



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

Case Reference : CHI/00HA/LOA/2021/0001

Property : 77 Newbridge Road, Bath BA1 3HF

Applicant : 77 Newbridge Road RTM Company Limited

Representative : BLB Solicitors Limited

Respondent : (Unknown – missing landlord)

Representative :

Type of Application : Determination of entitlement to acquire the Right to Manage – Commonhold and Leasehold Reform Act 2002

Tribunal Member(s) : Judge J Dobson

Date and venue : On the papers

Date of Decision : 17th May 2021
Corrected as below 28th May 2021

AMENDED DECISION

Correction of clerical error in the original heading not stating “Decision” and in paragraph 1 not stating the acquisition date and as further identified by the Tribunal in paragraphs 60 and 66- all pursuant to rule 50 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

Summary of the Decision

1. **The Tribunal has determined that the Applicant was entitled on the relevant date to acquire the right to manage 77 Newbridge Road, Bath BA1 3HF with effect from 15th June 2021.**

The application made and history of the case

2. The Applicant made an application dated 3rd February 2021 under Section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for the Tribunal to determine whether the Applicant is entitled to acquire the right to manage (“the Right to Manage”) in respect of a property described as 77 Newbridge Road, Bath BA1 3HF (“the Premises”) but stating that it could not find or ascertain the identity of the landlord.
3. The application was stated to be urgent on the basis that the Premises are not properly insured, the lessees having been unable to insure the parts of the Premises outside of their demises. It was also said that a sale of one of the flats had been affected by the missing landlord. No Claim Notice was served on the landlord in the circumstances but it is said that the relevant notices and information were otherwise served.
4. The Applicant has provided a single witness statement confirming that the requirements of sections 78 and 79 of the Act have been fulfilled, that the necessary Notice has been served as appropriate under section 85(3), and explaining what steps have already been taken to try to trace the landlord. The single statement is signed by three parties.
5. On receipt of the application, the Tribunal asked the Applicant to make some further enquiries, and the result of which is set out in a letter from the Applicant’s solicitor dated 4 March 2021, attaching an attendance note prepared following a telephone conversation with a Mrs Joyce on 22 February 2021- see below.
6. The Directions given by the Tribunal on 5th March 2021 stated that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless anyone other than the Applicant requested to be joined a party. No-one has done so. No application has been made for there to be any inspection of the Premises.
7. The Tribunal directed in the Directions that the Tribunal would give notice of this application, by sending a copy of it, along with these Directions and all other documents provided by the Applicant to the Tribunal, to Anthony Joyce, Keith Noble and the Personal Representatives of Mrs Elizabeth Allen (deceased)- see below. The Tribunal invited them to request, by 26 March 2021, to be joined as a

party to this application and that any request must explain and document their interest in the property and the application. No response has been received to those invitations.

8. The Tribunal also required the Applicant to produce its Memorandum and Articles of Association, which it has done.
9. I considered this matter on 19th April 2021 and identified certain other matters in relation to which the position was unclear. I consequently expressed various preliminary views and directed, firstly, that further evidence and submissions be filed and served as to Ms Gahagan becoming or agreeing to become a member of the Applicant, including the date of that and directed, secondly, there be filed and served any available evidence, to include title plans, and submissions if so advised, that the Premises are a self-contained part of a building. I gave related Directions in the event those matters prompted any other party to engage with the proceedings.
10. The Applicant has subsequently filed a letter dated 30th April 2021 making further submissions and 46 pages of supplemental bundle. Copies of communications with the persons named above and providing copies of the additional documents submitted to the Tribunal have also been provided. There has been no communication from any other party.
11. I have therefore proceeded by way of a paper determination on the initial and subsequent documents produced by the Applicant's representative. This is the decision made following that paper determination. I have retained the content of previous consideration of the application save where additional evidence and submissions have been received to which alter the position or to which reference should otherwise be made.

The Relevant Facts

12. The Premises comprise a Victorian terraced property converted into three flats, two of which are demised to the members of the Applicant. The third (basement/garden) flat ("the Garden Flat"), for which there is no registered lease, and no evidence of an unregistered lease, was occupied by Elizabeth Allen until she died in August 2018. Her Death Certificate states the specific date of death to have been the 8th of that month.
13. The other two flats are known as the Ground Floor Flat and the First Floor Flat respectively. Those names are adopted in this Decision. The former is owned by Ms Ellen Beatrice Brennan-Rist and the latter by Mr Karl Fraser Pallester and Ms Tracy Jean Gahagan. It is those three who have signed the Applicant's witness statement.
14. The freehold is unregistered. In 2007, when Mr Pallester and Ms Gahagan acquired their interest, Mrs Allen represented that she was

the freeholder. There is no other direct evidence of her interest, although management of the building was undertaken by Mrs Allen.

15. Mrs Allen's partner Keith Noble continued to reside in the basement flat after her death, although the Applicant says he was absent between late June/early July 2020 and late January 2021. Although he has verbally claimed that he has inherited the freehold from Mrs Noble, he has refused to divulge any details about Mrs Allen's Will, if there was one, and no Grant of Probate has been applied for.
16. Correspondence was also sent to Mr Noble in early to mid- 2020 in connection with an attempted sale of the First Floor Flat by Mr Pallester and Ms Gahagan and otherwise seeking information. Subsequent letters sent to the Garden Flat addressed to the Personal Representatives of Mrs Allen and to Mr Noble have not been answered.
17. The Applicant's solicitors have traced Mrs Allen's brother Mr Anthony Joyce and initially there was an exchange of correspondence. According to the note of the above-mentioned telephone conversation with his wife, Mrs Joyce, he believes that Mrs Allen made a Will but he has not seen it. He does not claim any interest in the property.
18. No issue arises that the flats are flats for the purpose of the Act or that they are held on long leases. The Applicant is a Right To Manage company ("RTM company").
19. The date of incorporation of the Applicant company is 25th January 2021. There were two subscribers/ founder members identified in the Memorandum of Association dated 22nd January 2021, not disputed to have been members of the company from that date. One is one of two joint tenants of the First Floor Flat, Mr Pallester. The other is Mr Brenna-Rist, the sole tenant of the Ground Floor Flat. Both are also Directors of the Applicant and Ms Brenna-Rist is additionally said to be the Company Secretary, although was not stated to be as at the minutes of the first meeting.
20. The Articles of Association of the Applicant adopt the model form prescribed by the RTM Companies (Model Articles) Regulations 2009 ("the Articles Regulations"). The particular premises defined in the Articles of Association of the Company are as being "77 Newbridge Road, Bath BA1 3HF".
21. No Notice Inviting Participation was served on any Qualifying Tenants. It is said that is because there are none upon whom such a Notice should be served as all three Qualifying Tenants- the three persons named in paragraph 10 above- are members of the Applicant.
22. No Claim Notice has been served. That is because of the inability to identify the landlord.

23. A copy of the application made to this Tribunal was sent to each of the Qualifying Tenants under cover of a letter date 8th February 2021.

The Statutory Background

24. The statutory scheme is set out in sections 71 to 94 inclusive of the Act. The relevant parts of that scheme for the purpose of this application are those which set out the key general provisions and those upon which the Respondent has based its objections.

25. Section 71 provides that a Right to Manage company may acquire the right to manage premises.

26. Section 72(1) defines premises as needing to (a) consist of “a self-contained building or part of a building, with or without appurtenant property” and (b) contain two or more flats held by qualifying tenants and also requires that (c) the number of flats held by the qualifying tenants is not less than two-thirds of the total in the premises.

27. Section 72(2) then states that “A building is a self-contained building if it is structurally detached”. Section 72(3) add that a part of a building is a self-contained 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 to it.

28. Section 72(4) says that it applies if the relevant services provided for occupiers are provided independently of services for occupiers of the rest of the building or could be without involving works likely to cause significant interruption in the provision of any relevant services for occupiers of the rest of the building.

29. Section 73(2) provides that a Right to Manage Company is a private company limited by guarantee whose Articles of Association state that its object, or one of them, is the acquisition and exercise of the right to manage premises.

30. Section 78(1) requires that the Notice Inviting Participation is to be served on all Qualifying Tenants who are not members of the Right to Manage company and have not agreed to become members of the company. A Qualifying Tenant is one who holds a long lease. The following clause, section 78(2) sets out the information to be provided.

31. The relevant parts of Section 79 similarly provide that (79(2)) the Claim Notice may not be given unless each person required to be given a Notice Inviting Participation has been given such a notice at least 14 days before, that (79(3)) the claim notice must be given by an RTM company which complies with subsection (4) and (5) [which relate to the membership of the RTM company] and that the claim notice must

be given to the landlord, as well as (79(8)) a copy of the claim notice being given to every qualifying tenant of a flat.

32. Section 79(7) however states that there is no requirement to give a Claim Notice to a person whose identity cannot be identified (of which an unidentified landlord is such a person).
33. Section 80 of the Act states that the Claim Notice must comply with certain requirements, including (3) stating the full name of each person who is both a Qualifying Tenant and a member of the RTM company and (7) specifying a date at least three months after the date for the counter-notice on which the RTM company intends to acquire the right to manage the Premises.
34. However, section 81 states that the Claim Notice is not invalidated by any inaccuracy in any of the particulars required by section 80. If any of the members of the RTM company stated on the Claim Notice was not a qualifying tenant, the claim notice is specifically not invalidated by that, provided that a sufficient number of Qualifying Tenants of flats are members of the RTM company.
35. Section 85 of the Act sets out the specific provisions where the landlord cannot be traced- and so the Claim Notice cannot be given. Those include that the RTM company may apply to the Tribunal for an order that the company acquire the right to manage despite that (85(2)), that notice must first be given to each person who is a Qualifying Tenant (85(3)) and that the company may be required to take further steps to trace the landlord or others (85(4))
36. Article 1(1) of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (“the Forms Regulations”) comprises a list of defined expressions, including most importantly for the purpose of this application, a definition of “the Premises” as meaning the “name and address”. The term “name and address” is contained in square brackets in the Regulations, indicating the need to insert the relevant actual address in the Articles of the specific Right to Manage company and so define the premises in relation to which the Right to Manage Company is intended to be such a company.
37. It merits noting that there has been a significant quantity of decisions variously of the First Tier Tribunal (Property Chamber), the Upper Tribunal (Lands Chamber) and the Court of Appeal in respect of disputed claims for the right to manage, involving what has been described as “trench warfare”. Insofar as specific case authorities are relevant, those are referred to below when considering the specific matters to which they relate.

Consideration of the issues identified

38. Notwithstanding the lack of objection to this application, I have considered carefully the documentation presented and, in particular,

the witness statement setting out the circumstances in which the landlord cannot be identified. Whilst there is no definitive answer, Upper Tribunal decisions have suggested that even in the absence of a (valid) counter-notice, in cases in which such would be relevant, there cannot be a right to manage acquired unless there are premises to which the Act applies in that the conditions in section 72 are satisfied. I must be satisfied of the requirements of the statute being met irrespective of the nature or lack of objection, whether in a counter-notice where applicable or, insofar as may be appropriate, otherwise.

39. It is relatively unusual to have a witness statement with three signatories, who are collectively described in correspondence to the Tribunal dated 8th February 2021 as the Directors and Members of the Applicant. It has been explained by the Upper Tribunal (Lands Chamber) that this Tribunal can accept such a statement with more than one signatory if it considers that appropriate. I do in this instance, where no issue has been taken by any other party with the contents of that statement. I have confirmed that I accept various of the matters stated in the statement specifically where immediately relevant. However, I should make it clear for the avoidance of doubt that I also accept the remainder of the contents, save where any specific contrary finding is made.

Membership of the Applicant company and relevance to the Notices

40. I note that the Memorandum of Association describes the two subscriber members of the company as Mr Pallester and Mr Brennan-Rist, as explained above. I note that the Applicant's statement, in contrast, describes Mr Pallester and Ms Gahagan as joint members.
41. I was previously concerned that I had no evidence that the membership had changed from the subscribers and as to when Mr Pallester went from being a member and a joint owner of the First Floor Flat to being a "joint member" and that save for the assertion in the witness statement, I had no evidence of Ms Gahagan being a member of the Applicant.
42. I reminded myself that in the normal course, the Tribunal would not require the Applicant to prove the Register of Members, particularly in the absence of evidence to suggest an error in the names of members stated. However, I considered that in that instance there was a reason to do so, where the available evidence was that there may be some confusion between Mr Pallester being a member and both joint tenants being members.
43. The Applicant's representative has explained that the Act does not permit joint subscriber members and continues that on the same day of incorporation Mr Pallester resigned his sole membership and applied jointly with Ms Gahagan to be made a joint member. It is submitted that the application was approved in a board meeting, and they were entered on the Register of Members, all on 25 January 2021

44. The representative states that Paragraph 26(4) of the Articles of Association provide that persons who are jointly the qualifying tenant of a flat shall be regarded as jointly being a member of the Applicant.
45. I have considered the further documents provided. I accept the submissions made with regard to the provisions of the Articles.
46. I accept with the benefit of the further evidence that Ms Gahagan was a member of the Applicant, most notably at the time of Notice Inviting Participation and so was not required to be served with such Notice. I note that she is described as a person with significant control, as owning more than 25% of the shares, as at the minutes of the first board meeting. I also note and accept that Mr Pallester signed a letter resigning his membership and nominate Ms Gahagan and himself jointly in his place and they both signed giving notice of being joint qualifying tenants. I further note that the matter is mentioned in Board minutes. I additionally note that she is shown as a member in the Register of Members. That is ample to dispose of that point.

Ownership of the freehold/ the landlord

47. I have considered the available information as to ownership of the freehold title and hence the identity of the landlord for the purpose of this application.
48. I note that the leases of the Ground Floor Flat and the First Floor Flat are both granted in 1973 by a freeholder which is said to retain ownership of the Garden Flat. I note and accept the submission of the Applicant's representatives in their letter dated 4th March 2021 that the evidence points to the title Garden Flat and the freehold not having been split. There is, I agree, no evidence to support there being a separate lease of the Garden Flat and the freehold being held by a different party.
49. The statement of Mrs Allen by letter in 2007 that she owned the Garden Flat and the freehold of the Premises as a whole is consistent with her having purchased the interest of the original freeholder. It was not of course given in the context of this application. There is nothing before me to cast doubt on the correctness of the statements Mrs Allen made at the time.
50. On the footing that she purchased prior to the date for compulsory first registration, it is reasonable that the title has not subsequently been registered.
51. Given that the leases required the freeholder to arrange insurance for the premises Mrs Allen having done so was also consistent with her ownership of the freehold. The change from that as explained in the Applicant's witness statement, does not detract from that position.

52. In light of the evidence and in the absence of any contrary evidence, I find that Mrs Allen owned the freehold of the Premises, including the Garden Flat. That is to say, solely. If there had been any change to joint ownership with her partner (albeit not apparently pursuant to a Civil Partnership), Mr Noble, registration would have been required.
53. Given that Mrs Allen has died, it necessarily follows that the freehold is now owned by her Personal Representative(s). I accept the evidence on the Applicant's witness statement that there has been no Grant of Probate- and that a standing search has been lodged- and hence there cannot have been a transfer executed. In any event, registration of the new ownership would have been required. In the absence of that, the legal ownership must be with the Personal Representatives.
54. However, I accept that it is not apparent as to who they are. If there is no valid Will made by Mrs Allen, the Personal Representative will be her brother, as the relevant person entitled to be appointed as an Administrator pursuant to the Intestacy Rules. If there is a valid Will which appoints Executors, the Personal Representatives will be the Executors so appointed, who may or may not be or include Mr Noble.
55. I am troubled by Mr Noble's assertion that Mrs Allen's estate has been left to him but that he has not disclosed any Will which would form the basis of that and he has not otherwise responded. I am further troubled that he has apparently refused to communicate with Mr Joyce, to whom it appears title would pass in the absence of such a Will and to whom there may be a gift in any Will. I note the comments made to the Applicant's representative by Mr Joyce, although I make no finding as to whether they are correct. Mr Noble has also taken no known steps to have the title of the freehold transferred to him and I accept the evidence in the Applicant's witness statement that he has not demanded ground rent. He has also not arranged any insurance for the Garden Flat or any other part of the Premises that I have received evidence of.
56. However, it is not appropriate to speculate about any of the above or as to potential reasons for Mr Noble's approach, which do not alter that fact that the identity of the landlord is not known for the purpose of this application.
57. I am content that the explanation for the lack of a Claim Notice served on the landlord is ample and is sound and I find that there was no requirement pursuant to section 79(7) for a Claim Notice to be served.

The Premises

58. No specific comments have been made on behalf of the Applicant in relation to the requirement that the Premises are a self-contained building or part of a building. It must necessarily follow that they cannot be a self-contained building as the Premises are described as terraced property. The Premises are not actually detached: there is no

evidence before me that they could properly be held to be structurally detached where actually joined to other property because the join is not of a structural nature.

59. The Premises need to therefore be part of the building as a whole, being the block of terraced properties collectively. The fact that no relevant point has been taken by any party does not alter the need for me to satisfy myself that the Premises are ones to which the Act applies.
60. It is necessary there to be a vertical division of the building, for the Premises to be capable of being redeveloped independently of the rest of the building and further that relevant services provided for occupiers are provided independently of services for occupiers of the rest of the building or could be without involving works likely to cause significant interruption.
61. It has been held by the Lands Tribunal in *Re Holding and Management (Solitaire) Ltd* [2008] L.&T.R. 16 that a vertical division means a strict vertical divide and that any (other than de minimis) deviation disqualified a property from the right to manage. Separate development means that it can be demolished and something else built in its place without damaging the structure of the remainder of the building or requiring significant development work to be carried out to the remaining part.
62. I previously considered that I could not simply infer from the fact that the Premises were formerly a house and that there is, I am told, a terrace of houses, that there is a vertical divide between the Premises and the properties to either side. I also noted that potentially the development of a mid-terrace property may be problematic. Equally, in respect of the provision of services, I observed that the usual expectation would be that those are independent but matters could not at that point be put higher.
63. I accepted that there are two flats held by Qualifying Tenants and that the number of flats held by the Qualifying Tenants is not less than two-thirds of the total in the Premises.
64. The Applicant's representative has now provided details of the titles to the flats and the neighbouring houses, including plans and have also provided photographs and measurements taken by the Applicants. I have considered those and accept that they support there being a vertical divide and further give no indication that there may not be such divide. The Land Registry plans are not sufficiently precise as to have been sufficient on their own but I note the photographs also provided strongly indicate a vertical divide. There appears to me to have been a vertical wall to 79 prior to 77 and 79 being built and all the indications from the photographs are of a vertical divide between 77 and 75.
65. I agree, insofar as it matters for these purposes, that 79 Newbridge Road appears to have been constructed separately to 75 and 77 and

looks older, being the property at one end of a block of three. The terrace is, I consider, a consequence of properties, including 77 being built on the sides of the block of three cottages.

66. Whilst it is not completely impossible that 77 and 75 are in some way interlocking and some part of one goes over or under the other, the balance of the evidence I have before me is very firmly against that. I therefore find on that evidence that there is a vertical divide.

67. I consider the question of separate development to be a more difficult question, given that it appears that 77 was built at the same time as 75. I am not certain that 77 can be developed independently of 75, and 79, although I am less concerned about 79, given that appears to have been standing some way before 77 was constructed and I perceive would remain standing if 77 were not to.

68. However, the test is one of the balance of probabilities and not one of certainty. On balance, I find that, perhaps with appropriate measures being taken to ensure stability, 77 can be redeveloped independently of 75 as well as 79.

69. With regard to services, the additional submissions attach a drainage search demonstrating that water supply and foul drainage for 77 are independent of the neighbouring properties. They state that so too is the electricity and gas supply, although there is no supporting evidence for that.

70. I accept that the supply of services is independent to 77. The high likelihood would be of an independent supply to a separate house, as 77 was. There is nothing before me to contradict such a supply. In the circumstances, I do not consider that I need further evidence in order to reach a proper conclusion.

71. I should say that I have been cautious in my treatment of the matters set out in the letter from the Applicant's representatives where that is not supported by other documentation. The letter is just that: it is not a witness statement by anyone able to give direct evidence on the matters contained. However, much of the content is supported by other documentation and that which is not does not raise any implausible matter. Therefore, I consider that I am able properly to treat the contents as correct, albeit second hand.

72. It follows that I accept 77 Newbridge Road to be a self-contained part of a building.

Decision

73. In light of the further evidence and submissions provide to me, which I find to sufficiently answer the queries I had raised, I determine on the evidence provided to me that the Applicant was entitled on the relevant date to acquire the right to manage 77 Newbridge Road, Bath BA1 3HF.

RIGHTS OF APPEAL

1. 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 by email at rpsouthern@justice.gov.uk
2. 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.
3. 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 time or not to allow the application for permission to appeal to proceed.
4. 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.