



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

Case Reference	:	LON/00BA/LRM/2015/0007
Property	:	15a All Saints Road, Wimbledon SW19 1BU
Applicant	:	15a All Saints Road RTM Co. Ltd.
Representative	:	Canonbury Management
Respondent	:	Assethold Ltd.
Representative	:	Scott Cohen Solicitors
Type of Application	:	For the determination of the (no fault) right to manage
Tribunal Members	:	Judge Dickie Mr M Taylor, FRICS
Date of Decision	:	12 May 2015

DECISION

Decision of the tribunal

The application is granted. The tribunal determines that the Applicant was entitled to acquire the Right to Manage on the relevant date. The Right to Manage is acquired on the acquisition date defined by Section 90(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"), (being 3 months from the date the tribunal's determination becomes final).

The application

1. An application is made under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that on the relevant date the Right to Manage Company was entitled to acquire the Right to Manage. The Respondent is the freeholder.

2. A Notice of Claim sent by the Applicant to the Respondent and its managing agent dated 12 November 2014 was served under cover of a letter dated 16 November 2014. The Notice required the service of any counter notice by 21 December 2014.
3. A counter notice dated 18 December 2014 was served by the Respondent and the Applicant applied to the First Tier Tribunal for determination as to the Right to Manage on 9 February 2015. Directions were issued by the tribunal and the matter listed for hearing on 15 April 2015. The Respondent filed a statement of case dated 20 March 2015.
4. The hearing was adjourned with directions allowing the Respondent to reply to the Applicant's hearing bundle, filed on 14 April 2015. The matter was listed for determination on the papers, and neither party having requested a further oral hearing, the tribunal has proceeded to decide the application on the documents before it. The Respondent's solicitors have not in fact filed a reply to the Applicant's bundle, and have confirmed in an email dated 12 May 2015 that they rely on the Respondent's statement of case alone.
5. The Respondent raises issues of compliance with Sections 79(8), 80(2), 80(8) and (9) of the Act for the determination of the tribunal.

Section 79(8)

6. Section 79(8) provides that

“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 within the premises”.

7. The Applicant has provided copies of correspondence serving various members with the copies of the claim notice. The Respondent observes that copies sent to the leaseholders of flat 3, 4, 5, 6, 7 and 9 were sent to addresses which were not the qualifying addresses.
8. The Respondent relies on Section 111(5) of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 which provides

“A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.”

9. The Respondent seeks to put the Applicant to proof of notification of the service address by the respective qualifying tenants in the flats mentioned above. The tribunal considers that Section 111(5) is permissive only however – in that it provides that service “may” be at the flat (unless a different address has been notified), but not that it must be so served. The Respondent, the landlord, does not expressly assert or produce evidence that the notices have not been served correctly, and does not raise any positive case regarding any particular address. The Applicant confirms that the notices have been served at the addressed provided by the subscribing RTM company members. The tribunal is satisfied that the claim notices were correctly served.

Section 80(2), Section 80(8) and (9)

10. So far as is relevant, Section 80 of the Act provides:

- (1) *The claim notice must comply with the following requirements.*
- (2) *It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.*
- ...
- (8) *It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.*
- (9) *And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.*

11. The Respondent submits that the claim notice failed to comply with the requirements of section 80(2) that it must identify the premises to which the Chapter applies, and that it does not contain particulars required by applicable regulations.
12. The premises are defined as “15a All Saints Road, Wimbledon, London UK SW19 1BU and any common parts of that building which lessees of that building currently have use of under their leases within the claim notice.” The Respondent observes that the description of the premises within the Freehold title however is “land and buildings on the South East side of the Junction All Saints Road and Norman Road Wimbledon”.
13. The Respondent asserts that it is essential the definition of the premises is correct and without ambiguity, that the definition in the claim notice appears to refer to the postal address and that by inclusion of references to common parts there is scope for interpretation of the Premises included within the claim.
14. Furthermore, the Respondent objects to the statement of grounds in the claim notices as being a recital of all possible grounds (the building being described as both a self-contained and as a part of a

building, as both with and without appurtenant property and containing two or more flats held by qualifying tenants) instead of an identification of the grounds applicable to these premises. However, the tribunal finds there is no ambiguity in the notice that the premises must be such as are covered by the provisions of the Act, and that the particulars required or prescribed by applicable regulations are provided.

15. The Respondent draws the attention of the tribunal to the recent decision of the FTT (Property Chamber) in case reference LON/00AU/LRM/2014/0017 in which it found that the definition of the premises should leave no scope for interpretation given the rights and obligations following acquisition of the Right to Manage. However, having considered that non-binding decision the tribunal finds it is not relevant in any event. In that case the articles of association of the RTM company referred only to the individual flats at the premises, and thus did not allow the RTM to acquire the right in relation to the entire freehold premises and appurtenant property. In the present case, however, the contrary is true of the description of the premises. The Schedule of Notices of Leases with the Freehold title refers to all of the flats as being at 15a All Saints Road. The description "15a All Saints Road" identifies the building by its postal address, and it applies to the whole building, and not just the individual leaseholder interests.
16. It is not explained by the Respondent in what way the reference to any common parts of the building of which the lessees have use under the terms of their leases could be ambiguous in the present case, and the tribunal finds that it is not.

F Dickie

Date 12 May 2015