FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference(s)	:	**MAN/00CA/OAF/2024/0606.** **MAN/00CA/OAF/2024/0001.**
Properties	:	**(1) 6a Barkfield Avenue Formby L37 3JD** **(2) 7a Barkfield Avenue Formby L37 3JD**
Applicants	:	**(1) James Green & Doreen Green** **(2) Andrew Thomas Kenyon & Leanne Katherine Kenyon [Nee Stansfeld]**
Representative	:	**Dr Jack Rostron**
Respondent	:	**Morax Limited**
Representative	:	**(1) Orme Associates Property Advisers** **(2) Boom Developments**
Type of Applications	:	**Under section 21 (1) (a) of the Leasehold Reform Act 1967 ("the Act") for the determination of the price to be paid under section 9 of the Act.** **Under section 21 (2) (a) of the Act for a determination of the provisions to be included in the conveyance under section 10 of the Act.** **Under section 21 (1) (ba) of the Leasehold Reform Act 1967 for a determination of the reasonable costs payable under section 9 (4) of the Act.**
Tribunal Members	:	**V Ward BSc Hons FRICS – Regional Surveyor** **R P Cammidge FRICS** **Judge David R Salter**
Date of Decision	:	**17 July 2025**

DECISION

Background

1. The Tribunal has received applications under section 21 (1) (a) of the Leasehold Reform Act 1967 ("the Act") for the determination of the price to be paid under section 9 of the Act, under section 21 (2) (a) of the Act for a determination of the provisions to be included in the conveyance under section 10 of the Act and also an application under section 21 (1) (ba) of the Act for a determination of the reasonable costs payable under section 9 (4), in respect of:

   6a Barkfield Avenue, Formby L37 3JD.
   7a Barkfield Avenue, Formby L37 3JD.

2. By virtue of the case management powers provided by Rule 6 (3) (b) of the Tribunal Procedure (First – tier Tribunal) (Property Chamber) Rules 2013, the Tribunal consolidated these cases.

3. The Applicants were represented by Dr Jack Rostron MA PhD FRTPI FRICS whilst the Respondent was represented by Andrew Orme of Orme Associates Property Advisers.

4. Neither party requested an oral hearing.

The Existing Leases

5. Salient details of the existing leases are as follows:

6a Barkfield Avenue	Date of Lease 1 August 1961 Term 990 years from 29 September 1927. Ground Rent £15.75 pa
7a Barkfield Avenue	Date of Lease 31 December 1960 Term 990 years from 29 September 1927. Ground Rent £15.75 pa

The Law

6. The Applicants have the right to acquire the Freehold interest under the Leasehold Reform Act 1967 ("the Act").

   Claim Notices under the Act were served on the following dates:

6a Barkfield Avenue	9 September 2024
7a Barkfield Avenue	8 January 2024

Submissions in respect of the price to be paid under section 9 of the Act.

7. Both parties confirmed that they had agreed the price to be paid under section 9 of the Act was £263.00 for each Property.

Submissions in respect of the terms of the Conveyances

8. In relation to the applications under section 21 (2) (a) of the Act, both parties provided draft transfers in respect of the conveyance of the freehold interests for each of the Properties. The drafts submitted by the Applicants contained an indemnity clause with respect to restrictions in a Conveyance dated 6 June 1951 made between (1) Mary Teresa Weld-Blundell (2) Geoffrey Edmond de Trafford and Edric Humphrey Weld and (3) The Trustees of the Royal Liver Friendly Society ('the 1951 Conveyance'); a conveyance referred to in the Charges Register of each of the freehold titles. The drafts submitted by the Respondent for each of the Properties contained a corresponding indemnity clause and several additional provisions, relating to a right of way and restrictive covenants (in identical terms to each other), about which the following submissions were made**.**

9. Dr Rostron stated that each of the Applicants had forwarded the Notices of Request for Particulars of Rights of Way and Restrictive Covenants required by the Landlord to the Respondent in early January 2024 (7a) and early October 2024 (6a) respectively. Regarding the Notice served in respect of 7a, Dr Rostron stated that the Respondent was required to respond within a four-week time limit, but did not do so. Consequently, in light of the Leasehold Reform (Enfranchisement and Extension) Regulations 1967 ('the 1967 Regulations'), the Respondent is 'deemed to require no rights of way or provisions concerning restrictive covenants to be included in the conveyance'. As to the Notice served in respect of 6a, Dr Rostron commented as follows:

"Regarding James and Doreen Green's Notice dated 7 Oct delivered 8 Oct 2024. The time limit for Landlord's Requests for Particular Rights of Way and Restrictive Covenants is four weeks which ends 4 November 2024. The correspondence received from Mr. Andrew Orme was received 20 November 2024. His letter was post marked 19 November. The Notice delivered 8 Oct 2024 but received 20 November renders it void. It is an enigma why the letter purported to be dated 3 November was received on 20 November 2024. Similarly, it is enigmatic why the Landlord's Notice of Requests for Particulars of Rights of Way and Restrictive Covenants delivered on 8 October was stamped by the Respondent 14 October 2024."

10. Dr Rostron submitted that, on the basis of this evidence, the transfer of the freehold title to 6a should not include any rights or other covenants and provisions such as those contended for by the Respondent in its purported

response to the 6a Notice in the letter dated 3 November 2024 or as represented in its draft transfer for this Property.

11. In respect of the restrictive covenants contained within the Respondent's drafts, Dr Rostron, referred to Hague on Enfranchisement (7th Ed.), section 6.33, which states as follows:

"*The basic rule is that the landlord cannot require the continuance of any of the covenants imposed by the tenant's lease. But an exception is made in the case of any restrictive covenant which is capable of benefiting other property, and which also fulfils one of two further alternative conditions. These are as follows:*

(i) The covenant is enforceable by one or more persons other than the landlord…
(ii) The covenant, although enforceable only by the landlord, is "such as materially to enhance the value of the other property".".

12. Dr Rostron noted that the Upper Tribunal had established a line of authority that material enhancement was a matter of "*general impression*" and that there must be evidence to satisfy the Tribunal that there would be some monetary uplift in value, or the prevention of some monetary diminution in value, of other property when considering the covenants to be imposed.

13. In furtherance of the points raised in paragraphs 11 and 12, Dr Rostron adduced in evidence, without comment, copies of the First-tier Tribunal decisions in *Edward Patrick Parkes v Morax Limited* (BIR/00CA/OAF/2020/0010) and *Megan Langley and David Euan Jones & others v Morax Limited* (BIR/00CA/OAF/2024/0001;BIR/00CA/OC6/2024/0001;BIR/00CA/0AF/2024/0002;BIR/00CA/OC6/2024/0003;BIR/00CA/OAF/2024/0003;BIR/00CA/OC6 /2024/0002 (a consolidated appeal in which the First-tier Tribunal made a determination in relation to *7 Barkfield Avenue, Formby* which Mr Rostron cited as *Eleanor Shephard v Morax Limited*). Dr Rostron also referred to two County Court Orders included with his Statement of Case where no new rights of way or restrictive covenants were included in transfers agreed by the judge.

14. Initially, Mr Orme listed and referred to the Notices to Acquire and to the Notices of Request for Particulars served by the Applicants in respect of each of the Properties and to subsequent responses he had made on behalf of the Respondent in November 2024 relating to the latter.

15. Thereafter, Mr Orme pursued two lines of argument in furtherance of his contention that the transfers of the freehold titles to each of the Properties should include the additional provisions (including a right of way and various restrictive covenants) set out in the draft transfers which he had submitted on behalf of the Respondent.

16. First, Mr Orme submitted that the Notices of Request for Particulars served by the Applicants were premature in that they failed to comply with the conditions in Regulations 3.1 and 5.2 of the 1967 Regulations. Consequently, these Notices should be treated as invalid ('the validity argument'). In this circumstance, Mr Orme stated that, as a consequence, the Tribunal may consider the inclusion or otherwise of additional provisions in the respective transfers *ab initio*.

17. Secondly, Mr Orme intimated that the restrictive covenants included in the Respondent's draft transfers concerned the use and development of the Properties. Each of these restrictive covenants, other than the one relating to the construction of telecommunication masts, could be traced to the existing leases and comprised provisions relating to alterations, user (as a single private residence) and nuisance. In the context of section 10(4)(b)(i) of the Act, he observed:

"There is no mention in the leases that the Applicants agreed with anyone other than the Landlord [the Respondent] to observe the covenants in the lease, and it may be those covenants are not expressly annexed to neighbouring land."

As to the question of 'material enhancement' where restrictions may only be enforceable by the landlord (the Respondent), Mr Orme informed the Tribunal that the Respondent has an interest in ten properties in *Barkfield Avenue*. According to Mr Orme, five of these properties are held on long leaseholds with the Respondent holding the freehold reversions of these properties. In this respect, Mr Orme intimated that because half of the properties in which the Respondent has an interest are subject to a lease and neighbouring properties have the same covenants there would appear to be value in the restrictions ('the material enhancement' argument). In support of this statement, Mr Orme relied upon several observations made by the First-tier Tribunal in a case in 2019 in which Mr Orme had appeared relating to *23 Stanley Road, Hoylake, Wirral CH47 1HN* (MAN/00CB/OAF/2019/0029) including the following:

"Mr Orme asserted that as 13 of the houses were free from covenant, that would diminish the value of the covenants that remain. Whilst that is undoubtedly true, it also appeared to the Tribunal to be a recognition by Mr Orme that the covenants do indeed create value, albeit that value will decrease the more properties have them removed but whilst more than half of the properties retain the covenant, there would appear to be value in it."

Mr Orme did not refer to either of the First-tier Tribunal decisions cited by Mr Rostron (see above, paragraph 13).

Tribunal Comment and Determination in respect of the Conveyances

18. The Tribunal considered the written submissions made by the parties, together with the draft transfers and office copies in respect of the freehold and leasehold titles for each of the properties.

19. The Tribunal noted that the acquisition of the freehold interests comprised transfers of the whole of the freehold titles and no rights or other easements for the benefit of the land were detailed in the Property Registers of either of the freehold titles.

20. Other than those rights set out in section 10(2) of the Act, to which all conveyances executed to give effect to section 8 of the Act are subject to or benefit from (as acknowledged, expressly, in the Respondent's draft transfer), the Tribunal noted that the Applicants had not requested any rights be included in the draft transfers for the benefit of the Properties.

21. Regarding any rights purportedly reserved for the benefit of the Respondent (other than those conveyed by way of indemnity, as to which see below, paragraphs 27 and 28), the position is dependent on the Tribunal's acceptance or otherwise of the 'validity' and 'material enhancement' arguments put forward by Mr Orme on behalf of the Respondent. The Tribunal rejects each of these arguments. It does so for the following reasons.

22. The Tribunal's difficulty with the 'validity' argument lies in the sustainability of the evidence presented by Mr Orme which appears in salient respects to be contradictory. Hence, the Tribunal notes that in the evidence submitted by Mr Orme relating to the dealings between himself and Dr Rostron prior to the application to the Tribunal there is no compelling evidence to suggest that Mr Orme, on behalf of the Respondent, had challenged the validity of the respective Notices of Request for Particulars served by Dr Rostron on behalf of the Applicants. On the contrary and notwithstanding the Respondent's failure to respond to the Notice of Request for Particulars in respect of 7a, there is a degree of engagement (that, as far as can be gleaned from the evidence, fell short of compliance with either Notice) evident in Mr Orme's correspondence with Dr Rostron in November 2024 (including reference to prospective provisions to be included in the transfers although, in this respect, the proposed restrictive covenants do not tally with those set out, subsequently, in the draft transfers. This is incompatible with the notion that the Notices were regarded at that time by Mr Orme as invalid. In light of this, the Tribunal is unable to countenance an argument made after the application to the Tribunal that seeks to establish that these Notices be treated as invalid. In any event and be that as it may, it is also important to point out that should the Tribunal have been persuaded by the merits of the 'validity' argument with the result that the Tribunal would have been in a position to consider the Respondent's proposed additional provisions

afresh the Respondent's case founders, nevertheless, as the following paragraphs 23-25 show, on the further failure, intimated above, to satisfy the 'material enhancement' argument in relation to those provisions.

23. In respect of the restrictive covenants proposed in the Respondent's drafts transfers, section 10 (4)(b)(i) of the Act confirms that a conveyance executed to give effect to section 8 of the Act should only contain such provisions as the landlord might require to secure continuance of restrictions arising by virtue of the lease which are capable of benefiting and materially enhance the value of other property. Likewise, section 10 (4)(c) of the Act only allows provisions which will "*not interfere with the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy but will materially enhance the value of other property in which the landlord has an interest*."

24. In *The Trustees of the Sloane Stanley Estate* [2011] UKUT 415 (LC) and the earlier decision of *Cadogan v Erkman* [2011] UKUT 90 (LC), the Upper Tribunal determined that, although valuation evidence is not necessarily required to quantify such a benefit, evidence is required to establish that the restriction would *materially enhance* the value of the other property.

25. As indicated above (see, paragraph 17), Mr Orme informed the Tribunal that the Respondent has an interest in ten properties in *Barkfield Avenue*, five of which are held on long leaseholds in circumstances where the pertinent leases contain the same covenants. He argued, on the authority of the observations made by the First-tier Tribunal in relation to *23 Stanley Road* that where there is such a preponderance of properties held on long leases with common covenants there must be 'value' in those covenants which justified their retention in any transfer of the freehold title. In this context, Mr Orme contended that in this case the restrictive covenants proposed in the Respondent's draft transfers (i.e. those derived from the existing leases and the new restrictive covenant relating to the construction of telecommunication masts) had 'value' in this sense and, therefore, would *materially enhance* the value of the Respondent's other property.

26. The Tribunal finds the points made by Mr Orme instructive and acknowledges that in appropriate cases it is conceivable that the approach advocated may provide a framework within which to commence an assessment of whether or not 'material enhancement' may be established. However, in this case, its utility is limited by what might be described as the precedent that is 'nearest to home', namely *Eleanor Shephard v Morax Limited* in which the First-tier Tribunal determined that the only additional provision that ought to be contained in the transfer of the freehold title to *7 Barkfield Avenue* in accordance with section 10 of the Act was an indemnity clause in respect of the 1951 Conveyance. In this circumstance, it is surprising that no reference is made by Mr Orme to this decision bearing in mind, in particular, that he represented the Respondent in that case, must be aware of the outcome, and know that the decision runs counter

to the position he has adopted in this case. Further, *7 Barkfield Avenue* is immediately proximate to the subject Properties. Clearly, this is a precedent that, whilst not binding, the Tribunal cannot ignore and one which, in the absence of compelling evidence that questions its authority, it would be perverse for the Tribunal not to follow. The Tribunal notes that Mr Orme's evidence about the Respondent's interests in other properties appears to be more specific in this case than in *Eleanor Shephard v Morax Limited* where the Tribunal noted that he accepted that 'the Respondent's freehold interests were *"dotted around"* the local area'. However, this evidence, which is summarised above in paragraph 25 and welcome, was not specifically directed towards *Eleanor Shephard v Morax Limited* and further, without more, is not sufficient to persuade the Tribunal to depart from the precedent set by that case.

27. Finally, in respect of indemnity covenants, the Tribunal noted that the Charges Registers of each of the freehold titles referred to the 1951 Conveyance and restrictions contained therein. These restrictions are described collectively as 'all privileges in the nature of light air water drainage way and passage and other easements or quasi-easements and restrictions'. It is uncertain whether any such restrictions would still be enforceable, but they would remain on the freehold title following the transfer of title.

28. As such, the Tribunal determines that the conveyances to the Applicants, as envisaged in the Applicants' and Respondent's drafts, should contain a covenant by the Applicants to observe and perform any restrictive covenants contained or referred to in the 1951 Conveyance and to indemnify the Respondent from and against all costs, claims, demands and liabilities arising from the non-observance and non-performance thereof, so far any such covenants relate to that property and remain capable of being enforced.

29. Accordingly and in line with the decision in *Eleanor Shephard v Morax Limited* relating to *7 Barkfield Avenue*, the Tribunal determines that the only additional provision that ought to be contained in the conveyances of the freehold interest of the Properties in accordance with section 10 of the Act, is the inclusion of an indemnity clause in respect of the 1951 Conveyance as set out above.

Costs under section 21 (1) (ba) of the Leasehold Reform Act 1967 for a determination of the reasonable costs payable under section 9 (4) of the Act

30. In the absence of agreement between the parties as to costs, the parties are to comply with the Directions as set out in Appendix One.

Appeal

31. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be

received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

APPENDIX ONE – COSTS DIRECTIONS

1. In the absence of agreement, the Respondent shall, **by 15 August 2025,** send to the Applicants a detailed statement of costs incurred in accordance with section 9 (4) of the Act. The statement shall include, where appropriate, details of hours spent, level of fee earners, hourly rates or alternative basis of charging.

2. The Applicants shall, **by 5 September 2025,** send a statement in reply to the Respondent, in particular, indicating those costs that are agreed and those costs that remain in dispute (and the reason(s) why).

3. The Applicants and the Respondent shall, **by 19 September 2025,** exchange with each other and lodge with the Tribunal (by email to rpmidland@justice.gov.uk), a paginated, indexed, pdf bundle of all the documents they wish the Tribunal to consider when making its determination. These bundles must include copies of the Respondent's statement and the Applicants' statement in reply and must clearly identify the costs agreed and those still unresolved and why.

4. The Tribunal considers this matter can be dealt with on the basis of the written submissions of the parties. If either party requires an oral hearing, they are to notify the Tribunal upon submitting their statement of case. If following receipt of the papers, the Tribunal considers an oral hearing is required, the parties will be notified accordingly.