



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

**Case reference** : **CAM/00KB/LRM/2021/0003**

**HMCTS code (paper, video, audio)** : **P:PAPERREMOTE**

**Property** : **19-25 Pendennis Road & 48-54 Dover Crescent, Bedford MK41 8NJ**

**Applicant** : **19-25 Pendennis Road & 48-54 Dover Crescent RTM Company Limited**

**Representative** : **Vestra Property Management Limited**

**Respondent** : **Assethold Limited**

**Representative** : **Scott Cohen Solicitors Limited**

**Type of application** : **Application for permission to appeal**

**Tribunal member(s)** : **Judge Wayte**

**Date of decision** : **6 October 2022**

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**DECISION REFUSING PERMISSION TO APPEAL**

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**Covid-19 pandemic: description of determination**

This has been a determination on the papers. A face-to-face hearing was not held because no-one requested one and all issues could be determined on paper in accordance with the usual practice for dealing with applications for permission to appeal.

**DECISION OF THE TRIBUNAL**

1. The tribunal has considered the respondent's request for permission to appeal dated 16 September 2022 and determines that:

- (a) it will not review its decision; and
  - (b) permission be refused.
2. 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 respondent may make 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 to appeal.
  3. Where possible, you should send your further application for permission to appeal **by email** to [Lands@justice.gov.uk](mailto:Lands@justice.gov.uk), as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.
  4. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

#### **REASONS FOR THE DECISION**

5. The test for whether to grant permission to appeal is whether there is a realistic prospect of success.
6. In the present case, the tribunal does not consider that any ground of appeal has a realistic prospect of success.
7. For the benefit of the parties and the Upper Tribunal (Lands Chamber), the tribunal records below its comments on the grounds of appeal and any procedural points raised, adopting where appropriate the paragraph numbering of the original request for permission.
8. The respondent seeks permission to appeal the decision dated 17 August 2022 whereby I made a rule 13(1)(b) costs order against them, having determined that they had acted unreasonably in defending the underlying Right to Manage (RTM) application. That application was determined in the applicant's favour on 12 April 2022 and if the respondent applies to the Upper Tribunal for permission for this appeal, that decision will provide relevant background.
9. In summary, the respondent objected to the RTM application on two grounds: firstly that "*there is prima facie evidence that the premises constitute multiple buildings*" and therefore did not meet the definition of premises in section 72(1) of the 2002 Act ("the vertical division objection"); and secondly, that the identification of the premises was ambiguous due to its description of 19-25 Pendennis Road & 48-54 Dover Crescent without adding the qualification of "odd" and "even" as per the title, in breach of section 73(2) of the 2002 Act.

10. Both objections were dismissed by the tribunal in the decision dated 12 April 2022 and an application was subsequently made for permission to appeal that decision in respect of the vertical division objection only, which was refused on 7 June 2022. As far as I am aware, no further application for permission to appeal has been made to the Upper Tribunal in respect of that decision.
11. There are two grounds of appeal in respect of the rule 13 costs decision. Ground 1 states that there was no evidential basis for the relevant findings, referring to paragraph 11 of the decision which stated that “*knowingly running a defence that lacks substance and merit is capable of amounting to unreasonable behaviour in defending proceedings*”. The complaint is that there is nothing in the RTM decision that amounts to a finding to support that claim.
12. The reasons for the rule 13 decision are in paragraphs 11-13. Paragraph 11 deals specifically with the objection in respect of the identification of the property. The RTM decision agreed with the applicant that this objection was “*disingenuous*” (paragraph 22), particularly given the respondent’s agents use of exactly the same description in their service charge demands. In their application for a rule 13 costs order, the applicant provided copies of several earlier FTT decisions involving the respondent making similarly unsuccessful arguments in respect of other properties owned by them. In these circumstances I consider that there is ample evidential basis for the finding that the respondent (or at least any reasonable respondent) would have been aware that this objection lacked substance or merit but still chose to pursue it in proceedings.
13. The second ground of appeal is that the FTT misunderstood the burden of proof in respect of the RTM decision. The respondent points to paragraph 11 of the decision refusing permission to appeal the RTM decision which refers to the respondent’s failure to establish that the property was vertically divided. The respondent accepts that the alleged failure to appreciate the proper application of the burden of proof makes no difference to the RTM decision but claims that I therefore approached the rule 13 decision on the wrong basis.
14. My findings as to the vertical division objection are in paragraph 12 of the rule 13 decision. That paragraph is clear that the unreasonable conduct was the failure of the respondent to comply with the overriding objective in rule 3(2)(a) of the Tribunal’s Procedure Rules to deal with the case in ways which are proportionate to the tribunal’s resources (and co-operate with the tribunal generally). In particular, pursuing the objection in such a vague way that the tribunal had to inspect the property to determine the case. As noted in the RTM decision, it was immediately obvious to the tribunal that the property was a single detached building and in those circumstances, if the respondent wanted to argue otherwise they needed to explain their case better. That is clearly a very different point to any misunderstanding of the burden of proof, which is denied.

15. Paragraph 13 of the rule 13 decision summarises the findings and refers back to the case of *Pineview Ltd v 83 Crompton Street RTM Co Ltd* [2013] UKUT 598, which the respondent cited in support of their opposition to the Rule 13 application. While I doubted that the Deputy President was supportive of objections “*which lack both substance and merit*”, despite the comments in [66] of that case, it must be the case that a respondent with the knowledge and experience of Assethold risks a rule 13 order being made against them if they pursue such objections in proceedings without due regard to the overriding objective and the tribunal’s resources.

**Name: Judge Wayte**