FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00FF/OAF/2024/0025 and 0026**
Properties	**:**	**27 and 28 Clementhorpe York YO23 1AN**
Applicants	**:**	**Ms Hassena Karbani** **Paul William Elsome and Alison Clare Elsome**
Representative	**:**	**Bonallack & Bishop Solicitors**
Respondent	**:**	**Clementhorpe (York) Management Company Ltd**
Representative	**:**	**Hethertons Solicitors**
Type of Application	**:**	**Leasehold Reform Act 1967, Section 21(1)(a) & s21(2)**
Tribunal	**:**	**Tribunal Judge L Brown** **Mr S Wanderer**
Date of Decision	**:**	**28 January 2026**

DECISION

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1. The consideration payable for each Property is £10.00

2. The terms of the TP1 transfer for each of the Properties shall be in accordance with paragraphs 38 and 39 of this Decision and excluding the "uniformity clause" (see paragraph 40 of this Decision).

The Application

1. By applications to the Tribunal dated 21 December 2021 and 7 January 2022 ("the Applications") the Applicants separately seek for determinations of terms on which they may purchase the freehold interests in the properties situate at 27 and 28 Clementhorpe, York, YO23 1AN (together "the Properties" and each a "Property") pursuant to the provisions of the Leasehold Reform Act 1967 ("the 1967 Act"). The Applications were made under Section 21(1)(a) for a determination of the price payable for the acquisition under section 9; and under Section 21(2)(a) to determine the provisions which ought to be contained in the conveyance.

2. Directions were issued dated 19 June 2025.

Issues

3. The right to enfranchise is not disputed but the contents of the transfer and terms proposed, including the rights that are being excluded by the landlord, are disputed. At issue are:

a. The consideration payable;

b. Whether the terms of the transfer should include a right for the Applicants to park in the communal car parking for visitors;

c. Whether a uniformity clause should be included.

Hearing

4. The Applications were heard by video link on 24 November 2025. We found no difficulty with the format or connections. The parties were represented by Counsel – Ms Fisher for both of the Applicants and Mr Wigglesworth for the Respondent. Each party provided their own bundles for the hearing, including Statements of Case. The Tribunal was aided by comprehensive Skeleton Arguments from both Counsel, for which we were grateful.

The Law

5. The relevant principal law for this matter is contained in Section 10 of the 1967 Act:

Rights to be conveyed to tenant on enfranchisement.
"

(1) Except for the purpose of preserving or recognising any existing interest of the landlord in tenant's incumbrances or any existing right or interest of any other person, a conveyance executed to give effect to section 8 above shall not be framed so as to exclude or restrict the general words implied in conveyances under section 62 of the Law of Property Act 1925, or the all-estate clause implied under section 63, unless the tenant consents to the exclusion or restriction; but the landlord shall not be bound to convey to the tenant any better title than that which he has or could require to be vested in him,

.....

(3) As regards right of way, a conveyance executed to give effect to section 8 above shall include—

(a) such provisions (if any) as the tenant may require for the purpose of securing to him rights of way over property not conveyed, so far as the landlord is capable of granting them, being rights of way which are necessary for the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy and in accordance with its provisions; and

(b) such provisions (if any) as the landlord may require for the purpose of making the property conveyed subject to rights of way necessary for the reasonable enjoyment of other property, being property in which at the relevant time the landlord has an interest, or to rights of way granted or agreed to be granted before the relevant time by the landlord or by the person then entitled to the reversion on the tenancy.

.....

(5) Neither the landlord nor the tenant shall be entitled under subsection (3) or (4) above to require the inclusion in a conveyance of any provision which is unreasonable in all the circumstances, in view—

(a) of the date at which the tenancy commenced, and changes since that date which affect the suitability at the relevant time of the provisions of the tenancy; and

(b) where the tenancy is or was one of a number of tenancies of neighbouring houses, of the interests of those affected in respect of other houses."

6. In addition, we were referred to Section 62(2) of the Law of Property Act 1925 ("the 1925 Act"):

"(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof."

Facts

7. The Properties are within the Clementhorpe development. Hassena Karbani is the registered leasehold proprietor of 27 Clementhorpe, York, which is registered at Land Registry under title number NYK132380. Paul and Alison Elsome are the registered leasehold proprietors of 28 Clementhorpe, York, which is registered at Land Registry under title number NYK132276.

8. The Respondent is the freehold owner of the Properties which are contained within the development, registered at Land Registry under title number NYK149704.

9. The Properties are held by the Applicants pursuant to leases dated 22 April 1993 and 23 April 1993 which are the same in form ("the Leases"). They are for terms of 999 years at an annual peppercorn rent.

Consideration payable

10. Although correspondence suggested that the Respondent would present evidence from a Valuer, none was produced. It did not contradict that only a nominal sum would be payable and proposed the sum of £250.00. The Applicants relied upon the evidence of 17 November 2021 from Mr K Chapman-Burnett, a Chartered Surveyor, which included a statutory calculation and proposed the value of the freehold interest to be £10.00.

Tribunal's determination

11. The Tribunal found Mr Chapman-Burnett's assessment to be cogent, following the standardised method of valuation in similar enfranchisement matters, albeit that in reality the ground rent of one peppercorn had no particular value at all (Mr Chapman-Burnett attributed £1 to it in calculating its capitalised value). While as a fall-back, Counsel for the Respondent invited the Tribunal to find a sum of at least mid-way between the parties' proposed sums, we found that Mr Chapman-Burnett's report carried weight for the Tribunal and determined that the consideration payable for each property should be £10.00.

Claimed right for the Applicants to park in the communal car parking for visitors

Parties' Positions

12. It was common ground that the Applicants can acquire no more nor less than the rights enjoyed under their respective leases. The Statements of Case and Skeleton Arguments were detailed, and we will not repeat here all of the points presented, only those relevant to the Tribunal's decision.

Applicants' position

13. The leaseholders of fifteen apartments currently share use of visitor parking spaces. Clause f of the First Schedule of the Lease extends to the communal parking, and there is an express right to park pursuant to the terms of the Lease.

14. Relying on principles from *Arnold v Britton* [2015] UKSC 36 the Applicants asserted that the Tribunal should take account of (in this matter, parking for visitors) agreement – i.e. under the terms of the lease - the context of the agreement as a whole. Further, following *Duchess of Bedford House RTM Co Ltd v Campden Hill Gate Ltd* [2023] EWCA Civ 1470, a right to park may be found even where specific wording to that effect does not appear in title documents, and evidence of a settled practice of parking can establish an easement for such parking (*Newman v Jones* 22 March 1982 (unreported), Sir Robert Magarry VC).

15. The lease plan expressly designates communal spaces as being for visitor parking and the practice has been that the parking spaces are used on a 'first come, first served' basis by the various leaseholders enjoying a similar right. The leaseholders have contributed to the maintenance of those areas within the maintenance charge they pay, accepted by the Respondent and therefore acknowledgement of the right.

16. In the alternative, the Applicants have a right to park via the establishment of an easement, via prescription, having been in continuous use of the visitor parking spaces since 1993. It is referred to within the "welcome pack" for lease purchasers, and there have been various meetings regarding how to manage the communal property and parking.

Respondent's position

17. The Respondents disputed that the Leases include an express right to use the visitor parking spaces and to include it within the Transfers would be to grant additional rights, contrary to established principles of enfranchisement and which rights would not be available to the remaining leaseholders. It has expressed that after enfranchisement the Applicants would have no permission or right to use the visitor parking spaces.

18. Permitting the parking which has occurred does not amount to a grant of a right. There were no promises or assurances by the Respondent concerning parking rights on which the Applicants have relied to their detriment so as to be able to assert rights by prescriptive or proprietary right.

19. Each Property has its own parking space. There is no general or reputed right that a property should also have with it space for visitors to park.

20. If there were such rights as claimed, were the Respondent to require the use of all of the spaces to carry out works to clean and maintain the Common Parts of the site, the Applicants would have the ability to seek injunctive relief to exclude the Respondent from those spaces, which would be impractical.

21. Section 10(2) of the 1967 Act makes specific provision for to grant with premises all such easements and rights over other property, "*….so far as the landlord is capable of granting them, as are necessary to secure to the tenant as nearly as may be the same rights as at the relevant time were available to him under or by virtue of the tenancy or any agreement collateral thereto, or under or by virtue of any grant, reservation or agreement made on the severance of the house and premises or any part thereof from other property then comprised in the same tenancy; and*
to make the house and premises subject to all such easements and rights for the benefit of other property as are capable of existing in law and are necessary to secure to the person interested in the other property as nearly as may be the same rights as at the relevant time were available against the tenant under or by virtue of the tenancy or any agreement collateral thereto, or under or by virtue of any grant, reservation or agreement made as is mentioned in paragraph (i) above."

This is provision dealing with easements and rights, but the sub-section goes on to clearly limit those benefitting – and communal parking is not included.

Pertinent Lease content

22. "Property" is defined as: *"the land shown coloured red and numbered 208 on the Plan and the buildings thereon or thereover and the law (being a parking space) shown coloured red and numbered 208p thereon being parts of the land comprised in the title(s) above referred to*".

23. "Common Parts" are defined as "*all parts of the Development other than those comprised in the leases"*. The Development is identified as being shown edged green on the Lease plan.

24. The First Schedule records Rights Granted, including *"(a) to pass with or without vehicles along the Estate Roads and…along the Accessways"* and "(f) *to use any facilities or things provided for the common use of the Purchaser and the registered proprietors of the title to the Lease"*

25. The Lease definition of *Accessways is "any pedestrian ways forecourts or drives now or hereafter constructed within the Development on the surface of the land shown coloured brown on the Plan and which are intended to remain private."*

26. *Estate Roads* are defined as "*all roads verges and footpaths now or hereafter constructed within the Estate which are intended to become highways maintainable at the public expense."*

Tribunal's determination

27. The Tribunal's first task was to interpret the Lease to find the rights benefitting the Applicants currently. We noted that each property has its own allocated parking space within its demise. That has no bearing upon the Applications. We noted that the area identified to us as being for visitor parking is identified by "VP" on the plan attached to the Lease, and we found that such land must fall within the definition of Common parts, as being land within the Development, not demised.

28. Leaseholders are required to pay a maintenance charge and Part 2 of the Sixth Schedule records that it relates to (amongst other costs) expenditure for maintenance of the Common parts. It does not identify an element of contribution for the land used for visitor parking.

29. The First Schedule to the Leases sets out rights granted to leaseholders. By clause (a), rights are granted to "*pass with or without vehicles along the Estate Roads and…along the Accessways*". We found that this wording does not include an express right to park a vehicle in the visitor car parking spaces.

30. As to the clause (f) wording - permitting use of *facilities or things provided for the common use….* – no explanation of the meaning of *facilities* or *things* is provided, but we found on a balance of probabilities that "*This must mean and refer*

to those things provided under the terms of the Leases…" (Mr Wigglesworth's submission). We found the provision does not to grant any relevant right supporting the Applicants' argument. There is no reasonable interpretation of this wording in the Lease permitting for inclusion of a right to use the visitors parking areas.

31. The Fifth Schedule to the Leases sets out the Respondent's covenants, which do not include an express provision by it of parking spaces for visitors. We found no persuasive evidence that the Leases have been varied in any way to include an express right to park in the spaces retained by the Respondent.

32. The asserted parking right does not have the benefit of Section 10(2) of the 1967 Act, it is not an easement listed therein.

33. We found that the Applicants' assertions did not give rise to an implied transfer under Section 62 LPA because no relevant right exists.

34. We found Ms Fisher's argument to be unconvincing, that if all but one of the leaseholders were to enfranchise, without obtaining a conveyance of a right to use the parking spaces, it would result in a single property retaining all four visitor parking spaces. From the facts, we found that the Respondent retains ownership of the areas, it has granted permissions to use them but could withdraw consent for all or part of the area to be used for visitor parking, at will. It would remain as land within Common Parts, but without definition as to its purpose. It is incorrect that one remaining leaseholder would be entitled to use the areas exclusively, unless the Respondent granted such permission.

35. Notwithstanding the longevity of the Applicants in common with other leaseholder in the Development making use of the visitor parking areas, we found no easement arose by prescription. We found that the use was always by way only of permission of the Respondent, which could be withdrawn at any time as to purpose of use – leaving the areas as merely within Common Parts. While material and correspondence separate from the Lease content may have encouraged the Applicants to think otherwise, we found such belief to lack credibility but more particularly had not been relied upon, to their detriment, by the Applicants, so as to create an enforceable interest. There was no persuasive evidence before us that the Respondent was prevented for unilaterally directing how the areas could be used.

36. In consequence of our findings we decided that no right for use of visitor car parking exists to be capable of being transferred under a conveyance for enfranchisement concerning the Properties.

The Transfer Deed

37. The Tribunal's decision on content of the TP1 transfer is by reference to that appearing in the Applicants' bundles, commencing at page 63 and specifically regarding clauses on pages 66 and 67. It follows consequent upon our determination in the preceding paragraph.

38. Page 66 – "Rights granted", clause (h): the proposed wording largely repeats the Lease First Schedule clause (f) and should be retained, but the additional wording should be omitted (i.e. it must exclude "*…for the avoidance of doubt also*

includes the use of the communal parking and visitors parking"), because it purports to confer additional rights to those subsisting.

39. Page 67 – the Tribunal was informed that parties have agreed to the removal of restrictive covenants proposed clauses (5) and (6) and to the revised wording for clause (3)

40. Page 67 – inclusion of new clause 6 (b) and (c) – the "uniformity clause": the Respondent wanted to include wording to "*….ensure that in future the uniformity of the estate as a whole can be maintained"* (Mr Wigglesworth), as being reasonable, to benefit all parties and the leaseholders in the Development. The Applicants' position on this as summarised by Ms Fisher was "…it is not currently contained within the Lease. Additionally, it would be difficult to determine which property it should be uniform with." The Tribunal found no wording in the Lease corresponding with that proposed. In the way that the Applicants cannot acquire more (or less) than the rights enjoyed under their respective leases, no persuasive authority was presented to us to suggest the Respondent can include provision in the TP1 to create a restriction not in the Lease. We determined that the uniformity clause should be omitted.

Tribunal Judge L Brown

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.

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 (Property Chamber).