FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	:	**LON / 00AW / OCE / 2024 / 0606**
Property	:	**55-57 Melbury Road, Holland Park, London, W14 8AD**
Applicant	:	**57 Melbury Freehold Limited**
Representative	:	**Jack Dillon**
Respondent	:	**Jove Properties (1) Limited** **Jove Properties (2) Limited**
Representative	:	**Elodie Gibbons**
Type of application	:	**An application under the Leasehold Reform Housing and Urban Development Act 1993**
Tribunal	:	**Judge Shepherd** **Duncan Jagger FRICS**
Date of amended Decision	:	**12th August 2025**

Amended DECISION under the slip rule

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1. This application relates to the terms of a collective enfranchisement claim. Whilst the enfranchisement or valuation matters are not disputed it's terms are disputed. The application was made pursuant to s.24 of the Leasehold Reform, Housing & Urban Development Act 1993 (the Act) to determine the remaining terms in dispute for the acquisition of 55-57 Melbury Rd, London W14 8AD (The premises).

2. The application was made by the nominee purchaser 55-57 Melbury Road Freehold Ltd . The Respondents are Jove Properties (1) Ltd and Jove Properties (2) Ltd.

3. The issues we were asked to resolve were:

(1) the extent of a right of way; and

(2) whether the transfers ought to deprive No.55 of rights to light and air.

4. The Applicants were represented by Jack Dillon of Counsel and the Respondents by Elodie Gibbons of Counsel. We are grateful to both for their written and oral argument which should be commended for its clarity.

Background

5. The premises consists of a traditional mansion block containing six flats (numbered 1 to 6), which backs onto rear gardens, then a hardstanding area and further to the rear a garage block with seven garages and two studio flats on the first floor.

6. There are six leases of flats which are registered against both the freehold and headlease. Flat 6 is the penthouse and the demise includes two garages and one of the garage block flats. The demises of Flats 1 to 5 each include one garage. There is no lease of the other garage block flat; it is occupied by an onsite porter.

7. Vehicles can only reach the garage block at the rear of No.55 by an accessway over neighbouring land at 47 Melbury Rd. The accessway also serves garages to the rear of No.47, although these are currently not in use.

8. The flat leases granted the owners of the flats a right of way over "the service road …coloured blue on Plan A".

9. The participating tenants exercised their right to collective enfranchisement by serving notice under s.13 of the Act dated 21 November 2023. The s.13 notice appended a plan, which set out the extent of the right of way sought shaded green.

10. The Respondents served a counter-notice under s.21 dated 16 February 2024. The s.21 counter-notice admitted the right to collective enfranchisement, but challenged the valuation only.

11. The current application to the Tribunal was made on 7 August 2024, after which there was a three month stay, followed by the directions dated 15 January 2025.

12. We were told that approximately a fortnight before the hearing the Respondents produced a different plan that they wished to reflect the right of way given to leaseholders. The plan is marginally different in appearance but the difference is significant enough we were told to require us to decide which plan to use. Our task was made somewhat more difficult because neither party had submitted factual or expert evidence on the question. The parties' counsel could not give evidence and fairly

recognised this. Accordingly, we pass no comment on the physical attributes of either plan nor on the motivations for the Respondents adopting the stance they have. Suffice to say that is self evident that the alternative plan was submitted by the Respondents very late in the day.

The relevant law

13. As already stated, the enfranchisement process was started by the Applicants by the service of a notice under s.13 of the Act. The Respondents served a counter notice under s.21 and the application was made under s.24 of the Act. The relevant parts of this section state the following:

> *24.— Applications where terms in dispute or failure to enter contract.*
>
> *(1) Where the reversioner in respect of the specified premises has given the nominee purchaser….*
>
> *4.*
>
> *(a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section*
>
> *… but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice … was so given, the appropriate tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute. …*

14. Under Schedule 7 to the Act a conveyance which is the result of the collective enfranchisement process shall not exclude or restrict the general words implied in conveyances under section 62 of the Law of Property Act 1925 and rights of way are similarly protected.

15. In *Wolstenholme and others v Curzon* [2017] EWCA Civ Asplin J said the following about the "bartering " process contained in the Act :

56 In my judgment, the deputy president was entirely right to determine at para 54 of the UT decision that the structure of the 1993 Act requires the terms of acquisition to be identified and either agreed or in default of agreement determined by the F-tT and that it would render that scheme incoherent and open to abuse if terms which had been agreed could be revisited . When coming to this conclusion I also take into account that the parties in this case could have specified that nothing was agreed until everything was agreed but did not do so .W

Determination

The plan

16. We consider that the Respondents accepted the plan proposed by the Applicant as reflecting the right of way. It is not open to them to resile from that position. Ms Gibbons sought to argue in effect that it was "all agreed or nothing" but her solicitors had not given warning that this was the case at the time. The attempt by her clients to introduce a new plan at a very late stage for motives we do not comment on merely highlights the fact that somebody had realised the implications of the agreement already reached. We confirm that the plan included by the Applicants is to be the plan included in the conveyance.

Light & air

17. This issue relates to the disputed wording in the freehold and headlease transfers. The Respondents sought to restrict the Applicants' right to light and air and the Applicants made various deletions to the freehold transfer and headlease transfer to remove these restrictions.

18. This is a common feature in these sorts of cases. The Respondents did not explain in any detail why they wanted the clause deleted in the manner indicated. Ms Gibbons

was relatively neutral in her submissions orally and made no mention of the issue in her skeleton argument. For our part we consider that Mr Dillon is correct in relying on the case of *Sloane Stanley Estate v. Carey-Morgan* [2011] UKUT 415 (LC) because there was no evidence of any monetary uplift that resulted from the proposed deletions. Speculation on the future use of the retained land is not enough in our view. Accordingly, we reject the deletions proposed by the Respondents. In sum for the freehold transfer:

Clause 12.3.4 – deletion allowed

Clause 12.3.11- deletion allowed

12.10.6 – deletion allowed

For the leasehold transfer:

12.3.4 – deletion allowed

12.3.11- deletion allowed

12.9.7 – deletion allowed

19. The deletion in clause 12.1.10 in the freehold transfer is allowed.

The proposed revaluation

20. Ms Gibbons suggested that were we to decide in favour of the Applicant on the points raised the valuation could be revisited. She had talked to the Respondents' valuer who said he had not considered the right of light and air point or the exclusion of s.62. There was no evidence before us from either valuer on the point which contrasts with the position in *Broomfield Freehold Management Limited v Meadow Holdings Limited* 2007 WL 4736248. We do not consider that the valuation should be revisited as it has already been agreed by both valuers.

21. The parties should submit amended transfers for our approval within 14 days.

Judge Shepherd

12th 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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

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

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

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