

# A question of timing

*When are all the terms agreed for the purposes of the Leasehold Reform Housing and Urban Development Act 1993?*  
*Lucy Barber investigates*



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The most common dispute in both collective enfranchisement claims and lease extension claims pursuant to the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) is the dispute over the premium to be paid. There is also, however, often some confusion about when all the terms of acquisition are agreed, and therefore when the statutory timetable for completion begins to run.

Last summer's Court of Appeal case of *Goldeagle Properties Ltd v Thornbury Court Ltd* [2008] now provides some assistance.

### Background

Before looking at the facts of this case, we need first consider the relevant provisions of the 1993 Act. Part I of the 1993 Act deals with collective enfranchisement claims and Part II deals with lease extension claims. The completion timetable for collective enfranchisement claims is set out in s24 and for lease extension claims is set out in s48. The completion timetables in both sections are very similar, but as *Goldeagle* involved a collective enfranchisement claim, I will consider the relevant provisions of Part I.

### Appropriate period

When a group of tenants wish to make a collective enfranchisement claim to purchase the freehold of their building, they first need to serve an initial notice pursuant to s13 of the 1993 Act. The competent landlord then has not less than two months in which to serve a counter-notice.

Section 24(3) of the 1993 Act provides that where a landlord has received an initial notice from a nominee purchaser and:

- (a) the reversioner has given the nominee purchaser such a counter-notice; and
- (b) all of the terms of acquisition have been either agreed between the parties or determined by a leasehold valuation tribunal,

but if a binding contract incorporating those terms has not been entered into by the end of the appropriate period, the court may, on the application of either the nominee purchaser or the reversioner, make such order under subsection (4) as it thinks fit.

Section 24(5) of the 1993 Act provides that this application to the county court needs to be within two months of the end of the appropriate period. What, then, is the appropriate period for this purpose? It is defined in s24(6), which provides that:

The appropriate period is:

- (a) where all of the terms of acquisition have been agreed between the parties, the period of two months beginning with the date when those terms were finally so agreed;
- (b) where all or any of those terms have been determined by a leasehold valuation tribunal...
  - (i) the period of two months beginning with the date when the decision of the tribunal under that subsection becomes final; or
  - (ii) such other period as may have been fixed by the tribunal when making its determination.

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The appropriate period is therefore two months from the date when the terms of acquisition are agreed.

#### Terms of acquisition

It is a common misconception that the terms of acquisition are agreed when the premium payable is agreed. This is not the case. Section 24(8) of the 1993 Act provides that the terms of acquisition are:

- (a) the interests to be acquired;
- (b) the extent of the property to which those interests relate or the rights to be granted over any property;
- (c) the amounts payable as the purchase price for such interests;
- (d) the apportionment of conditions or other matters in connection with the severance of any reversionary interest; or
- (e) the provisions to be contained in any conveyance.

Therefore the timetable for completion does not begin to run until primarily the premium and the terms of the conveyance have been agreed. With regard to lease extension claims, the terms of acquisition include the terms of the lease as well as the premium.

The same principle applies in respect of lease extension claims. Section 60 of the 1993 Act provides that the landlord in a lease extension claim can claim the cost of their surveyor in carrying out the valuation and their legal fees incurred in investigating the claim and

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#### Statutory costs

The landlord in a collective claim can recover some of the professional fees they incur in connection with the claim. Section 33 of the 1993 Act provides that the landlord can recover their surveyor's fee for carrying out a valuation of the property and some of their legal fees. The legal fees they can recover are those incurred in connection with investigating title to the claim and in carrying out the conveyancing, ie negotiating the terms of and completing the conveyance.

for carrying out the conveyancing, ie negotiating the terms of the new lease and completing the transaction.

#### County court application

From the date that the terms of acquisition are agreed, ie the premium and the terms of the conveyance or lease, there is a period of two months in which to either enter into a binding contract or to complete the transaction. If no binding contract is entered into or completion does not take place within that time, either party then has a

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further period of two months in which they may make an application to the county court.

If no application to the county court is made within that two-month period, then there is a deemed withdrawal of the claim. Section 24 of the 1993 Act is commonly misinterpreted so that it is thought that a county court application has to be made within two months of the terms of acquisition being agreed. This is not the case, however: the county court application must be made no later than four months, but no sooner than two

### *In Goldeagle the application to the county court had to have been made by 14 January 2007 – four months after the terms of acquisition had been agreed.*

months, after the terms of acquisition are agreed, otherwise there is a deemed withdrawal.

If the court application is made by the tenant, they will usually be asking the court for a vesting order, so the court will set a timetable for completion to take place.

If the court application is made by the landlords, they may ask for a vesting order in favour of the tenants. This will be the case if they are keen to receive the premium due. Alternatively, they may ask the court to make an order that there has been a deemed withdrawal of the claim because completion has not been completed within the appropriate period.

If the landlord applies to the court for an order that the claim is deemed withdrawn, it may be more likely that rather than make such an order the court will instead issue a vesting order in favour of the tenants, but require the tenants to pay the landlord:

- compensation for the delay in completing the transaction;
- interest on the completion moneys; and
- the landlord's costs in making the court application.

This ensures that the landlords are not out of pocket due to the delay.

### **Goldeagle Properties Ltd v Thornbury Court Ltd**

#### **Initial notice**

The tenants of a block of flats known as Thornbury Court made a collective enfranchisement claim to purchase the freehold of Thornbury Court by serving an initial notice, pursuant to s13 of the 1993 Act, on 7 February 2005 on the landlord Goldeagle Properties Ltd (the reversioner). The nominee purchaser was Thornbury Court Ltd (the nominee purchaser).

The reversioner served a counter-notice on the nominee

purchaser on 15 April 2005, which disputed the price stated in the initial notice and attached to the counter-notice the proposed form of conveyance.

#### **Application to the Leasehold Valuation Tribunal (LVT)**

Section 24(1) of the 1993 Act provides that if any of the terms of acquisition are in dispute in a collective enfranchisement claim, either party can make an application to the LVT to determine the terms of acquisition. This application has to be made not more than six months and not less than two months after the date of the service of the counter-notice. The reversioner made an application to the LVT on 11 July 2005, within the requisite time period. The application stated that Goldeagle was applying to the LVT 'to determine the amount payable as to the purchase price'.

#### **Statements of case**

The parties then submitted their statements of case to the LVT. The reversioner stated that:

- it had not received any response from the nominee purchaser on the terms of the conveyance attached to the counter-notice; and
- that it was not asking the LVT for a determination of its recoverable costs pursuant to s33 of the 1993 Act because the terms of the conveyance were yet to be agreed, and therefore

not all of its recoverable costs had been incurred.

The nominee purchaser in its reply stated that:

- it would amend and return the draft transfer attached to the counter-notice once the terms of acquisition have been determined by the LVT; and
- it agreed with the reversioner's statement that the s33 costs could not be determined as the terms of the conveyance were not yet agreed.

#### **LVT determination**

The LVT issued its determination on 14 September 2006, setting the premium payable, but made no representation as to the terms of the conveyance or the section 33 costs.

The nominee purchaser's solicitors made no representation as to whether the terms of the conveyance were agreed until after the LVT determination, when on 13 November 2006 they confirmed to the reversioner's solicitors that their client had signed the contract. The contract incorporated the terms of the conveyance in the form that was attached to the counter-notice.

#### **County court application**

The nominee purchaser made an application to the county court pursuant to s24 of the 1993 Act on 9 February 2007. This was on the basis that the terms of acquisition were agreed on 13 November 2006, which was when the nominee confirmed by letter that the terms of the transfer were agreed. The application was therefore made within the relevant time period pursuant to s24(5), being three months after the date when the terms of acquisition were agreed. The county court made a vesting order in favour of the nominee purchaser.

The reversioner appealed to the Court of Appeal on the basis that it believed that the application to the county court was not made within the requisite time period pursuant to s24(5). It contended that the terms of acquisition were agreed for this purpose on 14 September 2006, the date that the LVT made its determination. The application to the county court had to therefore have been made by 14 January 2007 – four months after the terms of acquisition had been agreed.

**The reversioner's submissions**

The reversioner submitted that:

- Section 24(1) of the 1993 Act contemplates only one application to the LVT and does not permit successive applications to be made. All the disputed items had to be submitted to the LVT in one application.
- The parties had proceeded on the basis that the terms of the conveyance were agreed. The price could not be determined unless it was known on what terms the property was to be conveyed. The terms of the transfer were therefore implicitly agreed when the LVT fixed the price.
- When the LVT determined the price, it was doing so on the basis that the terms of the transfer were disputed. The nominee purchaser could not make a further application to the LVT to settle, otherwise:

... there might be a knock-on effect on the prices which had already been settled.

**The Court of Appeal judgment**

The Court of Appeal disagreed with the reversioner and held that:

- There is nothing in s24(1) that prohibits the LVT from dealing with the points in dispute in stages by way of successive applications.
- The application to the LVT did not ask for a determination of the terms of the transfer. If the parties required the LVT to make a determination of the terms of the transfer, a new application would have to be made.
- In principle, the terms of the transfer should be agreed before the price is fixed, but in this case no one suggested that the terms of the transfer would affect the price. The LVT had therefore proceeded, as it was permitted to, on the basis that the premium would not be affected by the terms of the transfer.
- The parties had agreed in their statements of case that the terms of the transfer were not agreed. Therefore, it could not be implied

that the tenants had in some way agreed the terms of the transfer.

- As the LVT had not made a determination of the terms of the transfer, it continued to have jurisdiction to do so. The jurisdiction of the LVT is over all matters in dispute and is not confined to the specific matter or matters raised in the pleadings at any particular time.
- When an application is made to the LVT, the LVT remains seised of all matters in dispute.

**Conclusions**

- Before the price is agreed, either by negotiation or by the LVT, the parties should check whether any of the proposed terms in the transfer would affect the price in any way.

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- In any application to the LVT, the parties should ask the LVT to determine not only the premium but also the transfer, so if the terms of the transfer are not agreed before any LVT hearing is listed, the LVT hearing can be used to ask the LVT to determine the terms of the transfer as well as the premium. This will save both parties costs and time, as there will be only one application to the LVT required, as opposed to successive applications and only one LVT hearing.
- If an application to the LVT has been made simply to determine the premium within the requisite time period and the LVT has issued a determination, the LVT still has jurisdiction to determine the terms of the transfer. Therefore a further application to the LVT can be made to determine the terms of the transfer, notwithstanding that the second application is not made within the time period specified in s24.
- When a draft transfer is issued, the solicitors acting for the nominee purchaser should acknowledge

receipt of the transfer but make it clear that the terms are not accepted and that they will respond with their comments on the terms in due course.

- When solicitors write to confirm that the terms of the transfer are agreed, it should be made clear that they are agreeing the terms of acquisition (provided that the premium is also agreed) for the purposes of s24 of the 1993 Act, and that for the purposes of s24(8) the terms of acquisition are agreed as from the date of the confirmatory letter.
- Once the counter-notice has been served, it is important to take note of the six-month time limit for

making the application to the LVT. If no application is made in that time, then the claim will be deemed withdrawn.

- When the terms of acquisition are agreed, record the deadline for making the county court application as four months after the date of the terms of acquisition being agreed, as well as two months afterwards, so you know when the time period for making the application to the county court can be made.

The same principles will also apply in the case of lease extension claims.

It is important to keep track of these dates because if any of the above time limits are missed, there is a deemed withdrawal of the claim, and no further claim can be made for a period of 12 months from the date of the deemed withdrawal. ■

*Goldeagle Properties Ltd  
v Thornbury Court Ltd  
[2008] EWCA Civ 864*