FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/OOCA/LRM/2020/0004**
Property	**:**	**1-18 Briton Court, Britonside Avenue, Liverpool, L32 6SZ**
Applicant	**:**	**Briton Court RTM (2020) Company LTD**
Representative	**:**	
Respondent	**:**	**Ground Rent Trading LTD**
Representative	**:**	
Type of application	**:**	**Right to Manage- Section 84 (3) Commonhold & Leasehold Reform Act 2002**
Tribunal member(s)	**:**	**Judge J White** **Valuer Mr H Thomas FRICS FCABEng**
	:	**Paper(P)**
Venue	**:**	**Northern Residential Property First-Tier Tribunal, 1 floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester, M1 4AH**
Date of Determination	**:**	**12 May 2021**
Date of decision	**:**	**19 May 2021**

DECISION

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 pursuant to section 90(4) of the Act.

The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. On 3 June 2020, the Applicant issued this application to acquire the right to manage ("RTM") 1-18 Briton Court, Britonside Avenue, Liverpool, L32 6SZ (the "Development") under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). On 24 April 2020, the Applicant had served its Claim Notice. On 20 May 2020, the Respondent has served a Counter-notice disputing the claim.

2. On 28 August 2020, the Tribunal issued directions. In compliance with those directions the parties submitted a statement of Case .

3. The Directions stated that the Tribunal did not consider an inspection would be needed and it would be appropriate for the matter to be determined by way of a paper determination. Neither party had objected. The Tribunal convened on 12 May 2021 without the parties to determine the application. It decided that there was enough evidence to determine the application without the need for an inspection or oral hearing. It was in the interests of justice to do so and in accordance with the Overriding Objective.

The Background

4. The Respondent submits that this is the third Application made by the leaseholders in three years. There has been one previous application made and this was withdrawn before a determination. The Respondent submits that this application raises the same issues and has attached the statement of case for the first application.

5. There has been another application made by leaseholders from flat 1 and 16 of the Development in relation to the payablity of service charges. That application (MAN/OOCA/LSC/2018/0037 & 0038) was heard on 19 June 2019. An inspection of the development took place. The Tribunal commented that the Respondent failed to engage at all in the Tribunal process. The inspection found that there was no heating supplied to the common parts and those common parts were in a poor state. The Tribunal found that the service charges for the years 31 July 2014 to 31 July 2019 are not payable.

The Issues

6. The Application and Response raises the following issues:

   (i) Whether the Development is a qualifying premises as a self-contained building in accordance with s72 of the Act.

   (ii) Whether the Applicant is entitled to be incorporated as a single company in accordance with s73(2) of the Act.

   (iii) Whether the Applicant has served notices inviting participation to all leaseholders in breach of s78 of the Act.

7. The law in this area is complex. We annex the relevant statutory provisions to this decision.

Our Determination

Issue 1: self-contained building

The Respondents Case

8. The Respondent states that the Development is made up of three separate blocks that can be divided by way of vertical division of the building and/or structure and could be developed independently of the rest of the building. They state this is evident from the exhibits in their previous statement. Those exhibits provide a photograph of the building, plan drawings when the site was developed, the Land Registry plan and an extract from Falcon Chambers dated 24 February 2015 headed "The Right to Manage-the basics and some specific issues arising from recent case law".

The Findings

9. The development is one self-contained building and consequently is a qualifying premises in accordance with section 72 (1) and (2). It is one structurally detached building. It was built as one new building following planning permission granted in 2004. And we believe completed circa 2007 It is an approximately L shape building. Comprising 17, self-contained flats, believed to be of standard brick/block construction, beneath pitched roofs with tile coverings. There are 3 entrances; there is a central entrance giving access to 9 flats, 3 per floor, this being a 3-storey section, then 2 further entrances, one to each side, each giving

access to 4 flats, being 2 per floor, this being a 2-storey section. The grounds are obviously communal with communal parking area, it is understood with allocated parking spaces. In addition, there is a bin storage area.

10. The blocks within the building are not self-contained. They cannot be redeveloped independently of the rest of the building in accordance with section 72 (3). The relevant services provided for occupiers could not be provided independently without significant interruption of those services in accordance with section 72 (4) and (5).

Reasons

11. The Respondent merely asserts that the building can be divided as it contains three separate staircases. They provide absolutely no argument or expert evidence on how the division is possible, beyond the general discussion in the Flacon Chambers article.

12. As the Applicant is making this application for a RTM for the whole of the development the Tribunal had to consider whether it consisted of a self-contained building in accordance with section 72 (1). It is self-contained if it is structurally detached in accordance with section 72 (2).

13. In *CQN RTM company limited V Broad Quay North Block Freehold Limited [2018] UK 0183 (LC)* the principles in *No 1 Deansgate Residential LTD Company v No 1 Deansgate RTM Co Limited [2013] UKUT 580 (LC)* were upheld at paragraph 54 of the decision. Structural meant "*relating to the core fabric of the building*" and that structural independence such a shared load bearing would signify structural attachment. A tribunal should have regard to the nature and degree of the attachment to determine if premises are structurally attached.

14. In *Consensus Business Group (Ground Rents) Ltd v Palgrave Freehold Co Ltd [2020] EWHC 920*, a collective enfranchisement case where the legal test relates to whether a building is structurally detached, the High Court found that the County Court Judge was entitled to reach the conclusion that there was a single building because the development was constructed as a single unit and the buildings were not designed to function independently. Though at paragraph 112 it was said that "*the fact that the Blocks were constructed at the same time and the fact that there is no visible gap between them are not by themselves sufficient*". At paragraph 125-126 it went on to say:-

".....The units form, however, to adopt the words of the Claimant's expert 'part of a coherent building of consistent structural form and fabric, clearly designed as a single entity'."

126. The Recorder's conclusion at [105] needs to be understood in the light

of these findings as well as in the light of the expert evidence. He found as a matter of fact that there was a single, coherent, structure which was built as part of a single development, with a common car park which was used to its full extent by residents of all the Blocks. This was not a case of buildings that were separately designed and built to function independently. The facts are different from Deansgate and closer to CQN and Albion Riverside ."

15. The Tribunal, using its own knowledge and experience of its members, determines that the separate blocks are not structurally detached. This is because they were built as one integrated building as set out above. In addition, the Tribunal believes there are common services fed off the landlords supply, including lighting of communal areas plus fire detection. Pipes from sections, particularly rainwater pipes run from one section to another as seen on the respondent's photographs. There are shared structural walls, therefore redevelopment of any one section would have a material effect on another,

16. This conclusion is supported by the Land Registry plan, other plans, photographs, and previous Tribunal decision. They clearly show one homogeneous building with interconnecting cables and pipework.. There is only one practical vehicular access to the site, again making separate development impossible.

17. In addition, the Applicant provides a copy of the planning approval together with the plan when the site was developed dated 1 October 2004. It is for the erection of 17 "*self-contained flats in a two and three storey block, together with construction of car park area and bin store*"[8].

18. As we determined the Development was one self-contained building, the Tribunal did not have to go on and determine whether any part of the building was self-contained constituting a vertical division that could be redeveloped separately in accordance with section 72 (2)-(5). As the Respondent did submit that there were three self-contained buildings capable of redevelopment we did go on to consider this issue.

19. In *Stamford Hill Mansions RTM Co Ltd v Daejan Properties Ltd*, (*unreported LON/00AM/LRM/2007/007)* where the tribunal considered that guidance as to the meaning of "independent development" can be derived from the definition of "redevelopment" in Leasehold Reform, Housing and Urban Development Act 1993 s.23(2). The test is a practical one, namely whether the part of the building in question can in practice be demolished and something else built in its place without damaging the structure of the remaining part of the building or requiring significant development work to be carried out to the remaining part of the building.

20. In this case the shared vertical walls make it impossible to redevelop part without damaging the structure of the remaining.

21. The Respondent has not submitted that the services are provided independently or could be without significant interruption to the occupiers of the rest of the building in accordance with section 72(4). Though in this case there is no heating in the common parts, as a new development there is likely to be communal pipework, water tanks electricity, fire safety systems and other services that are integrated and not designed to function independently.

22. The Tribunal considered whether it needed to adjourn and direct the parties to provide expert evidence in relation to the first issue in accordance with *Oakwood v Daejan [2007] 1 EGLR 121* and *St Stephens Mansions RTM Company LTD v Fairhold NW Limited [2014] UKAT 0541 (LC)*.

23. We concluded it was not proportionate or necessary in order to reach a fair decision. That is because the Respondent had not put forward any real argument or evidence to support their claim, beyond merely asserting that, as there were separate staircases, the building was not self-contained. The Development need only "consist of a self-contained building *or* part of a building" for the premises to qualify under 72(1) and (2). As the application relates to the whole of the Development and that is clearly a self-contained building , the qualifying rules in relation to part of a building contained in 72 (3)-(5) do not need to be considered. They had not established a prima facia case to oppose the application. The application related to the whole of the Development as the qualifying premises and clearly consist of a self-contained building as set out above.

Issue 2: Incorporation

The Respondents Case

24. The Respondent states that as there are three blocks the Applicants are not properly incorporated within the meaning of s73 (2) as they are one company.

The Findings

25. The Applicant company is a RTM Company in accordance with s73(2). Only one company is required in relation to the premises as the Development is one premises as set out above.

Reasons

26. The Respondent merely asserts that it does not comply as there are three blocks. They provide no argument or evidential basis for suggesting that there has been a procedural error.

27. We have regard to the decision of the Court of Appeal in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89; [2018] QB 571. The Court of Appeal noted that the Government's policy was that the RTM procedures should be as simple as possible to reduce the potential for challenge by obstructive landlords on purely technical grounds and that the legislation should be construed having regard to this legislative intent.

28. As was said in *Triplerose Ltd v Ninety Broomfield Road [2015] EWCA Civ 282.*:-

> *"45.Section 71 makes it clear that Chapter 1 of the Act makes provision for the acquisition of the right to manage only in relation to 'premises to which this Chapter applies' and only by a company 'which, in accordance with this Chapter may acquire and exercise those rights.' Section 72(1) makes it clear that Chapter 1 only applies to premises if they satisfy the three separate conditions set out in sub-paragraphs (a), (b) and (c) of section 72(1). Importantly for present purposes sub-paragraph (a) imposes the condition that the premises 'consist of a self-contained building or part of the building', which satisfies the conditions in sub-paragraphs (b) and (c) in relation to qualifying tenants and number of flats held by qualifying tenants. This makes it clear that the acquisition and the exercise of rights to manage applies not, as Mr Woolf originally suggested, to a number of blocks or self-contained buildings in an estate, but to a single self-contained building (i.e. structurally detached — see section 72(2)) or part of a building.*
>
> *"…*
>
> *"46.That in itself does not determine the question whether one RTM company can acquire the right to manage more than one set of 'premises'. For the provisions relating to RTM companies one has to look at sections 73 and 74 of the Act and the requirements set out in those sections and in the model articles of association contained in the Regulations. As already stated section 74 provides that: … That to my mind is quite clear. If a company is an RTM company in relation to premises A, only qualifying tenants of premises A, and relevant landlords of premises A, are entitled to be members of that RTM company.*

29. As we have determined that the Development is a self-contained building not capable of division then the Applicant as one company complies with section 73(2) of the Act as claimed becomes irrelevant. It is a private company limited by guarantee and its articles of association include as an objective the acquisition and exercise of the RTM.

30. The Respondent has provided no other basis for its assertion that it does not comply with section 72. The Applicant has provided copies of the relevant notices, the certificate of incorporation, memorandum of association.

Issue 3: Service of Notice to invite participation

The Respondents Case

31. The Respondent states that the Applicant has failed to serve a Notice to invite participation on all leaseholders in the development. They are aware of a minimum of four leaseholders who did not receive the Notice and the Notices would be invalid as they did not comply with section 78 of the Act. They have relied on argument from the first application.

The Findings

32. The Respondent has served a Notice inviting Participation in accordance with section 78 of the Act.

Reasons

33. The Respondent has provided no argument or evidence at all. The mere assertion without any grounds or evidence is not sufficient to counter the Applicants case. They are repeating an assertion from the application made in 2017 that does not appear to relate to this application.

34. The Applicant has provided a list of flat numbers together with the names and addresses of the leaseholders, based upon the information available from the land Registry at 18-19 of their bundle. Out of seventeen properties eleven returned and voted that they wished to participate. They have provided a copy of the Notice.

Costs

35. The Applicant has paid tribunal fees of £100. In the light of our findings, we are satisfied that it is appropriate to order the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision pursuant to Rule 13(2) of the Tribunal Procedure (First- tier Tribunal) (Property Chamber) Rules 2013.

Judge J White
19 May 2021

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

Appendix of Relevant Legislation

Commonhold & Leasehold Reform Act 2002

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 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.

...

73 RTM companies

(1) This section specifies what is a RTM company.
(2) A company is a RTM company in relation to premises if—
(a) it is a private company limited by guarantee, and
(b) its [articles of association state]1 that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.
(3) But a company is not a RTM company if it is a commonhold association (within the meaning of Part 1).
(4) And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.
(5) If the freehold of any premises is [transferred]2 to a company which is a RTM company in relation to the premises, or any premises containing or contained in the premises, it ceases to be a RTM company when the [transfer]2 is executed.

..

78 Notice inviting participation

(1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given—

(a) is the qualifying tenant of a flat contained in the premises, but

(b) neither is nor has agreed to become a member of the RTM company.

(2) A notice given under this section (referred to in this Chapter as a *"notice of invitation to participate"*) must—

(a) state that the RTM company intends to acquire the right to manage the premises,

(b) state the names of the members of the RTM company,

(c) invite the recipients of the notice to become members of the company, and

(d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.

(3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

(4) A notice of invitation to participate must either—

(a) be accompanied by a copy of the [articles of association]1 of the RTM company, or

(b) include a statement about inspection and copying of the [articles of association]1 of the RTM company.

(5) A statement under subsection (4)(b) must—

(a) specify a place (in England or Wales) at which the [articles of association]1 may be inspected,

(b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,

(c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the [articles of association]1 may be ordered, and

(d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.

(6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

(7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.