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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOBK/LRM/2015/0024**
Property	:	**Spire House, Lancaster Gate, London W2 3NP**
Applicant	:	**Spire House RTM Company Limited**
Representative	:	**Miss E Reed – counsel instructed by Macfarlanes LLP Solicitors**
Respondent	:	**Eastern Pyramid Corporation SA**
Representative	:	**Mr J Upton – counsel instructed by Watson Farley and Williams LLP solicitors**
Type of Application	:	**Application in relation to the denial of the Right to Manage (Commonhold and Leasehold Reform Act 2002 (the Act))**
Tribunal Member	:	**Tribunal Judge Dutton**
Date of Decision		**21st October 2015**
	:	

DECISION

The Tribunal determines that the Applicant is not entitled to acquire the right to manage the premises at Spire House, Lancaster Gate, London W2 3NP (the Property) for the reasons set out below

BACKGROUND

1. By an application dated 28th August 2015 the Applicant Company sought the right to manage "Spire House, Lancaster Gate, London W2 3NP as registered at HM Land Registry under title number NGL 340642 ("the premises")". This is the description of the Property as set out in the Claim Notice dated 5th June 2015.
2. Initially the issues involved were to be decided as a paper case but a request for a hearing was made and the matter came before me on 21st October 2015. Prior to the hearing I was provided with a bundle of papers containing amongst other items the Application, the Memorandum and Articles of Association of the Applicant company, the statements of case for the parties, a copy of a specimen lease, a statement of Mr Murrell from Macfarlanes and various authorities.
3. In addition to the above I was also provided with the Claim Notice, the Notice of Invitation to Participate and the Counter-Notice.
4. On the evening before the hearing I received a skeleton argument from Mr Upton on behalf of the Respondent and on the morning a skeleton argument from Miss Reed on behalf of the Applicant. I have noted the contents of same.

HEARING

5. I hope I do not do a disservice to Counsel if I do not recount in any great detail the submissions made. I was greatly helped by both Miss Reed and Mr Upton. I record that following brief evidence by Mr Murrell as to the circumstances surrounding service of the Invitation to Participate Mr Upton confirmed that there were no procedural issues for me to consider.
6. Miss Reed told me that the main issue was whether the description of the Property in the Claim Notice and Invitation included the whole of the property, that is to say the structure known as the New Building and the Church Tower. It was the Applicant's case that it wished to manage the compete building including both parts, together with appurtenant land. Mr Upton agreed that the Garden Land as defined in the papers before me and by reference to an HM Land Registry number NGL 519541 was appurtenant land for the purposes of the claim.
7. Miss Reed accepted that the description in the Claim Notice referred only to the New Building's title number NGL 340642, the Church Tower being registered under title number NGL 354268. She also accepted that the Memorandum of the Applicant company defines the Premises to be managed as Spire House registered under title number NGL 340642. However she was of the opinion that the only requirement in the Notice was to specify the premises, not to include the title number. The failure to include reference to the Church Tower was an "inaccuracy" and did not invalidate the Notice.
8. The primary submission was that the Property was both the New Building and the Church Tower together and that these two properties

form a self contained building linked at every level, together with the appurtenant property, the Garden.

9. A fall back submission was that the Church Tower was appurtenant to the New Building and therefore could be included in the Right to Manage. It was the Applicant's intention to manage the New Building, the Church Tower and the Garden.
10. I was told that the tenants have the right to use the Church Tower for access to their flats and that there was no distinction between the New Building and the Church Tower. Her submission continued to say that it was clear from the Notice that the Applicant was asserting the right to manage Spire House, which included the Church Tower, which was in any event, appurtenant property. Finally Miss Reed submitted that the lack of description in the Memorandum was irrelevant and that the title number referred to in both the Notice and the Memorandum was the title out of which the leases to the flats had been granted.
11. For the Respondent Mr Upton summarised the Applicant's case as being either the New Building and Church Tower were part of the same building or the Church Tower was appurtenant to the New Building.
12. Section 80(2) of the Act requires the premises to be specified. It was suggested by the Applicant that the failure to refer to the Church Tower or to specify the title number of same was an inaccuracy which could be rectified. He rejected this argument as on the face of the Notice it only refers to the New Building, as does the Memorandum. This was not an inaccuracy that could be overlooked. It is not an 'inaccuracy' to omit part of the building for which the right to manage is sought. Further the Church Tower was either part of the whole or appurtenant, it could not be both.
13. He submitted that the correct way to consider this was to firstly decide whether the building was self contained or part of a building. It could not, he said be the latter as it was not possible to vertically divide the two and certainly it was accepted by the Applicant that this was the case at ground floor level. As to the former, the New Building was not self contained as it was not structurally detached from the Church Tower. Further whilst accepting that the Church Tower was appurtenant property this could not be the basis upon which the definition of a self contained building could be founded. It was also put to me that the provisions of schedule 6 paragraph 2 being the schedule setting out excluded premises would apply. This paragraph says under the heading *"self contained parts in different ownership"* that *"Where different persons own the freehold of different parts of premises falling within section 72(1), this Chapter does not apply to the premises if any of those parts are a self contained part of a building"*. There are indeed different freeholders for the New Building and the Church Tower. Accordingly if the Applicants first submission is correct and the whole is a self contained property, then it was said by Mr Upton, it is excluded under the schedule.
14. I was referred to a number of authorities including; Gala Unity Limited v Ariadne Road RTM Co Ltd both at the Upper Tribunal and the Court of Appeal; Pineview Ltd v 83 Crampton Street RTM Co Ltd [2103]UKUT 0598 (LC); Assethold Ltd v 15 Yonge Part RTM Co Ltd

[2011]UKUT 379 (LC); Holding and Management (Solitaire) Ltd [2008]2EG152. I have, as necessary considered these.

FINDINGS

15. I prefer the submissions of Mr Upton, both before me and in the Respondent's statement of case and in his skeleton for the following reasons. It does not seem to me that the Property as set out in the Notice can be considered a self contained building, nor can it be part of a building because, as agreed, it is not capable of vertical division. Miss Reed accepted that the New Building alone was not a self contained building. However she was of the view that the two parts together, namely the New Building and the Church Tower form the whole building for which the right to manage is sought. That may well be the practicality of the situation but the Notice makes no reference to the Church Tower. The title number included relates only to the New Building. The memorandum also refers only to the one title number as being the premises for which the RTM company has the right to manage.
16. I do not accept that for the purposes of establishing whether the premises are a self contained building or part of a building you can rely upon appurtenant property to create one or other of these definitions. I agree with Mr Upton that the first step is to determine whether the premises are a self contained building, which clearly Spire House is not, or whether it could be considered as part of building, which both Counsel agreed could not be the case. It is my finding that it is only after establishing whether the building falls within s 72(2) or (3) that you consider the appurtenant land point. The provisions of paragraph 2 to schedule 6 would also appear to provide a potential stumbling block to this application if the conjoined route is adopted to establish a self contained building.
17. The case of Assethold Ltd v 15 Yonge Park RTM Co. Ltd is of help. In the conclusion to the judgment of Walden-Smith HHJ she found that including the wrong name or address of the RTM company was not an 'inaccuracy'. The information required by s80(2) is that the Notice must specify the premises. This notice refers to the property as Spire House with a title number specific thereto, no mention is made of Church Tower.
18. I find therefore that the description of the premises in the Notice does not create a property which falls within s72(1)(a). Further I do not consider that the omission of the Church Tower in the Notice is an inaccuracy as provided for in s80(1). In those circumstances I must conclude that the Applicant does not have the right to manage the Property.

Andrew Dutton

Tribunal Judge Dutton 21st October 2015.