FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LRM/2013/0008**
Property	:	**8-11 Cleveland Square, London, W2 6DH**
Applicant	:	**8-11 Cleveland Square RTM Co Ltd**
Representatives	:	**RTMF Services Ltd**
Respondent	:	**Dorrington Belgravia Ltd**
Representative	:	**Mr Sissons of Counsel**
Type of Application	:	**Section 84(3) of the Commonhold & Leasehold Reform Act 2002**
Tribunal Members	:	**Judge I Mohabir** **Mrs H Bowers** **Mrs J Clark**
Date and venue of Hearing	:	**17 June 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**10 September 2013**

DECISION

Introduction

1. This is an application made by the Applicant pursuant to section 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 property known as 8-11 Cleveland Square, London, W2 6DH ("the property").

2. The property forms part of a series of terraced buildings on Cleveland Square. There are a total of 8 blocks forming part of the same terrace. The Respondent is the freeholder owner of the entire terrace. All of the 8 blocks are divided into residential flats.

3. During World War II, a bomb destroyed 8-11 Cleveland Square and subsequently a new brick building was constructed in its place.

4. By a claim notice dated 28 January 2013, the Applicant exercised the entitlement to acquire the right to manage the property.

5. By a counter notice dated 4 March 2013, the Respondent served a counter notice denying that the Applicant was entitled to acquire the right to manage the property on the basis that it was not a self-contained building or part of a building within the meaning of section 72(1)(a) of the Act.

6. By an application dated 11 March 2013, the Applicant applied to the Tribunal for a determination of the issue as to whether it was entitled to acquire the right to manage the property. On 21 March 2013, the Tribunal issued Directions. The basis upon which the Respondent denies that the Applicant is not entitled to acquire the right to manage is set out in its statement of case dated 8 May 2013. The arguments advanced by the Respondent are particularised and dealt with below in turn. The expert evidence relied on by the parties is contained in the survey reports of Mr S Levy FRICS dated 28 May 2013 and Mr J Crane BSc CEng MCIBSE MinstE MConsE dated 8 May 2013 respectively.

properties nor has the Applicant provided any explanation as to how the party wall connects the two parts of the terrace.

10. The Tribunal did not accept the submission made by Mr Sissons as being correct, as to do so would be to give the section an unnecessarily artificial meaning. The mere fact that the property abuts the adjacent properties by reason of the party wall does not preclude it from being structurally detached provided that the requirements of section 72(4) are satisfied. Save from the provision of shared heating with 2 Cleveland Gardens, the properties are physically distinct.

11. Indeed, the same point was considered in ***Belmont Hall Court & Elm Court*** (LON/00AZ/LRM/2008/0013), where there was an element of shared service to both properties, the Tribunal concluded at paragraph 40 of the decision that:

> *"...the intent of the legislation is to grant long lessees of "premises"...whilst maintaining maximum flexibility as to the physical entity in respect of which the RTM may be sought. This may well be in recognition of the fact that premises come in all shape, sizes and configurations; some constitute a single structure; some constitute a single structure but contain multiple vertically divided self-contained parts...some consist of a single structure horizontally divided into self-contained parts..."*

12. For the same reasons, the Tribunal was satisfied that the property was structurally detached within the meaning of section 72(2) of the Act.

Self-Contained Part of a Building

13. It was conceded by Mr Sissons that there was a vertical division between the property and 12 Cleveland Square and that section 72(3)(a) was met.

14. However, he went on to submit that the property could not be redeveloped independently as required by section 72(3)(b). Mr Sissons accepted that no guidance was given by the Act as to what independent development could involve, but he submitted that a possible test was

whether the premises could be demolished and/or rebuilt without causing damage to the structure of the neighbouring properties. This proposition is set out at paragraph 21-03 of Hague, Leasehold Enfranchisement where the substantially identical provisions of section 3(2) of the Leasehold Reform, Housing and Urban Development Act 1993 is discussed. In addition, the Applicant had not undertaken a building or structural survey to establish whether redevelopment was possible.

15. In the Tribunal's judgement, it was not necessary in the present case to reach any conclusions as to what test in relation to independent redevelopment had to be applied and what evidence, if any, the Applicant had to adduce in this regard. The mere fact that the property had been demolished and rebuilt as a consequence of war damage was sufficient to prove that independent redevelopment was entirely achievable. Accordingly, the Tribunal concluded that section 72(3)(b) of the Act was satisfied.

16. Section 72(3) and (4) then had to be considered together. It was common ground that heating is provided to the 9 apartments located in 2 Cleveland Gardens from the plant located in the property.

17. It was submitted by Mr Sissons that, as this service was not provided separately from the remainder of the terrace, it was incumbent on the Applicant to prove that it could be done by carrying out works which would not result in a significant interruption of any relevant services to the rest of the building, as required by section 72(4) of the Act.

18. On the evidence contained in Mr Crane's report, Mr Sissons submitted that the Applicant could not succeed on this point. Mr Crane had examined a number of possible scenarios. He concluded, firstly, that the installation of new boilers within each of the 9 flats at 2 Cleveland Gardens would involve significant work to each flat and would prove to be extremely disruptive. Secondly, the installation of a communal

central heating boiler in the basement storage area would be less disruptive and expensive, but would result in the loss of hot water for a total of 9 days and the installation would take a further 2 days to commission the system. In contrast, Mr Sissons argued that Mr Levy had not dealt with this matter at all in his report.

19. Mr Sissons relied on the authority of ***Oakwood Court (Holland Park) Ltd v Daejan Properties Ltd*** [2007} 1 EGLR 121 where it was held, *inter alia*, that an interruption of 8 hours to the provision of central heating was a significant interruption within the meaning of section 3(2) of the Leasehold Reform, Housing and Urban Development Act. He submitted that there was no material difference between that section and section 72(4) of the Act.

20. The Tribunal rejected the submissions made by Mr Sissons largely for the reasons advanced on behalf of the Applicant. Under the terms of the residential leases of both premises, the Respondent is only contractually obliged to provide heating between October and April in each year. The Applicant will, therefore, be afforded a period of some months in which to install and commission separate heating systems to both properties. Moreover, in a report dated August 2011, Mr Crane indicated that it was the Respondent's intention to install separate heating systems, as the existing boilers were coming to the end of their useful lives. Furthermore, at paragraph 6.19 of his report, Mr Crane confirms that *"new boilers can, therefore, be installed whilst the existing oil fired boilers remained in operation"*.

21. For the reasons given above, the Tribunal concluded that the requirements of sections 72(3) and (4) of the Act had satisfied. It was, therefore, not necessary for the Tribunal to go on to consider what application, if any, the decision in ***Oakwood Court*** had in this case.

22. Pursuant to section 90(4) of the Act, the Tribunal determined that the Applicant shall acquire the right to manage 3 months from the date of this decision.

Judge I Mohabir

10 September 2013