]

Received a notice of which the above is a true copy

Dated:

Signed: [*signature of recipient*]


ENGLANDS LANE
N
Lower Ground Floor
Notes
The area edged in blue on the plan indicates title LN218474.
J. King.
Scale 1:300
In accordance to Land Registry Practice Guide 40.
1) Boundaries are shown in Black with coloured edging
2) The coloured edging or outlining is described by the
3) The coloured edging or outlining should not obscure
Location
Supplied
Licence
Produce
Serial nu
PLA

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.

For information on how HM Land Registry processes your personal information, see our Personal Information Charter.

Leave blank if not yet registered.	1	Title number(s) out of which the property is transferred: LN219474
When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.	2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any: LN207276
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.	3	Property: The property is identified ☒ on the attached plan and shown: 1. Edged red; and 2. hatched green. ☐ on the title plan(s) of the above titles and shown:
Remember to date this deed with the day of completion, but not before it has been signed and witnessed.	4	Date:
Give full name(s) of all of the persons transferring the property. Complete as appropriate where the transferor is a company.	5	Transferor: Joanna Margaret King and Andrew Jonathan King For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix: For overseas companies (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:
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.	6	Transferee for entry in the register: 9 Chalcot Gardens Freehold Limited For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix: 13042039 For overseas companies (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:

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.	7 Transferee's intended address(es) for service for entry in the register:
	~~8 The transferor transfers the property to the transferee~~
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): [to be agreed or determined] ☐ 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 But for the purposes of the Law of Property (Miscellaneous Provisions) Act 1994 subject to the following provisions: 10.1 The covenant implied by section 2 (1) (b) of that Act is amended by deleting from that section the words "his own cost" and substituting the words "the cost of the person to whom he disposes of the Property" 10.2 Section 6 (2) (a) of the Act is to be construed as if all entries made in any public register are within the actual knowledge of the Transferee

Where the transferee is more than one person, place 'X' in the appropriate box.
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 *24: private trusts of land* for further guidance. These are both available on the GOV.UK website.
	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:

Use this panel for: – definitions of terms not defined above – rights granted or reserved	12 Additional provisions 12.1 Definitions The "blue land" means the area hatched blue on the plan

- 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.

annexed hereto
The "pink land" means the area shaded pink on the plan annexed hereto
The "Retained Land" means all land registered under title number LN219474 at HM Land Registry which is retained by the Transferor on the date of this Transfer
The "Garden" means that part of the area shaded pink and hatched black on the plan annexed hereto
The "Garden Path" means that part of the area shaded pink and hatched green
The "Parking Area" means that part of the area shaded pink and hatched brown on the plan annexed hereto
"10 Chalcot Gardens" means all land registered under title number LN207276 at HM Land Registry

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
12.2 The Property is transferred together with the following rights:
(a) A right of way in common with others entitled to a like right over along and through the blue land at all times for the purposes of access and egress to the Property
(b) A right to keep three properly enclosed refuse containers in the area designated for that purpose by the Transferor within the blue land and a right of access at all times to the same

[*only in the event of an agreement or determination that the pink land falls within section 1 (2) (a) of the Leasehold Reform, Housing and Urban Development Act 1993:*
(c) A right for the benefit of the upper ground floor flat in common with others entitled to a like right to use the Garden for the purpose of quiet enjoyment and not for the playing of ball or any other games and in the case of children and dogs only with adult supervision
(d) A right of right of way for the the benefit of the upper ground floor flat in common with others entitled to a like right over along and through the Garden Path at all times for the purposes of access and egress to the Garden
(d) In so far as the Transferor may have the right to grant the same a right in common with others to park three private motor vehicles in the Parking Area]

Any other land affected should be defined by reference to a plan and the title

12.3 Rights reserved for the benefit of other land

numbers referred to in panel 2.

12.3.1 The Transferee grants and reserves to the Transferor and its successors in title and all those authorised by the Transferor for the benefit of the Retained Land and each and every part of it the following rights:-

12.3.1.1 The rights of passage and running of gas electricity water and soil from and to other parts of the Retained Land through the Conduits which may pass through the Property
12.3.1.2 The right for the Transferee with servants workmen and others at all reasonable times to enter into and upon the Property so far as may be necessary to connect to the Conduits and causing as little disturbance as possible and making good any damage caused to the Transferee' s reasonable satisfaction
12.3.1.3 The right for the Retained Land to be supported by the Property as the same now are enjoyed at the date hereof

12.3.2 The Transferee grants and reserves to the Transferor and its successors in title and all those authorised by the Transferor for the benefit of the Retained Land and 10 Chalcot Garden and each and every part of it the following rights:
12.3.2.1 A right of right of way in common with others entitled to a like right over along and through the blue land for the purposes of access and egress to the Garden

[*only in the event of an agreement or determination that the pink land falls within section 1 (2) (a) of the Leasehold Reform, Housing and Urban Development Act 1993 and, contrary to the position set out in the counter-notice served by the Transferor, that land falls to be acquired by the nominee purchaser:*
12.3.3 The Transferee grants and reserves to the Transferor and its successors in title and all those authorised by the Transferor for the benefit of the Retained Land and 10 Chalcot Garden and each and every part of it the following rights:
12.3.3.1 A right of right of way in common with others entitled to a like right over along and through the Garden Path at all times for the purposes of access and egress to the Garden
12.3.3.2 A right in common with others to park five private motor vehicles in the Parking Area]

Include words of covenant.

12.4 Covenants by the transferee

Positive covenants by the Transferee
12.4.1 The Transferee hereby covenants with the Transferor to pay on demand all the costs reasonably incurred by the Transferor in performing its obligations pursuant to 12.5.1 hereof
12.4.2 On any disposal by the Transferee of the Property (save by way of charge) to procure on completion of such disposal that the disponee shall enter into a deed of covenant with the registered proprietor for the time being of the Retained Land

12.4.3 The Transferee hereby covenants with the Transferor by way of indemnity only henceforth to observe and perform all the covenants conditions and restrictions contained in or referred to in the registers of title of LN219474 and the registered leases referable to the Property and to indemnify and keep indemnified the Transferor in respect of all costs claims demands or other liability arising as result of any breach thereof
12.4.4 To apply to HM Land Registry for a restriction to be placed on the Register 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 written consent signed by the proprietor for the time being of the Retained Land that the provisions of clause 12.4.2 of the Transfer dated [enter date of this Transfer] have been complied with or do not apply to this disposition"

Restrictive covenants by the Transferee

Include words of covenant.

12.5 Covenants by the transferor

Positive covenants by the Transferor
12.5.1 The Transferor hereby covenants with the Transferee that subject to the performance by the Transferee of the covenant contained in 12.4.1 above to keep the Retained Land in good and substantial repair and the grounds in good order

Restrictive covenants by the Transferor

Lower Ground Floor

Notes

The area edged in blue on the plan indicates title LN219474.

J. King.

a.j.King

Scale 1:300

In accordance to Land Registry Prac
1) Boundaries are shown in Black with
2) The coloured edging or outlining is c
3) The coloured edging or outlining sho

Annex 3 – Statutory Provisions

Leasehold Reform, Housing and Urban Development Act 1993 c. 28
s. 1 The right to collective enfranchisement.
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 [...]1 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]2 —
(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]3 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.
(6) Any right or obligation under this Chapter to acquire any interest in property shall not extend to underlying minerals in which that interest subsists if—
(a) the owner of the interest requires the minerals to be excepted, and

(b) proper provision is made for the support of the property as it is enjoyed on the relevant date.
(7) In this section—
"appurtenant property" , in relation to a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the flat;
[...]4
"the relevant premises" means any such premises as are referred to in subsection (2).
(8) In this Chapter "the relevant date" , in relation to any claim to exercise the right to collective enfranchisement, means the date on which notice of the claim is given under section 13.

2.— Acquisition of leasehold interests.

(1) Where the right to collective enfranchisement is exercised in relation to any premises to which this Chapter applies ("the relevant premises"), then, subject to and in accordance with this Chapter—

(a) there shall be acquired on behalf of the qualifying tenants by whom the right is exercised every interest to which this paragraph applies by virtue of subsection (2); and

(b) those tenants shall be entitled to have acquired on their behalf any interest to which this paragraph applies by virtue of subsection (3);

and any interest so acquired on behalf of those tenants shall be acquired in the manner mentioned in paragraphs (a) and (b) of section 1(1).

(2) Paragraph (a) of subsection (1) above applies to the interest of the tenant under any lease which is superior to the lease held by a qualifying tenant of a flat contained in the relevant premises.

(3) Paragraph (b) of subsection (1) above applies to the interest of the tenant under any lease (not falling within subsection (2) above) under which the demised premises consist of or include—

(a) any common parts of the relevant premises, or

(b) any property falling within section 1(2)(a) which is to be acquired by virtue of that provision,

where the acquisition of that interest is reasonably necessary for the proper management or maintenance of those common parts, or (as the case may be) that property, on behalf of the tenants by whom the right to collective enfranchisement is exercised.

(4) Where the demised premises under any lease falling within subsection (2) or (3) include any premises other than—

(a) a flat contained in the relevant premises which is held by a qualifying tenant,

(b) any common parts of those premises, or

(c) any such property as is mentioned in subsection (3)(b),

the obligation or (as the case may be) right under subsection (1) above to acquire the interest of the tenant under the lease shall not extend to his interest under the lease in any such other premises.

(5) Where the qualifying tenant of a flat is a public sector landlord and the flat is let under a secure tenancy [or an introductory tenancy]1 , then if—

(a) the condition specified in subsection (6) is satisfied, and

(b) the lease of the qualifying tenant is directly derived out of a lease under which the tenant is a public sector landlord,

the interest of that public sector landlord as tenant under that lease shall not be liable to be acquired by virtue of subsection (1) to the extent that it is an interest in the flat or in any appurtenant property; and the interest of a public sector landlord as tenant under any lease out of which the qualifying tenant's lease is indirectly derived shall, to the like extent, not be liable to be so acquired (so long as the tenant under every lease intermediate between that lease and the qualifying tenant's lease is a public sector landlord).

(6) The condition referred to in subsection (5)(a) is that either—

(a) the qualifying tenant is the immediate landlord under the secure tenancy [or, as the case may be, the introductory tenancy]2 , or

(b) he is the landlord under a lease which is superior to the secure tenancy [or, as the case may be, the introductory tenancy]3 and the tenant under that lease, and the tenant under every lease (if any) intermediate between it and the secure tenancy [or the introductory tenancy]3 , is also a public sector landlord;

and in subsection (5) “appurtenant property” has the same meaning as in section 1.

(7) In this section “the relevant premises” means any such premises as are referred to in subsection (1).