FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/LRM/2019/0007**
Property	:	**23 Cannon Place, London NW3 1EH**
Applicant	:	**23 Cannon Place RTM Company Limited**
Representative	:	**Mark Tempest instructed by Cartwright Cunningham Haselgrove & Co**
Respondent	:	**David Franklin Ambrose**
Representative	:	**Self**
Type of application	:	**Right to manage**
Tribunal member(s)	:	**Judge Hargreaves** **Stephen Mason BSc FRICS FCI Arb**
Date of hearing	:	**7th October 2019 at Alfred Place**

DECISION (9th October 2019)

Decisions of the Tribunal

(1) The Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act, and the Applicant will acquire such right within three months after this determination becomes final.

(2) If the Applicant wishes to apply for the costs of the application then it must file and serve a brief application supported by grounds and a schedule of costs in form N260 or similar no later than 5pm 23rd October 2019, and the Respondent has until 5pm 6th November 2019 to file and serve his response.

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(3) If there is any application for costs, it will be dealt with after 6th November 2019.

REASONS

1. This was an application to acquire the right to manage 23 Cannon Place, London NW3 1EH (“the premises”) under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The Respondent freeholder has served a counter-notice asserting that the Applicant RTM company was not on the relevant date entitled to acquire the right to manage.

2. References are to the page numbers in the Applicant’s trial bundle except where otherwise stated.

3. The claim notice is dated 22nd January 2019 (p9). The Respondent’s solicitors (Kobalt Law LLP, no longer instructed) issued a counter-notice relying on the grounds in *ss72(2), 73(3)(b) CLRA 2002* (“the Act”) to allege that there was no right to manage *“Because the building is not a self-contained building and it is not structurally detached from 25 Cannon Place and the structure of the building is such that it could NOT be redeveloped independently of the rest of the building.”*

4. The counter-notice is at p13. It is signed on behalf of David Ambrose and David Franklin Ambrose Family Discretionary Settlement (“the Franklin Trust”). Try as we might, and as Mr Tempest also attempted, it was not possible to ascertain the precise interest if any of the Franklin Trust. David Franklin says he is a co-trustee but did not identify the other trustee or the beneficiaries on whose behalf he maintained he had a duty to act. See paragraph 1 of his statement of case at p36, and the second half of p39 (also the statement of case). The best evidence before us is that the Franklin Trust has no interest in the property, and we proceed on that basis. Even if it does, we do not see how it defeats the Applicant’s application on the basis of the Respondent’s submissions, which were far from coherent on this point.

5. David Franklin is the landlord and freeholder as is clear from the office copy entries for the freehold, NGL234064 (p68). It is clear that the freehold is charged to Jabac Finances Limited, and it is subject to the leases listed in the schedule at p69. So if the Franklin Trust does have an interest in the freehold, it is not registered, and though the counter notice was served on its behalf, no particular point was taken save the points referred to and disposed of above. The registered leases include the leasehold interests owned by the shareholders of the Applicant, as well as (i) a 999 year lease of the common parts and (ii) the lease of flat 3, the first floor flat.

6. By way of background, and to avoid any misunderstanding about our position, we add the following briefly about the flats. The basement/lower ground floor flat and back garden is owned by Mr and Mrs Lockett. Mr Lockett attended the site visit and the hearing. The raised ground floor flat (flat 2) is owned by Belsize Investments Limited, and is let to tenants. Mark Lear is a director of both Belsize Investments and the Applicant, attended the site visit and the hearing, and deposed to the relevant facts on behalf of the Applicant in a witness statement which is at p46. The lease of the top two floors (the second and third floor or the penthouse flat) is owned by Rolf Petermann who was not present at the site visit or hearing but is a shareholder of the Applicant company. See pages 48-49. There is an appropriate number of leaseholders and flats to satisfy *s79(5)*.

7. David Franklin is the proprietor of the first floor flat, flat 3. In further submissions and his statement of case delivered after the counter-notice was served, he contended that the application should also fail because he is a resident freeholder (*paragraph 3, Schedule 6 of the Act*): "*I regard Flat 3 as my home*" (p33 but with no supporting details). Mr Tempest took no particular objection to him running the allegation and that, subject to case management, is in line with the principles and procedure discussed in *Tanfield Chambers' Service Charges and Management*, 4th edition at 27-23. However, in this case, the Respondent's point was an extremely bad one with not only no supporting evidence, but with a welter of evidence against the assertion, which was doomed to fail. The effect of the evidence given by himself and on behalf of the Applicant is that he has not lived there for between 5-6 years, and the mortgagee (Royal Bank of Scotland) appointed an LPA receiver who let the property for 5-6 years. For part of that time the flat was let to the Grzybek family until June 2018. Flat 3 has been empty since then. It has been repossessed by the mortgagee. It was put into auction in June 2019 but withdrawn. See Mr Lear's evidence at p49-51, and the emails from other parties and third parties exhibited at p56, p62, p65, p73-80. But most significant of all on the question of his residence is the Respondent's own evidence at p63 (repeated p71) in which in an email dated 9th November 2018 he gives precise instructions about his contact details (as a freeholder), and they include a work address in Chelsea and as a *"residence"*, an address in France. Mr Franklin's oral evidence to the Tribunal in response to cross examination by Mr Tempest and certain questions from the Tribunal was indirect and verging on the incoherent (he suggested that he had lived there recently but had been locked out or excluded unlawfully, but could provide no details whatsoever): he was clearly fed up with being asked about his position as a resident of his flat, and we are satisfied that on at least two occasions before us, he withdrew the allegation that he wished to rely on the resident freeholder exemption. He suggested that he was not really aware of the legal situation and just wished to ensure that the tribunal had all the relevant facts before it, but if so, it was plainly against the weight of the available evidence (including his).

8. We should add, before moving on to what we consider to be the critical issue in the application, that in relation to the common parts, the leasehold interest of which is owned by Cannon Place Management Company Limited, there is no objection to the application on behalf of that company (we do not see how it could object, but for reasons which should be clear, wish to record its position). In fact, the leaseholder of the common parts supports the application: see the letter from Jabac Finances Limited dated 22nd August 2019 at p84. This explains that the Respondent is the sole shareholder of Cannon Place Management Company Ltd, but appointed Clive Newman, a director of Jabac as a director of Cannon Place, so that Jabac could at least protect its security over the freehold by ensuring that buildings insurance is in place. Jabac's letter also confirms the facts relating to the Respondent's "residence" argument.

9. In addition, the Respondent wanted to raise issues as to (i) fraud (ii) the validity of the Jabac charge (iii) the discharge of the Jabac charge (iv) whether there is any valid buildings insurance in place (v) other issues and complaints as to the management of the property. We mention these for the sake of completeness: we refused to let the Respondent pursue these issues or seek to cross examine Messrs Lovett and Lear about them. None of these issues are relevant and it would not have been in accordance with the overriding objective to allow the Respondent this indulgence (in addition to those he had already enjoyed in terms of allegations and presentation).

10. Having considered the Respondent's written submissions and Mr Tempest's skeleton argument, in view of our findings above as to the resident landlord point and the Franklin Trust point, the only point for determination is the point raised in the counter-notice, ie the structural integrity point. The property is one half of a semi-detached property. From the road, the property is on the left and no. 25 is on the right as you face the pair. This point relates to the requirements of *s72* of the Act. As the parties agree that services are provided to no. 23 entirely separately from no. 25, we are required to consider whether the property is self-contained/structurally detached, and whether it could be redeveloped independently of no.25.

11. The Applicant instructed Graham Bridgman-Clarke FRICS, RICS Registered Valuer, whose report is dated 4th September 2019, is RICS expert witness compliant, and is at p85. It contains useful photographs and plans. We have read the report and are familiar with the property having attended a site visit when we had the opportunity to inspect the exterior front and back, the side/flank wall, the common parts and the interior of the penthouse flat. We agree with Mr Bridgeman-Clarke's description of the property and his conclusions as set out in his section 6 from p90. His main conclusion is that the property is self-contained; it can be re-developed. We agree. As to be expected there is a party wall separating it from no. 25. Subject to shoring up no. 25 in the event that no. 23 was demolished, he had no problems concluding that vertical

separation was possible and hence, redevelopment as well. See in particular, his conclusions at paragraph 6, p90-92.

12. The Respondent did not have expert evidence to support his position. He purported to give his own account of how the property was built or repaired, and its various defects, but without matching the expertise of the Applicant's surveyor, and with a great deal of self-interest, undermining any weight or credibility we might wish to give to the evidence had it been presented by an independent expert. Exhibited to his bundle (which we did not get, except for p141 or 191) is a letter dated 1st October 2019 from G. Pelentrides. He gives no qualifications and it is not an expert report. The writer had reviewed a 2001 structural report he had written and concludes, in relation to four tie rods the ends of which are visible on the flank wall of the property, that the tie rods add to the property's stability, and so does no. 25. The letter does not address the detail or requirements of *s72*. It focuses on the flank walls of nos.23-25 and ignores the point and function of the party wall. The Respondent was keen to show us the bulge in the flank wall of the property, which he did, but we have concluded that it is irrelevant to the statutory test in *s72*.

13. The Respondent has two main points on structural severability and redevelopment: (i) the tie rods pass through the floors and are secured to the party wall with no. 25 (which he could not confirm in oral evidence) (ii) the floor joists of both properties provide support to each other's party wall so that if they were removed, the other property would collapse: these arguments reflect the Respondent's theory of lateral restraint and the mutual interdependence of the properties. Mr Bridgeman-Clarke was cross-examined on these issues, and while stressing that he is not a structural engineer, he was confident that the property could be demolished and rebuilt so long as no. 25 was shored up in the process. Furthermore, there is no evidence that the tie rods pass through to no. 25 or are attached to the party wall: no party wall agreements were produced, and we have concluded that even if the tie rods were so attached, it would not affect our conclusion. In other words, there is no evidence to connect the tie rods or joists to the structural stability of no. 25 in such a way as to prevent no. 23 from being separated vertically or redeveloped. The Respondent would have needed cogent evidence to support that argument and lacked any.

<u>Summary</u>

14. Overall, the Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act.

15. Therefore, in accordance with section 90(4), within three months after this determination becomes final the Applicant will acquire the right to manage these premises. According to section 84(7):

> "(7) A determination on an application under subsection (3) becomes final—
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> (a) if not appealed against, at the end of the period for bringing an appeal, or
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> (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of."

Costs

16. Section 88(3) of the Act states:

> "(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises."

17. In the light of the Tribunal's decision, there is no question of awarding any costs of the proceedings to the Respondent because the application for the right to acquire has not been dismissed. We have provided alternative costs directions in case the Applicant considers it has grounds for doing so under Tribunal Rule 13.

Judge Hargreaves
Stephen Mason BSc FRICS FCI Arb
9th October 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such

reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).