FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LRM/2022/0040**
HMCTS	**:**	**P: PAPER REMOTE**
Property	**:**	**106 Church Road, London, SE19 2UB**
Applicant	**:**	**106 Church Road RTM Company Limited**
Representative	**:**	**Amphlett Lissimore**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Scott Cohen, Solicitors**
Type of application	**:**	**Right to manage**
Tribunal member	**:**	**Judge Robert Latham** **Marina Krisko FRICS**
Venue of Hearing		**10 Alfred Place, WC1E 7LR**
Date of decision	**:**	**21 February 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. Neither party requested an oral hearing. The Applicant has provided a Bundle of Documents which extends to 397 pages.

Decisions of the Tribunal

(1) The Tribunal determines that the building known as 106 Church Road, SE19 2UB is a self-contained building for the purposes of section 72(1) of the Commonhold and Leasehold Reform Act 2002.

(2) The Tribunal determines that on 10 November 2022, the Applicant was 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.

(3) 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 20 September 2022, the Applicant issued this application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a decision that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage ("RTM") in relation to a building known as 106 Church Road, Road, London, SE19 2UB ("the Premises"). This is in Crystal Palace.

2. The sole issue that the tribunal needs to determine is whether the Premises are a "self-contained building". The Respondent seeks to argue that the Premises constitute more than one self-contained building and/or more than self-contained part of a building. The Premises are therefore not "premises" to which the RTM provisions apply.

3. By a claim notice dated 29 June 2022, the Applicant gave notice that it intended to acquire the Right to Manage the Premises on 10 November 2022. On 29 June 2022, the Respondent acquired the freehold title in the Premises.

4. By a counter-notice dated 22 July 2022, the Respondent freeholder disputed the claim, alleging that the Applicant had failed to establish compliance with sections 72(1) and 73(2) of the Act.

5. On 20 October 2022, the Tribunal gave Directions. The Procedural Judge identified the issue to be decided, namely whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the RTM of the Premises. The Judge was satisfied that this matter could be determined on the papers. Neither party has requested an oral hearing.

6. On 23 November, the Respondent filed its Statement of Case (at a p.89-100). The Respondent raises a single issue, namely whether the Premises constitute "a self-contained building" for the purposes of section 72(1) of the Act. The Respondent contends that the Premises comprise multiple self-contained parts of a building or alternatively multiple buildings. The Respondent relies upon the Court of Appeal decision in *Ninety Broomfield Road Company Limited v Triplerose Limited v* [2015] EWCA Civ 282; [2016] 1 WLR 275 ("*Broomfield"*). The Respondent also notes that a similar point was raised in the FTT decision of *Eveline Road RTM Company Limited v Assethold Limited* (LON/00BA/LRM/2021/0041) which was then pending before the Upper Tribunal.

7. The Applicant filed a Reply (p.101-179). The Applicant maintains that the premises are a self-contained building. It relies on the decision of Mrs Justice Falk in *Consensus Business Group (Ground Rents) Limited v Palgrave Gardens Freehold Co Limited [*2020] EWHC 920 (Ch); [2020] 2 P&CR 12 which concerns a collective enfranchisement claim pursuant to the Leasehold Reform, Housing and Urban Development Act 1993. The Applicant also exhibits a reinstatement cost assessment report which was prepared for insurance purposes and provide a description of the Premises.

8. On 4 January 2023, the Respondent filed a Reply (at p.180-185). The Respondent confirmed that it was contending that the Premises do not qualify by reason of section 72(1) on the basis that the Premises are: (a) more than one self-contained building; and/or (b) more than one self-contained part of a building.

9. The Applicant has filed a Bundle of Documents which extends to 397 pages. This includes the leases for the six flats in the Premises.

10. The Respondent applied for permission to adduce expert evidence. On 9 December 2022, Judge Vance refused this application (p.187). He noted the Premises are not a complex building. Photographs have been provided. Obtaining expert evidence would merely incur unnecessary cost and delay.

11. On 2 February 2023, the Upper Tribunal, Mr Justice Edwin Johnson, the Chamber President, gave judgment in the *Eveline Road* case. This decision, *Assethold Limited v Eveline Road RTM Company Limited* ("*Eveline Road*"), is reported at [2023] UKUT 26 (LC). On 9 February, the Tribunal invited the parties to make further representations in the light of the decision. Both parties responded on 15 February:

    (i) The Applicant asserts that the decision is binding on this Tribunal and clearly supports the Applicant's case.

    (ii) The Respondent states that the case is "still ongoing and is in the process of appeal". The Respondent seems to accept that on

the basis of the Upper Tribunal's decision their grounds for opposing the application are bound to fail.

The Law

12. Chapter 1 of Part 2 of the Act provides for an RTM company to acquire the right to manage premises to which the Chapter applies if the following conditions are satisfied

> (i) The premises must be a self-contained building or part of a building, with or without appurtenant property which contains two or more flats held by qualifying tenants (section 72).
>
> (ii) The RTM company must be a company limited by guarantee whose objects include the acquisition and exercise of the right to manage the premises in question (section 73(2)).
>
> (iii) At the date of service of the claim notice the members of the RTM company must be at least two in number and must be qualifying tenants of at least half of the flats in the premises (section 79(4)-(5)).
>
> (iv) At least 14 days before serving the claim notice the RTM company must have served a notice of invitation to participate on all qualifying tenants who are not members of the RTM company and have not agreed to become a member (section 78(1)).
>
> (v) A claim notice must be served on the landlord under a lease of the whole or part of the premises, any third party to such a lease, and any appointed manager (section 79(6)).
>
> (vi) By section 84(1) a person who receives a claim notice may give a counter notice disputing the RTM company's entitlement to acquire the right to manage the premises.

13. Section 72 specified the qualifying rules in respect of premises to which the RTM applies (emphasis added):

> "(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.

(6) Schedule 6 (premises excepted from this Chapter) has effect."

The Decision in *Eveline Road*

14. The Property subject to the RTM application stood at one end of a terrace of properties which front on to Eveline Road. The Property comprised four flats. There were two adjacent ground floor flats (A and C), and two first and second floor maisonettes above (B and D). Flats A and C each had an area of yard or garden immediately to their rear. Beyond that there were further areas of garden which were enjoyed with respectively, each of Flats B and D. Access to these areas of rear garden was obtained by a side gate from the path leading down the east side of the Property.

15. Externally, the Property had the appearance of a pair of semi-detached houses, with each house having different external decoration. This division was maintained through the remainder of the Property, in the sense that, on the western side, there was Flat A with Flat B above, while on the eastern side there was Flat C with Flat D above.

16. The history of the Property was not entirely clear. Planning permission had been granted in September 2014 for various works, comprising the erection of a single storey rear extension, a two storey side extension including rear roof extensions, and the creation of the four flats. The position appeared to be that the property was originally a single house. The eastern Part was then added, the ground floor rear extension was constructed to both parts, the roof was extended upwards to create a second storey to the property, and the four flats were created within the extended envelope.

17. The freehold title to the Property was registered under three separate registered titles, each of which was held by Assethold. In 2018, Assethold had acquired the freehold titles. The registered freehold titles disclosed that the existing long leases of the flats were granted between 2014 and 2016. The dates of the grant of these leases are broadly consistent with the extension and conversion of the Property into flats pursuant to the planning permission granted in September 2014.

18. Assethold appealed against the decision of the FTT on two grounds:

> (i) The FTT were wrong to decide that the Property comprised a single building. The Property in fact comprises two sets of qualifying premises. Each of the parts is a set of qualifying premises.
>
> (ii) One RTM company cannot make RTM claims in respect of two sets of qualifying premises. The RTM company can only make a claim in respect of one set of qualifying premises; see *Broomfield*. RTM claims by the same RTM company in respect of more than one set of qualifying premises are not possible.

19. Assethold contended that section 72 does not include self-contained parts of buildings which themselves contain a self-contained part of the relevant building or self-contained parts of the relevant building. In such a case, an RTM claim can only be made in relation to those self-contained parts of the relevant building which are themselves indivisible; that is to say not capable of further division into a smaller self-contained part or self-contained parts.

20. The RTM Company responded that the limitation which Assethold sought to impose upon the terms of section 72 was not one which could be extracted from the language of the section. Each of the premises, the

western part and the eastern part fell within the definition of a self-contained part of a building. In order to exclude the premises from this definition, words of exclusion were required in Section 72, excluding a self-contained part of a building which itself contained a self-contained part or self-contained parts of the same building. There are no such exclusionary words in section 72. Such words cannot be read into the section without resorting to the illegitimate device of writing additional words into the legislation.

21. At [49] – [50], Johnson J noted the importance of the distinction between a "self-contained building" and a "self-contained part of a building". In the current case, the only self-contained building was the whole terrace. Therefore, the Property and its parts could only fall within the terms of s.72 if they were a "self-contained part of a building". A self-contained part of a building is defined in s.72(3). Premises comprised a self-contained part of a building if they satisfied the requirements in s.72(3)(a) to s.72(3)(c). Johnson J went on to conclude that there was nothing to exclude from s.72(3), a self-contained part of a building which itself contained a self-contained part or parts of the building.

22. Johnson J held (at [80]) that the decision in *Bloomfield* was uncontroversial. The Court of Appeal had merely held that a RTM Company cannot the right to manage in respect of more than one set of premises. He added:

> "It can of course be said that the RTM Claim has in fact been made in respect of two sets of premises; namely the Parts. This however seems to me to beg the question. If the Property can qualify as a single set of premises for the purposes of Section 72, and it seems to me quite clear from the language of Section 72 that the Property can so qualify, it is hard to see why the Property should then be disqualified because it also comprises two sets of premises, namely the Parts, to which Section 72 also applies. This was not the situation which the Court of Appeal was considering in *Broomfield*, and it does not seem to me that the decision of the Court of Appeal can be said to have been directed to this situation."

23. At [114], Johnson J reached the following conclusions based on (i) a simple reading of the language of the 2002 Act and, in particular, section 72, and (ii) a consideration of the purpose and effect of the RTM provisions and consideration of the decision in Broomfield, and (iii) application of the decision of the Court of Appeal in *41-60 Albert Palace Mansions (Freehold) Ltd v Craftrule Ltd* [2011] EWCA Civ 185 [2011] 1 WLR 2425:

> "(1) The reference to a self-contained part of a building in Section 72 is not confined to a self-contained part of a building

which does not itself include a self-contained part or self-contained parts of the same building.

(2) A self-contained part of a building, as defined in Section 72, includes both (i) a self-contained part of that building which does not include a self-contained part or parts of the same building and (ii) a self-contained part of that building which does include a self-contained part or parts of the same building.

(3) In the case of a self-contained part of a building, the right to make an RTM claim is not confined to a self-contained part of the building which is not capable of further sub-division into self-contained parts.

(4) In the present case, the RTM Company was entitled to make the RTM Claim in relation to the Property, notwithstanding that the Property is comprised of two parts, namely the Parts, which are each also self-contained parts of the Terrace within the meaning of Section 72.

The Premises

24. The Premises at 106 Church Road, Road, London, SE19 2UB are a substantial two storey detached building with a basement. The original building was constructed in the 1800s. At some later date, it was converted to create four flats in the main building with two additional flats in an extension. It is probable that the conversion and the building of the extension occurred at the same time.

25. The freehold to the Premises is registered under a single registered title. We have been provided with the leases for the six flats. All have the same lease plan. In each lease, "Building" is defined as "the land and building known as 106 Church Road, London SE19 UB registered at HM Land Registry with title numbers SY48266 and SGL527947 as edged blue on the Plan". The Official Copy of Register of Title is at p.92-94). The leases in respect of the six flats were granted between April 2018 and April 2019. All were granted for terms of 125 years from 1 January 2018. The lease treats the whole building (namely the original building and the extension) as a single structure.

26. The lease plans are very accurate. Flats A, B, C and D are in the original building. All share a common entrance hall and staircase. Flats 106A and 106B are in the rear extension. The extension was built as a single structure. Flats 106A and 106B have a party wall. Flat 106A is directly behind the main building with Flat 106B behind Flat 106A. Flats 106A and 106B are at a lower level. There are steps down to a separate entrance to these two flats.

27. The extension is built directly against the rear wall to the main building. Thus were the main building to be demolished, it would be necessary to create a new rear wall for Flat 106B. It is therefore clear that the main building and the rear extension are structurally connected.

28. The lease is premised on there being common services for the whole Building. Thus, paragraph 3 of the Third Schedule grants the tenant "the right to use and to connect into any Service Media at the Property which serve other parts of the Building". Paragraph 6 grants the right to "re-route and replace any Service Media at the Building over which Rights are granted". The Applicant's Solicitor (at p.104) refers to all the electric and gas meters being in the same location. This is illustrated in the photograph at p.175.

29. The lease requires the landlord to insure the entire Building. The insurance reinstatement cost analysis report treats the whole building as a single structure. Indeed, it is difficult to see how the extension could be treated as a separate structure from original building. The report refers to the Building being "serviced by water, gas, electrics and main drainage" (p.149).

Our Determination

30. The question that we were asked to consider is whether a part of a building can qualify as a self-contained part of a building, within the meaning of section 72(3), if that part of the relevant building includes within it a part of the building which also qualifies as a self-contained part of the relevant building, within the meaning of section 72(3). Johnson J has now decided in *Eveline Road* that it can.

31. The facts in the current case differ from those in *Eveline Road* in that the Premises are a self-contained building. It is a separate house. It does not form part of a terrace as in *Eveline Road*.

32. It is not strictly necessary for us to consider whether the building at 106 Church Road could be considered as two separate self-contained parts. The Respondent has contended that Flats A, B, C and D are one self-contained part of the building, whilst Flats 106A and 106B are separate self-contained part of the building. Had it been necessary to do so, we would have concluded that the six flats can only be treated as a single self-contained building. Flats 106A and 106B cannot be treated as a separate self-contained part of the building. The six flats are all structurally connected and share services. These are the factors which section 72(3) of the Act would have required us to consider.

Tribunal Fees

33. The Applicant has paid tribunal fees of £100. In the light of our findings, the Tribunal orders the Respondent to refund any 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.

Conclusion

34. 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.

35. 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—
>
> (a) if not appealed against, at the end of the period for bringing an appeal, or
>
> (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of."

Judge Robert Latham
21 February 2023

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).