



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

Case Reference : LON/00AY/LRM/2015/0032

Property : 46 & 48 Kellett Road, London SW2
1ED

Applicant : 46 & 48 Kellett Road RTM
Company Limited

Representative : Urban Owners Limited

Respondent : Southern Land Securities

Representative : In person

Type of Application : Determination of the Right to
Manage

Tribunal : Judge Dickie
Mr M Cartwright FRICS

Decision date : 10 December 2015

DECISION

Decision of the tribunal

The application is granted. The tribunal determines that the Applicant was entitled to acquire the Right to Manage on the relevant date. The Right to Manage is acquired on the acquisition date defined by Section 90(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"), (being 3 months from the date the tribunal's determination becomes final).

The application

1. An application is made under section 84(3) of the Act for a determination that on the relevant date the Right to Manage Company was entitled to acquire the Right to Manage.
2. A Notice of Claim was served by the Applicant to the Respondent freeholder dated 23 July 2015. The Notice required the service of any Counter Notice by 27 August 2015.
3. A Counter Notice dated 25 August 2015 was served by the Respondent and the Applicant applied to the First Tier Tribunal for determination as to the Right to Manage on 23 July 2015. Directions were issued by the tribunal and, no party having requested an oral hearing, the tribunal has considered it appropriate to determine the application on the papers.
4. The Respondent has a single ground of objection to the application, in that "it does not believe that the property qualifies by reason of section 72 of Chapter 1 of Part 2 of the Act in that 46 and 48 Kellett Road constitute two separate blocks each being self contained buildings." The properties at 46 and 48 Kellett Road are registered under two separate freehold titles, copies of which have been produced to the tribunal. The Respondent is unsure of the position should it decide to sell one only of the titles. It considers that two separate Claim Notices should be served in respect of the two properties.
5. The Applicant's position in response is that 46 and 48 Kellett Road cannot be treated as two separate self-contained buildings due to the fact that the Third Floor Flat sits across both premises. As such it considers that the premises must be treated as one self contained building. The Applicant observes that the Third Floor Flat lease is referenced in the Schedule of notices of leases in both the freehold titles. The lease plan to the leasehold title for the Third Floor Flat (Title number TGL294987) does indeed show that the flat straddles both of 46 and 48 Kellett Road.
6. Section 72 of the Act provides:
 - (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 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.
- (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.

7. The Court of Appeal in *Triplerose Ltd. -v- 90 Broomfield Road RTM and others* [2015] EWCA Civ 282 held that a single RTM company cannot acquire the Right to Manage more than one self-contained building. Were 46 and 48 Kellett Road each to constitute a self-contained building, the application for the Right to Manage would be defeated.
8. The directions of the tribunal required the landlord on or before 30 October 2015 to provide a statement in reply to the application, setting out grounds in further detail as to why it considers the Applicant does not have the Right to Manage. The landlord was required to provide any documents relied upon including copies of plans and any authorities. The landlord has provided no evidence in support of its case, other than reference to there being two separate freehold titles. However, that does not form part of the definition of a self-contained building or part of a building. The landlord has not shown that the two blocks are structurally detached.
9. In light of the evidence put forward by the Applicant, and the landlord having failed to provide any material evidence to support the asserted grounds in the Counter Notice, in spite of the directions issued, the tribunal is not persuaded that ground is established and accordingly concludes that the Applicant has the Right to Manage.

Name: F. Dickie

Date: 10 December 2015