FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AM/HIN/2024/0027**
Property	:	**107 Forburg Road, London N16 6HR**
Applicants	:	**Hannah Susan Blum** **Max Grossnass** **Riva Brandeis**
Respondent/Council	:	**London Borough of Hackney**
Interested Person	:	**Sheila Grossnass**
Type of application	:	**Appeal in respect of an Improvement Notice:** Sections 11 and/or 12 and paragraphs 10-12 of Schedule 1 to the Housing Act 2004.
Tribunal	:	**Tribunal Judge I Mohabir** **Ms S Phillips MRICS**
Date of Decision	:	**6 August 2025**

DECISION

Background

1. This is an appeal by the Appellants against an improvement notice dated 14 June 2024 ("the Improvement Notice") served by the Respondent pursuant to the Housing Act 2004 ("the Act") and relating to 107 Forburg Road, London, N16 6HR ("the property").

2. The facts of this case are largely a matter of common ground and has, helpfully, been set out in the skeleton arguments prepared by the parties and can be summarised as follows.

3. Until his death on 14 November 2010, the property was solely owned by Simon Grossnass. He resided there with his second wife, the Interested Person. The Appellants are the children of Mr Grossnass and the Interested Person's stepchildren.

4. By a duly executed will dated 1 August 1986, Mr Grossnass appointed the Appellants' executors of his estate, of which at the date of his death the only significant asset was the property. The will left neither an income stream for the Interested Person nor a fund of capital monies for the Appellants.

5. The will directed the Appellants:

   "to divide and transfer the [Property]*...to such of them my...children as shall survive me...PROVIDED THAT my said children shall permit* [the Interested Person] *if she so wishes and without payment to use* [the property] *as a personal residence (but not otherwise) during her life-time SUBJECT to her being responsible for keeping the* [property] *insured under comprehensive cover, for the payment of rates and other outgoings and for maintaining* [the Property] *in reasonable repair decoration and condition".*

6. It is common ground that until 19 December 2017, the Interested Person had taken out a buildings insurance policy for the property. Thereafter, insurance was declined because she was not regarded as the owner of the property. The Appellants insured the property from 2021 up to the present time. For the avoidance of doubt, the Tribunal was satisfied that the buildings insurance is not relevant to the preliminary issue below.

7. There had been no communication between the Appellants and the Interest Party until 17 February 2023, the Interested Person contacted the Appellants to tell them to pay for the leaking roof at the property. The Appellants refused on the basis that she was responsible to do so under the will.

8. The Interested Person then complained to the Respondent who inspected the property on 13 February 2024. Following this, on 14 June 2024, served the Improvement Notice, identifying two Band C, Category 1 hazards and one Band D, Category 2 hazard under the Act. The Appellants concede that the Improvement Notice was validly served on them by the Respondent.

9. By an application dated 16 July 2024, the Appellants made this application to the Tribunal seeking to appeal the Improvement Notice on the ground that it had been served on them incorrectly because the will made the Interested Person responsible for repairing and maintaining the property.

Preliminary Issue

10. This decision is limited to deciding the preliminary issue, namely, who is the *"person having control"* of the property within the meaning of section 263(1) of the Act and, therefore, required to carry out the remedial work set out in the Improvement Notice. The Tribunal is not concerned with, for example, the scope of the works in the Improvement Notice.

11. The property is neither a flat nor licensed under Part 3 of the Act, it follows that the Improvement Notice should have been served on the *"person having control"* of the Property (paragraph 2(1) Schedule 1 to the Act).

12. Section 263(1) of the Act defines the *"person having control"* as *"the person who receives the rack-rent of the premises…or who would so receive it if the premises were let at a rack-rent*", as defined in section 263(2). Section 263(3) does not apply here because the property is not an HMO.

13. The Appellants do not receive a rack-rent (or any rent at all) from the Interested Person and, indeed, the will prohibits this. It is, therefore, only the second "limb" of section 263, which is relevant to the present case.

Hearing

14. The hearing took place on 23 July 2025. The Appellants, Respondent and the Interested Party were represented by Mr Levy, Miss Henderson and Mr Parkin of Counsel respectively.

15. The Tribunal heard submissions from Counsel in turn as to the meaning of a *"person having control"* within the meaning of section 263(1) of the Act.

16. The Tribunal was referred by Mr Levy and Miss Henderson to a number of earlier authorities where the meaning of a *"person having control"* was considered.

17. ***London Corporation v Cusack-Smith*** [1955] A.C. 337 concerned the meaning of the statutory words: *"a person…who…is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let"*.

18. As regards the second limb of that definition, Lord Reid considered at 360 that *"one looks for the person who at the relevant date would be*

entitled to make a new lease at a rack rent and supposes that he does so, and the only person entitled to make a new lease is the person in possession"

19. The House of Lords therefore determined that the freeholder who had let the premises under a lease at less than a rack-rent was not such a person, but the lessee was.

20. Lord Bridge endorsed that case in ***Pollway Nominees Limited v Croydon LBC*** [1987] 1 A.C. 79, the leading authority on the statutory words: *"person having control"*.

21. A freeholder of a block of flats let the flats on long leases at a ground rent. Some, but not all, of the lessees sub-let their flats to tenants paying them a rack-rent. A repair notice (predecessor of improvement notices) was served on the freeholder, who contended that it was not the *"person having control"* of the block under s.39(2) Housing Act 1957 (which is materially identical to s.263 of the Act).

22. The freeholder had covenanted under the long leases to repair the structure of the block and had retained control over the same. The repair notice had required the freeholder to undertake substantial roof repairs.

28. Lord Bridge traced the statutory history of the words back to 1847 and explained at 92C-D that *"the owner of that interest in premises which carries with it the right, actual or potential, to receive the rack rent, as the measure of the value of the premises to an occupier, is the person who ought in justice to be responsible for the discharge of the liabilities to which the premises by reason of their situation or condition give rise"*.

23. The House of Lords therefore held that the *"persons having control"* were the long leaseholders collectively, who had either sub-let their flats at a rack-rent (limb one) or otherwise would have been entitled to receive a rack-rent had they sub-let them (limb two) and the repair notice was a nullity.

24. The Upper Tribunal has recently held that s.263 HA's second limb applies to a person: who *"is in a position to receive the rack-rent because they own an interest in the premises (alone or in combination with others) that enables them at the relevant time to realise at least two-thirds of their net annual value"* (per Fancourt J at [97] in ***Global Guardians Management v Hounslow LBC*** [2022] UKUT 259 (LC)).

25. The position is summarised below in ***Cottam & Ors v Lowe Management Ltd*** [2023] UKUT 306 (LC) (20 December 2023) at paras 39 – 48 by Upper Tribunal Judge Elizabeth Cook;

"In ***Pollway Nominees Limited v Croydon London Borough Council*** [1987] 1 AC 79 the House of Lords identified the "person having control" of a building, such a person being the correct recipient of a notice served by the local authority under section 9(1A) of the Housing Act 1957 requiring them to carry out repairs". The Judge then went on to cite the judgement of Lord Bridge above.

Submissions

26. Mr Levy submitted that the Appellants could not fall within the second limb of section 263(1) of the Act because the lifetime interest created by the will in favour of the Interested Party was subject to the provisions of the Settled Land Act 1925 ("SLA"), as it was created before the commencement of the Trusts of Land and Appointment of Trustees Act 1996 ("TOLATA").

27. He argued that section 20 of the SLA granted the tenant for life under the trust extensive powers. These include the right to sell the life interest (section 38) and the right to grant a lease of the life interest (section 41). Any provision in the will that seeks to limit the life interest of the tenant to grant a lease and receive a rack rent is void (section 106).

28. Mr Levy submitted, therefore, that if the Interested Person is entitled to do so, she must fall within the definition of a *"person having control"* within the meaning of section 263(1) of the Act.

29. Furthermore, if the tenant chose to exercise to sell or lease the life interest, it is not subject to forfeiture and he or she continues to be entitled as tenant for life, receiving the rent from the lease or the income from the purchase-money and the Trustees do not hold any interest in the land pre-TOLATA[1]. Therefore, the Improvement Notice should be quashed.

30. In short, Miss Henerson for the Respondent submitted that, although the Interested Party occupies the Property and does not pay rent due to the terms of the Will, if the Property was let and rent was charged, the Applicants would be entitled to receive the rack-rent. Furthermore, the Applicants are the freeholders and have the option of exercising their rights as the freeholders through possession proceedings.

31. Mr Parkin, for the Interested Party, largely adopted the stance taken by the Respondent. In addition, he submitted that the prospective entitlement to receive a rack rent under section 263(1) of the Act had to be considered within the context of control. It is not closely analogous to the concept of occupation for the purposes of the Occupiers Liability Acts, but is more akin to a landlord in a landlord-tenant relationship.

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[1] see *Megarry & Wade: The Law of Real Property* (10th ed.) at B-084 and B-093

32. It follows that the argument that the Applicants have no immediate right to possession, or could not rent the Property, fall flat. It is not a requirement that the Property is being or could be let, but the question is who *would* receive the rent if it was.

33. In addition, it was submitted that, whilst it was possible for the Interested Person to sublet part of the property, the rent realised would not satisfy the definition of a rack rent, being not less than two-thirds of the full net annual value of the premises.

34. For these reasons, both the Respondent and the Interested Party submitted that the Appellant were the *"person having control"* within the meaning of section 263(1) of the Act.

Decision

35. The clear proposition that emerges from the authorities cited above about the meaning or definition of a *"person having control"* within section 263(1) of the Act is that such a person must either be in receipt of the rack rent (the first limb, which does not apply here) or has a prospective entitlement to do so if the property was let (the second limb, which does apply here).

36. What also emerges is that the second limb is that any prospective entitlement to the rack rent must be an actual or realistic possibility in each case.

37. The Tribunal was satisfied that the Interested Party could not be a *"person having control"* within section 263(1) of the Act for the following reasons.

38. Although the Appellants submitted that she could, theoretically, sell or grant a lease in relation to her life interest under the SLA, the Tribunal was satisfied that this would almost certainly never occur because the intention in the will is clear and unambiguous. It was intended that the Appellants allow her to occupy the property during her lifetime as a *private residence* (our emphasis) rent free provided that she insured it and maintained it.

39. As stated at paragraph 13 in her witness statement dated 21 May 2025, the Interested Party has acted in accordance with that intention and maintained the property as best she could with her limited financial resources since the death of Mr Grossnass approximately fourteen and a half years ago. On balance, what can be inferred from her conduct is that the Interested Party does intend to continue to solely occupy the property during her lifetime. She is now an elderly lady and if she was minded to part with possession of the property, this would probably have occurred by now. The Tribunal was, therefore, satisfied that the exercise of any rights the Interested Party has under the SLA, whilst theoretical, was not a realistic possibility, but rather a fanciful one.

40. Moreover, there was no evidence before the Tribunal that the Interested Party would be able to rehouse herself even if she is minded to part with possession of the property. Therefore, on balance, she would only be able to rent part of the property, but any such rent would unlikely be able to satisfy the definition of a rack rent in section 263(2) of the Act.

41. The Tribunal, therefore, concluded that the Interested Party was not a *"person having control"* within section 263(1) of the Act.

42. As to the position of the Appellants, it is clear that the Interested Party is unable to comply with the insuring and repairing obligations placed on her by the will. As such, they potentially can bring possession proceedings or, indeed, take steps to forfeit her occupation.

43. These are realistic steps the Appellants can take as Trustees under the will as part of their function to exercise a general supervision over the well-being of the settled land[2]. If successful, they would then be in a position to receive a rack rent for the entire property by letting it.

44. It follows, that the Tribunal was satisfied that the Appellants satisfied the definition of a *"person having control"* within section 263(1) of the Act and that the Improvement Notice was validly served on them.

Costs

45. Although both the Appellants and the Interested Party had intimated that they were going to make Rule 13 applications for costs against the other, this was not pursued at the hearing. Nevertheless, it is open to them to pursue these applications separately if they are minded to do so.

Name: Tribunal Judge I Mohabir **Date:** 6 August 2025

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

[2] see *Megarry & Wade: The Law of Real Property* (10th ed.) at B-093(x)

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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