



**Case Number:** CHI/18UD/LRM/2010/0005

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**PROPERTY:** 1 – 24 Weirside Place, Old Mill Close, Exeter, Devon, EX2 4BW

**Applicant:** Weirside RTM Company Limited

**and**

**Respondent:** Holding and Management (Solitaire) Limited

**In The Matter Of**

**Section 84(3) Commonhold and Leasehold Reform Act 2002**

**No Fault Right to Manage Application**

**Tribunal**

Mr A Cresswell (Chairman)  
Mr T E Dickinson BSc FRICS

**Date of Hearing:** 22 October 2010

**Appearances:** Mr P Harrison of counsel appeared for the Applicant. The Respondent relied upon its written submissions.

## **DETERMINATION**

### **The Application**

1. On 4 May 2010, the Applicant served on the Respondent a Claim Notice to acquire the right to manage the property under section 79, Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The Respondent served a Counter Notice dated 27 May 2010 under section 84(2)(b) of the 2002 Act to the effect that the Applicant was not entitled to acquire the right to manage the property. The Applicant now applies under section 84(3) of the 2002 Act for a determination of entitlement to acquire the right to manage on the Relevant Date, 4 May 2010.

### **Inspection and Description of Property**

2. The Tribunal inspected the property on 22 October 2010 at 12.30. Present at that time were Ms Z Tibbles (solicitor for Weirside RTM Company Ltd), Mr P Harrison (counsel for Weirside RTM Company Ltd) Mr M Woodhead (Drew Pearce) Mr M Hounsell (representing the residents) and Mr R Dendy from Holding and Management (Solitaire) Limited.
3. The property in question consists of 24 flats in 3 connected 3-storey blocks, each containing 6 residential flats, and a further block of 6 residential flats differently connected. The first 3 blocks are connected vertical wall to vertical wall. The 4<sup>th</sup> block is connected at the ground floor apartment wall of the last of the 3 connected blocks to a garage and then to a pitched connecting roof at the garage roof height, the connecting roof having a width of about 4 metres and a depth of about 2 metres. The connecting roof appeared to have one purpose only, that being to connect the 4<sup>th</sup> block to the other 3 via the garage. Beneath the connecting roof was the passageway to 4 of the site's garages, one of which we have already described as being connected to the end of block 3 and the connecting roof, and the other 3 garages being directly beyond the passageway. The site was served by a single entrance and the leaseholders enjoyed shared use of the grounds. Each flat had the use of a single garage and shared refuse storage rooms. There appeared to be no

relationship between the positioning of individual flats and the garages allocated to the leaseholders, such that the garage allocated to the leaseholder of a flat in one block may be adjacent to another block.

### **Summary Decision**

4. This case arises out of the Applicant's application for a determination of entitlement to acquire the right to manage in respect of 1 – 24 Weirside Place, Old Mill Close, Exeter. Under Sections 84(3) and 84(5)(a) of the 2002 Act, the Tribunal has jurisdiction to make a determination as to whether the Applicant was on the relevant date entitled to acquire the right to manage the property. The Tribunal has determined that the Applicant was on the relevant date entitled to acquire the right to manage the property.

### **Directions**

5. Directions were issued on 28 July 2010. These directions provided for the matter to be heard on the fast track.
6. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
7. This determination is made in the light of the documentation submitted in response to those directions and the written and oral representations received at the hearing.

### **The Law**

8. The relevant law we took account of in reaching our decision is set out below:

#### **Commonhold and Leasehold Reform Act 2002**

##### **S. 71 The right to manage**

(1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a

company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company).

(2) The rights are to be acquired and exercised subject to and in accordance with this Chapter and are referred to in this Chapter as the right to manage.

## **72 Premises to which 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.

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

## **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 memorandum of association states 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 conveyed or transferred 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 conveyance or transfer is executed.

#### **79 Notice of claim to acquire right**

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the

premises which is not less than one-half of the total number of flats so contained.

(6) The claim notice must be given to each person who on the relevant date is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31)(referred to in this Part as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

#### **84 Counter-notices**

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing a statement either—

(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled, and containing such other

particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or

(b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

(6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(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.

(8) An appeal is disposed of—

(a) if it is determined and the period for bringing any further appeal has ended, or

(b) if it is abandoned or otherwise ceases to have effect.

**Interpretation Act 1978 (c.30)**

**6. Gender and number.**

In any Act, unless the contrary intention appears,—

(c) words in the singular include the plural and words in the plural include the singular.

**Malekshad v Howard de Walden Estates Ltd House of Lords[2003] 1 A.C. 1013 Lord Millett:**

*47 "Any building." A "building" is merely a built structure. For the purposes of section 2 of the Act, it need not be structurally detached and may be subdivided into self-contained units. So it may form part of a larger whole, and at the same time may itself be a composite whole formed by separate units. The word is, therefore, not used with any degree of precision. The necessary precision is obtained by other elements of the definition of "house". For the purposes of section 2, the same structure may be regarded as a single building or as several buildings. Thus a terrace of houses may constitute a single building even though each house in the terrace also constitutes a building in itself.*

*48 Given the degree of imprecision in the concept of a "building", I think that the primary purpose of the requirement that the house should form the whole or part of a building is to exclude other forms of residential accommodation such as caravans or houseboats. No doubt it goes further than this, for I do not see how two separate detached buildings can constitute a single building.*

**Ownership and Management**

9. The Respondent is the freeholder of the property which is currently managed by it.

**The Lease**

10. The lease before the tribunal is a lease dated 30 August 1996, which was made between Alford Brothers Limited as lessor and John Farnill Rowbotham and Gwendolen Dorothy Rowbotham as lessees. This was agreed by the parties to be in a form common to all tenancies at the property. The Respondent became owner of the freehold interest in the property after the date of the lease.



## **The Applicant's Case**

11. The Applicant explains in its submissions, which were augmented orally by Mr Harrison, that there are 2 issues to be decided by the Tribunal, being whether the premises consist of a self-contained building, in which case there would be a right to manage. Secondly, if the premises do not consist of a self-contained building, are "premises" for the purposes of the 2002 Act capable of consisting of several buildings?
12. Mr Harrison referred the Tribunal to the description of a building by Lord Millett (albeit in another context), which the Tribunal has detailed above. He argued that the premises here matched Lord Millett's description. The blocks and the connecting roof are all built structures and there is no requirement for interconnection.
13. With regard to the second issue, he relied upon Section 6 Interpretation Act 1978, which we have detailed above. Put simply, there was no contrary intention within the 2002 Act and words in the singular include the plural too.
14. As a subsidiary to this submission in relation to the second issue, Mr Harrison pointed to the real difficulties which could be encountered if there was indeed no right for the right to manage (RTM) company to manage the whole of the premises at this property. He pointed to the fact that the description of the block within the lease was such that all 24 flats were included, as were the garages. It was clear that the garages were not connected to particular apartments, and that the amenity area was a communal area, and that there was a single entrance to the site. By example of the difficulties which could arise, he asked how 2 RTM companies would be able to resolve disputes such as how much they could draw from a common fund created by 24 1/24ths; or which garages or what part of the common area would each RTM be responsible for?
15. Mr Harrison also pointed out that the submissions on behalf of the Respondent appeared to be posited upon a false premise. The Respondent

appeared to rely upon a plan which showed the premises as being disjointed blocks, when the reality, revealed by the inspection, was that the blocks were conjoined.

### **The Respondent's Case**

16. The Respondent raised only one objection to the Applicant's right to manage, being satisfied as to all other elements of the application. That objection was based upon its query as to whether a single RTM company can make a claim for the right to manage a number of self-contained buildings. The Respondent argued that the property consists of 6 self-contained blocks of which only 2 are not structurally detached, and it refers to a copy Land Registry entry and filed plan.
17. The Respondent referred us to various LVT decisions and argued that they had been wrongly decided when decisions were made that a RTM company could manage separate buildings. It asked us, as we must, to give effect to the language of an Act, where that language is clear and explicit. It argued that this was not a case where we could apply a purposive approach to construction as Parliament had made clear what it meant by "a self-contained building". It argued that there is a restriction upon a RTM by virtue of Section 73(2)(b) of the 2002 Act because "the premises" can only refer to a self-contained building which must be structurally detached, and the use of the word "the" indicates that the draughtsman intended the RTM to relate to a single premises.
18. The Respondent submitted that a single RTM can only apply for the right to manage one self-contained building or part of one self-contained building, and cannot apply for the right to manage a series of self-contained buildings.

## **Consideration and Determination**

19. The Tribunal finds it clear from its examination of the property, in the light of Lord Millett's opinion, that it is a single self-contained building. It is clear to the Tribunal that the submissions on behalf of the Respondent were made in reliance upon a plan which did not reflect the reality we found upon inspection.
20. The Tribunal did not need the guidance of the other LVT determinations brought to our attention by the parties, having found, as we did, that the property is a single self-contained building. The Tribunal has determined that the Applicant was, accordingly, on the relevant date entitled to acquire the right to manage the property, there being no other objection to their doing so.
21. Even had we found differently, and found that there were 2 self-contained buildings at this property, we find ourselves wholly in agreement with Mr Harrison's submission that the issue is covered by Section 6 Interpretation Act 1978. It seemed to us to be an elementary issue, incapable of no other conclusion.
21. Whilst the Tribunal found Mr Harrison's subsidiary arguments attractive, they formed no part of our decision as the first issue was resolved by our inspection of the property, and, if there had been a need to resolve the second issue, that issue would be resolved by application of the clear words of the 2002 Act interpreted using Section 6 of the 1978 Act such that the singular also includes the plural.

**Andrew Cresswell (Chairman)**  
**A member of the Southern Leasehold Valuation Tribunal**  
**Appointed by the Lord Chancellor**

**Date 23 October 2010**