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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/OOCN/LRM/2015/0002**
Property	:	**46-48 Handsworth Wood Road, Birmingham, B20 2DT**
Applicant	:	**46-48 HWR RTM Limited Company Ltd, Eden House, The Office Village, Riverway, Uckfield, East Sussex, TN22 1SL**
Applicant's Representative	:	**Hill Hofsetter Limited, Trigen House, Central Boulevard, Blythe Valley Park, Solihull, Birmingham, B90 8AB (Mrs S Nixon Acting)**
Respondent	:	**Blue Property Investment (UK) Limited**
Respondent's Representative	:	**Brady Solicitors, Imperial Building Victoria Street, Nottingham, NG1 2EX (Mr D Richards, Counsel)**
Type of Application	:	**An Application under Chapter 1, Section 84(3) of the Commonhold & Leasehold Reform Act 2002 for a determination that on the relevant date, the Applicant was entitled to acquire the RTM the property.**
Tribunal Members	:	**Mr G S Freckelton FRICS (Chairman) Mr P J Hawksworth LLB**
Date and venue of Hearing	:	**Wednesday 14th October 2015 at The Tribunal Office, Birmingham**
Date of Decision	:	**9th December 2015**

DECISION

Background

1. On 27th February 2015, 46-48 HWR RTM Limited ("the Applicant) served a claim notice in respect of 46-48 Handsworth Wood Road, Handsworth, Birmingham (the premises) on the Respondent, Blue Property Investment (UK) Limited ("the Respondent"). The notice claimed that the premises were one to which Chapter 1 of the Commonhold & Leasehold Reform Act 2002 ("the Act") applies and claimed right to manage ("RTM") in respect of the premises.

2. On 14th March 2014, the Respondent, represented by Brady Solicitors, served a Counter Notice under the Act alleging that the Applicant was not entitled to acquire RTM of the premises as those premises consist of two self-contained buildings and only one Claim Notice had been served in respect of two buildings. The Counter Notice also stated that the building known as Flat 9 is not premises to which Chapter 1 of Part 2 of the Act applies as it does not contain two or more flats, as required by Section 72 (1)9b) of the Act.

3. Directions were issued on 8th July 2015 following which detailed written submissions were made by both parties.

Inspection

4. The Tribunal inspected the premises on Wednesday 14th October 2015 and found it to comprise of a pair of substantial semi-detached houses which have been converted to flats.

5. The inspection was carried out in the presence of Mr D Richards, Counsel on behalf of the freeholder and Mr A Howard from Blue Property Investment (UK) Limited.

6. The premises are approached directly from Handsworth Wood Road. There is an open parking area to the front and substantial communal grounds to the rear.

7. The layout of the premises provides for flats 1, 2, 3, 4 and 6 within 46 Handsworth Wood Road and flats 7, 8, 10, 11, 12, 14, 15 and 16 within 48 Handsworth Wood Road. Flat 9 is located to the rear of 48 Handsworth Wood Road.

8. At the time of the Tribunal's inspection the premises were undergoing a comprehensive scheme of renovation work and the majority of the flats were vacant.

9. The Tribunal noted that Flat 9, which has been referred to in the submissions of both parties as being separate and detached was actually attached to the rear of 48 Handsworth Wood Road by a beam which supported a covered access area. It was also attached by a rendered brick arch to an external store which in turn was also attached by a beam to the rear of 48 Handsworth Wood Road.

Submissions

10. The Applicant gave a brief summary of the background to the case and noted that in the Respondent's opinion Flat 9 did not qualify as it was a detached building comprising of only one property.

11. The Applicant confirmed agreement of the following matters raised by the Respondent:

    a) That Flat 9 does not qualify as it comprised of only one property.

    b) That notice has not been served on Flat 9 as the Applicant did not wish to acquire right to manage it.

12. The Applicant submitted that in its opinion the description of the premises was correct but that was a matter to be determined by the Tribunal.

13. The Applicant further submitted that section 82 of the Act provides that notice of claim must specify the premises. The Applicant confirmed that in its opinion it had specified the premises correctly as being 46 – 48 Handsworth Wood Road, being the address of the building and although the Respondent submitted that the building also included Flat 9 the Respondent had misconstrued the provisions of the Act.

14. As an alternative the Applicant submitted that if the building had not been correctly defined then this was covered by section 81 of the Act.

15. In support of its case, the Applicant referred to 2 cases:

    a) Miltonland Ltd-v-Platinum House (Harrow) RTM Co Ltd (2015) UKUT 0236 (LC) where the Upper Tribunal determined that an inaccuracy in the description of the building could be excused and;

    b) Assethold Ltd-v-15 Yonge Park RTM Co Ltd (2011) (UKUT 379 (LC) where the Upper Tribunal determined that although an incorrectly specified office address would make a notice invalid a minor defect did not invalidate it.

16. The Respondent confirmed that in its opinion the real issue was whether or not the property had been adequately described and submitted that it had not.

17. The Respondent submitted that a description specifying 46 – 48 Handsworth Wood Road clearly included Flat 9 which could not be considered separately as it was clearly part of the building having shared access and use of the grounds.

18. The Respondent further submitted that Flat 9 should have been given Notice to Participate due to its proximity to the main building.

19. Following the site inspection the Respondent submitted that it was evident that the dividing line between numbers 46 and 48 Handsworth Wood Road was a vertical line through the building. It was understood that the cellar was divided in the same way. As such, it was submitted that 46 and 48 Handsworth Wood Road should have separate RTM companies based on the principle confirmed in the Triplerose case.

20. The Applicant disputed that Flat 9 should have been served with Notice to Participate as it was a self-contained building.

21. The Tribunal pointed out that based on its inspection it appeared that Flat 9 was attached to the rear of 48 Handsworth Wood Road. The Tribunal adjourned while the parties consulted with their representatives.

22. Following the brief adjournment, the Applicant further confirmed that Flat 9 had not received a Notice to Participate and that the Applicant had no further submission to make on that point. It was also submitted that in the Applicants' opinion the Respondent should have raised the question of the division of the building at an earlier time rather than at the hearing.

23. For the Respondent, Mr Richards submitted that he would wish to have further time to consider the Miltonland case above referred to by Mrs Nixon in her submission as he had not had an opportunity to consider the same before such submission. With regard to the division of the building the Respondent submitted that following the Triplerose case, Applicants needed to be particularly careful when drafting notices and that it was one of the Tribunal's functions to determine facts. The Respondent submitted that in its opinion it was clearly seen by the Tribunal that the division between 46 and 48 Handsworth Wood Road was a vertical line between the two properties.

24. The Tribunal confirmed to the parties that it would issue Further Directions concerning the case of Miltonland giving the Respondent an opportunity of considering and making submissions on the same. Accordingly, on the 14th October 2015, further directions were issued by the Tribunal concerning service by the Applicant of a copy of the Miltonland case and inviting submissions on the same by the Respondent which it duly made on the 27th October last serving copies of such submissions on the Applicant. Essentially, the Respondent submitted that the Miltonland case could not assist the Applicant on the facts, as the facts in the Miltonland case were significantly different from the facts in this present case. The Respondent maintained its previous submissions and concluded by stating that the claim notice was still invalid.

The Law

25. According to section 72(1) of the Act the RTM premises arises if :-

(a) they consist of a self-contained building or part of a building, with or without appurtenant property,
(b) they contain two or more flats held by qualifying tenants, and
(c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

According to section 72(2) of the Act a building is a self-contained building if it is structurally detached and according to section 72(3) part of a building is a self-contained part of the building if—

(a) it constitutes a vertical division of the building,
(b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
(c) subsection (4) applies in relation to it.

Subsection 4 applies in relation to a part of a building if the relevant services provided for occupiers of it—

(a) are provided independently of the relevant services provided for occupiers of the rest of the building, or
(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.

Discussion and Determination

26. Number 48 Handsworth Wood Road consists in all of eight flats, with a further five flats in No 46, but additionally, at the rear of the premises, but included in the registered title for the site, is a separate flat, Flat 9. Flat 9 is some way away from the main building comprising the thirteen flats in total for which RTM is claimed. On the registered title plan the main premises are numbered 1 and Flat 9 is numbered 4.

27. When the Tribunal inspected the premises it noted that Flat 9, although situated beyond the backyard of the premises, appeared to be attached to the premises by a lengthy spar or beam as detailed in paragraph 9 of this Decision. Physically, therefore, Flat 9 is not detached from the premises. Flat 9 comprises, the Tribunal was told, of just the one flat.

28. According to the Applicant's Supplemental Statement dated 18th August 2015 at paragraph 4, "It has never been the intention of the Applicant to seek to manage Flat 9". The statement then went on to clarify that RTM was being claimed in respect of the premises within number 1 on the plan and not the premises within number 4. For ease of reference a coloured copy of the title plan is annexed to this decision.

29. In order to be eligible for RTM, Section 72 of the Act requires the premises to consist of a self-contained building or part of a building with or without appurtenant property. That building (see Section 72 (1) (b)) must contain two or more flats held by qualifying tenants.

30. At Section 72 (2) the Act goes on to say (Section 72 (2)) that a building is a self-contained building if it is structurally detached and that in the case of part of a building at Section 72 (3),

"A part of a building is a self-contained part of a building if-

(a) it constitutes a vertical division of the building
(b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
(c) sub-section (4) applies in relation to it

31. Subsection (4) states that:

This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it –

(a) are provided independently of the relevant services provided for occupiers of the rest of the building or

(b) could be so provided without involving the carrying out of works likely to result in significant interruption in the provision of any relevant services for occupiers of the rest of the building

32. The inspection, additionally revealed another matter, namely that the main premises numbered 1 on the plan that is to say, those for which RTM, **is** claimed, had at one time been themselves divided, because, the Tribunal was told, there is a dividing line running through the centre of the building down to a partitioned and divided cellar.

33. In the Memorandum and Articles of Association of the Applicant, the objects clause states that the Applicant was established to acquire the RTM in respect of *"46-48 Handsworth Wood Road Birmingham B 20 2DT"*.

34. The case of Triplerose Ltd v 90 Broomfield Road RTM Co Ltd (2015) EWCA Civ 282 established definitively that a claim to RTM cannot be made by a single RTM company in respect of two or more self-contained buildings.

35. Since Triplerose above, the validity of a claim notice was further considered in a case relied upon by the Applicants namely Miltonland Limited v Platinum House (Harrow) RTM Ltd (2015) UKUT 0236 (LC) where the issue before the Upper Tribunal was whether a claim to manage premises known as Platinum House was invalidated by the fact that within the relevant registered title was also a yard which, not being a building, was not eligible for RTM. Much argument was devoted in

Miltonland as to whether the yard was appurtenant property to Platinum House.

36. The claim notice in Miltonland particularised the property for which RTM was sought as being *"(within the area edged red on freehold plan NGL88768)"*. That title also included the yard. It was accepted by the parties that Platinum House satisfied the self-contained building requirement and the Upper Tribunal considered that the words *"(within the area edged in red on freehold plan NGL88768)"* were intended to signify that Platinum House itself was to be found within those red lines and that RTM was not being claimed as well, for the yard. The Upper Tribunal said that the reference made to the title plan in the claim notice *"is nothing more than a guide to the location of the premises in relation to which the claim is made. The premises are to be read as being Platinum House and its appurtenant property, no more no less"*. Thus the claim notice was held to be valid.

37. From reading the judgement in Miltonland it is clear that much importance was devoted to the word *"within"* in the description of the land in the claim notice for which RTM was sought in that case. Essentially, the Upper Tribunal found that Platinum House was clearly within the area of land edged red on freehold plan NGL88768 and the fact that other land, namely the yard in question, was within that area edged red as well did not invalidate the claim. In the Tribunal's view it is significant that no similar wording including the word *"within"* was included in the claim notice in the present case.

38. It is clear in the present case that the Claim Notice and the Memorandum and Articles of Association of the Applicant simply refer to 46-48 Handsworth Wood Road. No reference is made to a plan and the description in both documents does not make it clear that Flat 9 was **not** included. It would have been a simple matter to have particularised the description of the land the subject matter of the claim by reference to the title plan e.g. "being the area numbered 1 on the Title plan WM 39190 and for the avoidance of doubt excluding Flat 9 numbered 4 on the above plan" or similar wording. Thus, the Tribunal considers that anyone receiving the Claim notice and/or inspecting the Memorandum and Articles of Association of the Applicant would consider that RTM was being claimed for the whole site, including Flat 9 and that the Applicant was a company formed to obtain RTM for the whole of 46-48 Handsworth Wood Road again, including Flat 9.

39. Flat 9 is not physically detached from the main building because of the spar or beam connecting it to the main building but it is to all intents and purposes a separate building because in the Tribunal's view, having inspected the site at length, the structure of Flat 9 is such that it could be redeveloped independently of the main building and services to it could be provided independently of the relevant services provided for occupiers of it. Additionally, clearly the Applicants consider that Flat 9 is a separate self-contained building or part of a building otherwise they would not, from an early stage in this claim, have stated that RTM was not sought in respect of Flat 9.

40. Is the inclusion of Flat 9 by implication in the description "46-48 Handsworth Wood Road, Handsworth, Birmingham B20 2 DT" in the claim notice an inaccuracy in any of the particulars required by or by virtue of s 80 capable of being saved by Section 81 (1) of the Act? Section 81 (1) of the Act states that:

"A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80"

The Tribunal is guided by the case of Assethold Ltd v 15 Yonge Park RTM Co Ltd (2011) UKUT 379 itself referred to at length in Miltonland.

41. In Assethold, (according to Miltonland) it was stated that in "deciding whether Section 81 (1) could not render valid a claim notice which had given an entirely wrong address of the RTM company's registered office (a breach of section 80(5)) Judge Walden-Smith emphasised the relative narrowness of "inaccuracy which she considered was intended to deal with spelling mistakes or typographical errors". As Miltonland makes clear, Assethold was followed in Assethold Ltd v Stansfield Road RTM Co Ltd (2012) UKUT 262 (LC) where it was stated that:

"Under section 81(1) a distinction falls to be drawn between the failure to provide the required particulars and an inaccuracy in the statement of the particulars. A claim notice is saved from invalidity only in the case of the latter"

42. In Miltonland HHJ Bridge stated that:

"For myself, I agree with the approach adopted by Judge Walden-Smith for the reasons she gave and for the reasons given by the President in 14 Stanfield Road. I do not consider that where a claim notice clearly includes, within its statement of the premises over with RTM is claimed, land which cannot form part of the claim that can be said to be an inaccuracy in the particulars required by section 80(2)".

43. In this case therefore, the Tribunal finds that:

i. The Claim Notice is invalid because it purports to claim RTM for more than one self-contained building or part of a building and thus infringes the principle set out in Triplerose. It is noteworthy that, before the Claim Notice was served, the Applicant did not see fit to physically inspect the premises. Had it done so the issue of Flat 9 would immediately have presented itself as a problem requiring consideration. The description of the premises in the Claim Notice as 46-48 Handsworth Wood Road refers to at least two self-contained buildings, because such a description also, by implication, includes Flat 9, and is thus, invalid.

ii. Additionally, the failure to specify in the Claim Notice that the claim did **not** extend to Flat 9 is not an inaccuracy saved by Section 81(1) of the Act and thus the notice is invalid on that ground in any event. In the Tribunal's view following Triplerose, it is incumbent on those claiming RTM to specify the address with great precision and in this case the failure to do so is not merely an inaccuracy capable of being saved. Nor can it be saved by applying "reasonable recipient" principles since the Respondent on receipt of the notice would naturally have assumed that it related to the whole premises. That is to say, the Respondent would not have known that Flat 9 was to be excluded. Thus it would not have been clear to a reasonable recipient that RTM was **not** being claimed in respect of Flat 9.

iii. The description of the premises in the Memorandum and Articles of Association of the Applicant is in any event inaccurate since again, it purports to include Flat 9. Thus, the object of the Applicant appears to be to acquire RTM to more than one self- contained building or part of a building and as such the Applicant cannot be a valid RTM company since following Triplerose, where there are two or more self-contained buildings or parts of a building separate RTM Companies must be formed to acquire RTM for each building. That is to say, a single RTM company is unable to acquire RTM in respect of separate blocks or buildings.

iv. The Tribunal has found that the Claim Notice is invalid for the reasons set out above. Accordingly, the claim to RTM fails and it is not necessary for the Tribunal to consider at length the issue of the effect of the vertical division between 46 and 48 Handsworth Wood Road observed by the Tribunal at the inspection. However, it is apparent to the Tribunal that 46 and 48 have been occupied as one building containing 13 flats for some considerable number of years and accordingly, had the Claim Notice and the Articles of Association not been flawed as determined above, the Tribunal would have found that 46 and 48 (excluding Flat 9) satisfied the Triplerose test.

Costs

44. The issue of costs is regulated by section 88 of the Act and in particular section 88(3) which deals with the situation where, as in this case, the Tribunal dismisses an application for RTM.

45. The Tribunal has received a statement of costs from Messrs Brady solicitors dated 13 October 2015 but has not received any cost submissions from the Applicant. Accordingly the Tribunal reserves for itself the question of costs and Further Directions will be issued, contemporaneously with this Decision to enable the Tribunal to deal with costs in a further Decision.

APPEAL

46. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Mr G. Freckelton FRICS
Chairman
First-Tier Tribunal Property Chamber (Residential Property)