



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/43UH/LRM/2014/0020

Property : Block H, 84-91 Windmill Gate, Sunbury-on-Thames, Surrey TW16 7HQ

Applicants : 84-91 Windmill Gate RTM Limited

Representatives : N. Sabbagh & Mario Baumann

Respondent : HML Hawksworth Ltd

Representative : TWM Solicitors LLP

Type of Application : RTM (Section 72 Commonhold and Leasehold Reform Act 2002) ("the 2002 Act")

Tribunal Members : Judge J.B. Tarling

Date of Decision : 27th January 2015

DECISION

THE DECISION OF THE TRIBUNAL

For the Reasons given below the Tribunal HEREBY ORDERS that the Applicant is entitled to the Right to Manage the property. The Right to Manage takes effect from the 27th day of April 2015.

REASONS FOR THE DECISION

BACKGROUND TO THE APPLICATION

1. The only matters before the Tribunal are whether the premises are self-contained, and if they are not whether the existence of communal water services is a bar to the acquisition of the Right to Manage for these premises. The parties are in agreement that there exist communal water services which supply the subject premises as well as certain adjacent premises.
2. There was originally an issue regarding the Counter-Notice, but that issue was subsequently withdrawn. The Tribunal issued two sets of Directions on 13th October 2014 and 28th October 2014. In accordance with the Tribunal's Directions the Applicants produced a Bundle comprising all the relevant papers which ran to 123 pages. Neither party requested an Inspection, nor a Hearing before the Tribunal considered the Application, and the matter was set down for a paper determination.

THE RELEVANT STATUTORY PROVISIONS

3. The relevant statutory provisions in respect of those matters are as follows:

Section 72 of the 2002 Act provides as follows:

Qualifying rules

72 Premises to which this Chapter applies

- (1) *This Chapter applies to premises 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.*
- (2) *A building is a self-contained building if it is structurally detached.*
- (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) *subsection (4) applies in relation to it.*
- (4) *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 a significant interruption in the provision of any relevant services for occupiers of the rest of the building.*
- (5) *Relevant services are services provided by means of pipes, cables or other fixed installations.*

REVIEW OF THE EVIDENCE BEFORE THE TRIBUNAL

4. The following matters appear to have been agreed between the parties, or have not been challenged:
- a. Block H which comprises the Flats numbered 84 to 91 is a self-contained Building which is not physically attached to any other Building. The sample Lease and attached Plans at Pages 74 to 101 of the Bundle clearly demonstrate that this is the case.
 - b. The shared services are a communal water service and a pumping station which serve Block H as well as adjacent Blocks L & K. There is also a communal water meter serving all 3 Blocks.
5. The Applicants had prepared a "Reply to Respondent" at pages 62 to 69 of the Bundle. This outlined the statutory provisions and drew the Tribunal's attention in particular to Section 72(2). This provided that *"A building is a self-contained building if it is structurally detached."* The Applicants confirmed that Block H is a detached building and maintained that *"this is the only definition that requires satisfaction... and there is no requirement in respect of services supply."* The Applicants maintain that the Respondents are erroneously applying the requirement in Section 72 (3) and (4)(b) which only relate to Buildings which are not self-contained or detached. As a consequence the Respondents objections are without any legal merit and are therefore groundless.
6. The Applicants then go on to allege that the Respondents objections are unsubstantiated and factually misconceived. In Paragraph 7 of their Reply (at Page 64 of the Bundle) they say *"It is agreed that the domestic water to the three Blocks H, J & K are supplied by a single main that goes into the booster pump station. This supply then splits into 3 separate branches with each branch going to separate Blocks. The water supply is then segregated further for each flat within these Blocks. It is also agreed that the current meter is located on the single incoming supply to the booster pump station."*
7. The Applicants then make reference to a dispute regarding the apportionment of water charges from the metered supply. In the opinion of the Tribunal that matter is not directly relevant to the matters which is before this Tribunal, namely the acquisition of the Right to Manage. There is also reference to discussions with the Water Company regarding separate meters for each supply to each Block, but those discussions appear to have not been concluded. The Applicants conclude at Paragraph 13 on Page 65 of the Bundle by saying *"There seems to be no reason, practical or legal, why a separate water meter could not be installed for each Block. The installation of these meters would likely involve the interruption of supply for less than a day, which is exactly*

the same duration the water supply is interrupted when the tanks in the booster pumping station are chlorinated.”

8. The Respondents had lodged with the Tribunal a Witness Statement dated 21st November 2014 by Gillian Byfield BSc(Hons), AssocRICS, the Managing Director of HML Hawksworth Ltd. In that Witness Statement the Respondents referred to the Leases and the provisions for shared services with the adjacent Blocks. They confirm the arrangements for shared water supplies and that there have been disputes regarding the apportionment of water charges between the various Blocks. In Paragraph 5 on Page 73 of the Bundle the Respondents refer to discussions with the Water Company regarding the installation of individual water meters for each flat. That paragraph includes the following: *“A representative from Thames Water met Ms Smith on site but told her that it was not possible for Hawksworth to arrange for individual meters. Thames Water suggested that each lessee makes their own application instead.”*
9. At Paragraphs 6 and 7 of the Witness Statement the Respondents say *“6. Thames Water have not as yet commented on the water pump installation. The pump room is currently located between the communal water meter and the flats i.e. it lies on Windmill Gates’ side of the water meter and thus maintenance of that pumping station is clearly the responsibility of Windmill Gate. If Thames Water fit individual meters for each flat those meters will be located after the pumping station and the likelihood is that maintenance of the pumping station will become the responsibility of Thames Water.
7. From our experience in other buildings Thames Water will not agree to take on this maintenance responsibility and will decline to fit individual meters.”*
10. In summary the Respondents say there is no simple way in which the communal water service can be separated out. They maintain that the Block cannot be classified as a self-contained building, or part of a building and the premises are not qualifying premises and therefore the right to manage cannot be exercised.
11. Also included with the Respondents papers were an Invoice for communal water charges and a copy application for a quotation for new water supply connections. No reply or response to that application was supplied.
12. Neither party had supplied any Expert Report although there had been some correspondence inviting the Tribunal to give Directions for an Experts Report to be provided. The Tribunal had declined to make Further Directions and neither party had requested such Directions.

CONSIDERATION

13. The Tribunal commenced its consideration by reviewing the strict legal point of whether Sections 72(1) and (2), which deal with Buildings that are structurally detached, and Section 72(3) and (4) which deal with part of a

Building, are mutually exclusive. The rules relating to the interpretation of statutory provisions start with the main rule that words in any Act of Parliament should be given their normal meaning, in the absence of any obvious ambiguity. The Tribunal's preliminary conclusion on that point is that sub-sections (1) and (2) of Section 72 clearly refer to Buildings which are detached and not physically attached to another Building. The Tribunal's view is that sub-sections (3) and (4) of Section 72 refer only to "a part of a building"; in other words, one which is physically attached to and is part of another building. As Block H is a detached building which is not physically attached to another Building the Tribunal's preliminary view is that the provisions in sub-sections (3) and (4) of Section 72 relating to the provision of independent services do not apply in this case. On that assumption, then the Applicants are entitled to the Right to Manage. The Tribunal does not consider that there is any conflict of ambiguity in the wording of the Act in this case. In view of this preliminary decision of the Tribunal, it was not necessary to go on to consider the relevance of the separation of water supply services.

14. Neither party had supplied the Tribunal with any Court or Tribunal Case Law Decisions in support of their respective cases. However since this Application was received by the Tribunal the Upper Tribunal made its Decision in the case of *St Stephens Mansions RTM Company Limited and St James Mansions RTM Company Limited* Case Numbers LRX/9/2014 and LRX/12/2014 ("the Upper Tribunal Decision"). The Decision was published on 4th December 2014. One of the matters which was considered in that case was the layout of mains water services in a case involving a RTM application. As that Decision was considered to be highly relevant to the current matter before the Tribunal, a copy of the Upper Tribunal Decision was sent to the parties and they were invited to comment, before the Tribunal reached its conclusion on the current Application.

The parties submissions on the Upper Tribunal Decision

15. Both parties made written submissions commenting on the Upper Tribunal Decision. The Applicants sent to the Tribunal a "Further Submission" dated 15th January 2015. They repeated their view that Section 72(3) of the 2002 Act only applies to right to manage applicants of part of a building. As Block H is not structurally attached to another building Sections 72(3) and (4) do not apply, and the Right to Manage should be granted. They went on to say that even if Sections 72(3) and (4) did apply, the Upper Tribunal Decision confirms that the Applicants are entitled to the Right to Manage, anyway.
16. The Respondents made written submissions through their Solicitors TWM in a letter to the Tribunal dated 19th January 2015. They refer to the continuing problems regarding the separation of services and the installation of a new water service for Block H. That letter makes no comment on the Upper Tribunal Decision and does not attempt to distinguish that Decision from the current matter before the Tribunal, nor does it contain any argument why the Upper Decision applies, or is, or is not binding on the current Tribunal. On page 2 of their letter the Respondents Solicitors say "Our clients have no objection in theory to the exercise by the Applicants of the right to manage, however there are practical considerations which the Applicants have not

addressed.” The letter fails to comment or challenge the Applicants contentions that Sections 72(3) and (4) do not apply to Block H which is not structurally attached to another building.

17. The Respondents Solicitors also request in their letter that the proceedings be adjourned to allow the Applicants time to obtain confirmation from Thames Water that the water services can be separated.

The Application for an adjournment

18. The Tribunal refuses the Application for an adjournment. The Respondents have had plenty of time to deal with this matter and it is now far too late to request an adjournment. The only matter before the Tribunal is the determination of whether or not the Applicants are entitled to the Right to Manage. Details of how services are to be divided are matters which do not directly affect the Tribunal’s decision on that point and any further delay would not achieve anything. The Tribunal is reminded that any further delay would be contrary to the Overriding Objective contained in Rule 3 of the Tribunal Procedure(First-tier Tribunal)(Property Chamber) Rules 2013.

The Tribunal final considerations

19. The Tribunal reviewed all the evidence and written submissions made by the parties. For the reasons given above, the Tribunal agrees with the Applicants view on the law that as Block H is not structurally attached to another building, Sections 72(3) and (4) do not apply in this case. In addition the comments contained in the Upper Tribunal Decision make it clear that even if they did, such separation of services would not obstruct the Applicants entitlement to the Right to Manage.
20. The Tribunal notes the Respondents Solicitors comments that their Clients “have no objection in theory to the exercise of the Right to Manage by the Applicants.” That indicates to the Tribunal that they concede that the Respondents have no valid reasons in law to object to the Right to Manage.
21. For the avoidance of doubt, the Tribunal’s decision to confirm that the Applicants are entitled to the Right to Manage is an unconditional Decision. The Tribunal quite understands that there may well be valid practical problems and considerations which result from the awarding of the Right to Manage to one Block on an Estate where there are communal services. The Tribunal takes the view that the wording of Section 72 contains no power for the Tribunal to adjudicate in detail on each and every item of communal services where there is a dispute. These matters should be negotiated, if necessary by mediation, or other dispute resolution, in an attempt to reach agreement. If no such agreement can be agreed, then the solution may have to be by way of Court proceedings by any relevant party.
22. For the reasons given above the Tribunal determines that the Applicants are entitled to the Right to Manage.

THE ACQUISITION DATE

23. By Section 90 (4) of the 2002 Act, *“Where the right to manage is acquired by the company by virtue of a determination under section 84(5)(a), the acquisition date is the date three months after the determination becomes final.”* In the absence of any appeal, or Further Order, the Right to Manage takes effect three months from the date of this Decision.

Appeals

24. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
25. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.
26. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
27. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.
28. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.

Dated this 27th January 2015

J.B.Tarling

.....
Judge J.B. Tarling