IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UG/LRRM/2006/0002

IN THE MATTER OF SECTION 84(3) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

AND IN THE MATTER OF:
(1) 1-12, 14-64 & 92 & 93 THE MALTINGS, GRAVESEND
(2) 65-69 THE MALTINGS, GRAVESEND
(3) 1-5 HAZARDS HOUSE & 43, 44 & 45 WEST STREET, GRAVESEND

BETWEEN:

THE MALTINGS RTM COMPANY LIMITED

Applicant

-and-

LAKESIDE DEVELOPMENTS LIMITED

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination that it was on the relevant date entitled to acquire the right to manage the following three buildings ("the subject premises"):

   (a) 1-12, 14-64 & 92 & 93 The Maltings, Gravesend.

   (b) 65-69 The Maltings, Gravesend.

   (c) 1-5 Hazards House & 43, 44 & 45 West Street, Gravesend.

2. The Applicant company was incorporated on the 17 March 2006. The Memorandum of Association of the company stated that the objects for which it was established was to acquire the right to manage the premises known as "The Maltings". By a Special Resolution dated 3 August 2006 the objects clause of the Memorandum of Association was amended to specify that the objects for which the company was established was to acquire the right to manage the subject premises.

3. On 14 August 2006, the Applicant served three separate Claim Notices pursuant to section 79 of the Act claiming the right to manage the subject premises. On 19 September 2006, the Respondent served a counter notice stating that the Applicant was not entitled to acquire the right to manage the subject premises. In the counter notice it was contended that clause 3 of the company's Memorandum of Association defined the premises in respect of which it had been established to acquire the right to manage was simply described as "The Maltings". This definition included by the commercial and three separate residential elements of the development. This did not accord with the definition of the premises set out in each of the three claim notices, as the right to manage was only being claimed in respect of the three residential elements. It was submitted that the premises defined within the Memorandum of Association of an RTM company (within the meaning of s.73(2)(b)) must also accord with the definition of the premises (within the meaning of s.72) in respect of which any right to manage was claimed. Accordingly, this inconsistency between clause 3 of the Applicant's Memorandum of Association and the respective claim notices meant that it was not entitled to

serve the claim notices. It was further generally submitted that a single RTM company was not entitled to bring an application in relation to more than one building, having regard to the definition of the premises to which s.72 applies.

4. On 9 October 2006, three separate applications, pursuant to s.84(3) were made in respect of the subject premises seeking a determination that the Applicant was entitled to acquire the right to manage them.

Inspection

5. The Tribunal externally inspected the subject premises and The Maltings generally on 18 January 2007. The property comprises part of the former brewery site close to the river which has been developed and converted into several blocks of flats and offices which are arranged about access ways and open and undercroft parking"

Hearing

6. The hearing in this matter also took place on 18 January 2007. The Applicant was represented by Mr Serota from the firm of Wallace LLP, solicitors. The Respondent was represented by Miss Scott from Basicland Registrars Ltd, managing agents.

7. The Respondent's statement of case dated 3 November 2006 pleaded a slightly different case than the grounds relied on in the counter notice. It was contended, firstly, that s.72(1)(a) defines "premises" to which chapter 1 applies as being *"... a self-contained building or part of a building, with or*

without appurtenant property". A literal construction of this meant that an application under s.84(4) could only be made in respect of one building or premises. Clause 3 of the Applicant's Memorandum states that one of its objects is to acquire the right to manage the three subject premises. Therefore, neither of the requirements of s.72(1) or s.73(2)(b) had been met. Miss Scott accepted that there was no case law on this point but submitted, nevertheless, that the right to manage could probably only be claimed in relation to a single dwelling or property. She found support for this proposition in paragraph 29-007 in Sweet and Maxwell's Service Charges and Management, Law and Practice, publication. To do otherwise would be to give a contrary interpretation to the Act, such as giving voting rights to tenants of some blocks where the right to manage had not been acquired to vote at a general meeting of the company in respect of a block where the right to manage had been acquired. In addition, this construction of the Act would create opportunities for mismanagement and would create the potential for a single large landlord to set up a single RTM company for all of its properties and then vote against the right to manage being acquired for any of them.

8. Secondly, and in the event that the Tribunal found against her primary submission, Miss Scott alternatively submitted that the three claim notices were invalid because the premises to which they related did not correspond with the definition of the subject premises as set out in the Applicant's Memorandum of Association.

9. Miss Scott also invited the Tribunal to consider the practical difficulties that the Applicant would encounter in managing the mixed development. However, she conceded that these were not matter within the Tribunal's jurisdiction and could not be taken account of when determining this application.

10. Mr Serota effectively repeated the submissions made in the Applicant's Reply dated 16 November 2006. He submitted that there was no basis for the assertion that the Applicant was not a RTM company or could not acquire the right to manage in respect of more than one building. There was nothing within section 73 of the Act to that effect. Moreover, there are many estates which comprise more than one building where the lessees of each building or share the same appurtenant property. If the Respondent's submission that the right to manage could only be acquired in relation to a single building was correct, it would never be possible to exercise the right to manage in respect of an estate of more than one building with shared appurtenant property. For example, if the right to manage had been acquired, pursuant to section 72(1), in relation to a building on an estate with appurtenant property, the right could not be exercised in relation to any other building on that estate because section 73(4) prevented this. This could not have been the intention of the Act. In any event, Mr Serota argued that it was Apparent from the leases that The Maltings was intended to be managed as a single development and not treated as individual buildings.

11. Further, Mr. Serota relied on the earlier LVT decision in ***Dawlin RTM Ltd v Oakhill Park Estate*** (LON/OOAG/LEE2005/0012), where it was held in that case that an RTM could manage 5 blocks of flats. In addition, he contended that the Applicant had three objects in its Memorandum of Association. There was nothing within s. 73(2)(a) to prevent it from managing other blocks nor was it limited to one set of premises. The right to manage could be, therefore, be exercised by the Applicant provided that it was done so in relation to one block.

12. Alternatively, Mr Serota contended that the work "building" should not be construed in the singular, but could also be read as "buildings. This was the construction applied to ss.1(2)(a) and 5(3) of the Landlord and Tenant Act 1987, see: ***Long Acre Securities Ltd v Karet*** [2004] EWHC 442 Ch. He submitted that, by analogy, the same construction should be applied to s.72(1)(a) or generally.

13. In relation to the Respondent's second submission. Mr Serota contended that it was not sustainable because the Respondent also relied on the fact that a separate claim notice must be given in respect of each building. Because an RTM company could exercise the right to manage in respect of more than one set of premises, there was no reason why the claim notice should specify that the right was being exercised in respect of more than one building to which the notice relates.

Decision

14. The Tribunal did not accept the Respondent's primary submission that the right to manage could only be exercised by an RTM company in relation to one building. The Tribunal agreed with Mr Serota's submission that s.73(2)(b) of the Act does not say this. To read s.73(2)(b) together with s.72(1)(a) is to misconstrue the meaning of the word "premises" used in each instance. The effect of s.73(2)(b) is that an RTM company can exercise the right to manage more than one premises provided that the RTM company specifies in its Memorandum of Association that this is its object or one of its objects. In other words, each and every premises in respect of which the right to manage is claimed must be specified as a separate object with the company's Memorandum of Association, as is the case here. The Applicant has complied with this requirement because its Memorandum of Association expressly states, as a separate object, the right to manage each of the three blocks. Once the right is exercised, section 72, by way of clarification of s.79(1), provides that the right to manage may only be claimed on a building by building basis. Again, the Applicant did so by serving three individual claim notices in relation to each block. Had the Applicant simply served one claim notice, it would have been in breach of the definition of "premises" in s.72 and, inevitably, any such claim would have been dismissed.

15. If the Respondent's submission was correct, then a separate RTM company would have to be incorporated on each occasion that the right to manage was exercised in relation to a single building. As Mr Serota correctly argued, this potentially could lead to the unwanted consequence where the right to manage

could not be exercised in relation to a block on an estate where the right had earlier been claimed in relation to another block with shared appurtenant property, as s.73(4) would prevent this. The Tribunal was certain that the intention of this legislation was not intended to disenfranchise tenants in this way. The Respondent's fears about voting rights being exercised by tenants of blocks where the right to manage has not been exercised, has no relevance here because each of the three blocks has exercised that right. The Tribunal was also satisfied, both from its inspection and the terms of the leases, that it was and has always been the intention to manage the development as a whole. Indeed, this has always been the Respondent's approach. Accordingly, for the reasons stated, the Tribunal found that the Applicant company could exercise the right to manage in respect of the three subject premises. It was, therefore, not necessary to go on to consider the analogous construction of the word "building" under the Landlord and Tenant Act 1987.

16. It follows from the Tribunal's findings above, that the Respondent's second submission must also fail. If the Applicant is entitled to exercise the right to manage in respect of more than one premises, then the only method permissible under the Act by which that right may be exercised is by the serving of individual claim notices specifying the individual property for which the right is claimed. The fact that the one or more objects of the Memorandum of Association of an RTM may specify other premises is irrelevant. The right to manage cannot also be claimed in relation to those other premises within the same notice. As stated above, the only purpose of

this is to enable the RTM company, in the first instance, to be able to exercise the right to manage.

17. Accordingly, the Tribunal determined, in accordance with s.84(5), that the Applicant company is entitled to manage the subject premises. Pursuant to s.90, the acquisition date is 3 months from the date of this determination.

Costs

18. Although the issue of costs was not raised by either party, for the avoidance of doubt, the Respondent has no entitlement under s.88 to any costs incurred by it in these proceedings.

Dated the 22 day of March 2006

CHAIRMAN..... I. Mohabir .....

Mr I Mohabir LLB (Hons)