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**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case references** : CAM/22UH/LOA/2014/0001

**Property** : **Brook Lodge,  
High Street,  
Ongar,  
Essex CM5 9JX**

**Applicant** : **Brook Lodge Ongar RTM Co. Ltd.**

**Respondents** : **Grayson (Builder) Ltd.  
Beech Management (Brook Lodge)  
Ltd.  
London Wall Securities Ltd.**

**Date of Application** : **19<sup>th</sup> August 2014**

**Type of Application** : **For an Order that the Applicant is  
entitled to acquire the right to  
manage the property (Section 84(3)  
Commonhold and Leasehold Reform  
Act 2002 (“the 2002 Act”)**

**The Tribunal** : **Mr. Bruce Edgington (lawyer chair)  
Mr. David Brown FRICS**

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**DECISION**

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1. This application succeeds and the Applicant takes over management of the property on the 28<sup>th</sup> January 2015 (section 90(4) of the 2002 Act).
2. The Tribunal makes no order as to costs in respect of the application by the 2<sup>nd</sup> named Respondent.

**Reasons**

**Introduction**

3. The Applicant right to manage company (“RTM”) served the Respondents with claim notices on the 30<sup>th</sup> May 2014 seeking an automatic right to manage the property and giving the 30<sup>th</sup> June 2014 as the date by which counter-notices must be served. On the 24<sup>th</sup> June 2014, the 2<sup>nd</sup> named Respondent, Beech Management (Brook Lodge) Ltd. (“Beech”), as a party to some of the leases in question, served a counter-notice.

4. The counter-notice raised 2 issues, namely there are insufficient qualifying tenants and insufficient of those who are members of the Applicant RTM. The counter-notice then seeks to explain why some assignments have been 'invalid' and why some leases are 'invalid'.
5. The Tribunal decided that these cases could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 23<sup>rd</sup> October 2014 and (b) an oral hearing would be held if either party requested one before that date. No such request was received.
6. The directions orders issued by the Tribunal chair on the 5<sup>th</sup> September 2014, also required Beech to state its case by 19<sup>th</sup> September 2014 and, to say in particular why some of the leases failed to meet the criteria set out in sections 76 and 77 of the 2002 Act, if that was what they were saying. There has been no specific response to that question.

### **The Law**

7. For a property to be a qualifying self-contained building or part of a building it must contain 2 or more flats held by qualifying tenants i.e. tenants with long leases. The total number of flats held by such qualifying tenants must be not less than two-thirds "*...of the total number of flats contained in the premises*".
8. In essence, sections 76 and 77 of the 2002 Act say that a long lease is a lease for a term certain exceeding 21 years. Section 79 then says that on the date the Claim Notice is served, membership of the RTM must consist of "*...not less than one half of the total number of flats so contained*".
9. Section 75 of the 2002 Act defines "*whether there is a qualifying tenant of a flat for the purpose of this Chapter*". It then says that "*a person is the qualifying tenant of a flat if he is a tenant of the flat under a long lease*". A flat can have no more than one qualifying tenant.
10. Section 81 (1) says that a Claim Notice "*is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80*". Section 80 sets out what has to be in a Claim Notice including the addresses of the flats containing the qualifying tenants who are members of the RTM.

### **Discussion**

11. As the directions order referred to above makes clear, the Tribunal has no declaratory jurisdiction. Only Beech served a counter-notice and is contesting this application. They make allegations that certain assignments of a long lease are 'invalid' because they are a party to the original leases commencing in 2003 and such leases required them to be a party to any assignment, which they are not.
12. Furthermore they say that the leases commencing in 2013 are 'invalid' because (a) they should have named Beech as a party and they didn't

and (b) they did not express specific adherence to the NHBC Codes of Practice.

13. The problem is that without any such declaratory jurisdiction, the Tribunal must accept what is on the face of the entries at the Land Registry. The list of qualifying tenants is attached to the Claim Notice. That list contains the names of the present holders of the long leases save for one i.e. flat 13. There appears to be no flat 13.
14. If Beech claims that certain assignments or leases are 'invalid' then the correct procedure is to apply to the court for a declaration to that effect and upon receipt of any such declaratory Order, the Land Registry will change the register. Until that happens the leases and the names of the long leaseholders are as stated in such register.
15. A number of incidental points are raised by Beech such as an alleged business use of part of one of the flats and certain leaseholders who have not paid service charges. These matters are irrelevant to this application. Provided the minimum requirements set out in the 2002 Act are complied with, the right to manage is automatic.
16. It is true also that there are a number of incorrect or inadequate particulars in the Claim Notice which are errors. Some have been pointed out by Beech and the Tribunal also notes that some of the names of the qualifying tenants are incomplete. However, even with the inclusion of the non-existent flat 13, these are all minor defects in the particulars which the Tribunal finds come within section 81 of the 2002 Act so as not to invalidate the Claim Notice.

### **Conclusions**

17. The total number of flats in this or these self contained building(s) is not clear from the papers filed. There is no flat 13 and no registered entries relating to numbers 2 and 4 Brook Lodge. They may well be 'flats' for the purpose of section 72. However, what is not disputed are the actual numbers and titles. There are 26 long leasehold titles produced and possibly 28 flats depending on the status of numbers 2 and 4. Thus the first 'test' is passed i.e. the number of flats with qualifying tenants is more than two thirds of the total number of flats.
18. The next 'test' is to quantify the number of qualifying tenants who are members of the RTM. The qualifying tenant members of the RTM named in the Claim Notice (except flat 13) total 17 on the basis that there is one qualifying tenant per flat. In order to comply with section 79(5), as has been seen, the RTM must have a number of qualifying tenants for the premises which is not less than one-half of the number of flats. Thus it does not matter that one qualifying tenant has more than one flat. It is the number of flats with qualifying tenants which is relevant. The RTM therefore succeeds.
19. Beech has also asked for an order that its costs be paid by the Applicant. It has not quantified such costs. In view of the result of this case, the Tribunal would not be considering any order in any event bearing in mind the general provisions of section 88 of the 2002 Act. The Applicant has not acted unreasonably in pursuing this application.

**Other Relevant matters**

20. Beech has highlighted some relevant matters which the Applicant or the landlord should deal with as soon as possible. They can be summarised as follows:-

- Many of the lease titles (flats 10, 11, 18, 19, 20, 25 and 27) do not mention the fact that Beech is a party to the original lease and should be joined into any assignment. Clearly the titles were not checked properly after first registration and this should be rectified. The condition in each of the leases will still be relevant.
- Some of the leases (flats 3, 5, 6, 7, 14, 15, 17, 21, 22 and 23) do not say whether they are 1 or 2 bed roomed flats. This will affect the percentage of service charges payable.
- The title to flat 29 says that the term commences on the 1<sup>st</sup> October 2004 which is incorrect. It is 1<sup>st</sup> October 2003.
- If, as is alleged, London Wall Securities Ltd. is about to be struck off, this has serious potential problems because the Land Registry may insist on that company being a party to any assignment in respect of flats 3, 5, 6, 7, 14, 15, 17, 21, 22 and 23.

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**Bruce Edgington**  
**Regional Judge**  
**28<sup>th</sup> October 2014**