



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

Case References	:	(1) LON/00BJ/LRM/2018/0031 (2) LON/00BJ/LRTM/2018/0032
Properties	:	(1) Phoenix Way, London SW18 2PW & Apartments 1-14, 80 North Side, Wandsworth Common, SW18 2QX (2) 5 Spanish Road, London SW18 2HX
Applicants	:	(1) Phoenix Way RTM Co. Ltd (2) 5 Spanish Road RTM Co. Ltd
Representative	:	(1) & (2) Mr. M Loveday, counsel instructed by Realty Law Ltd
Respondents (Nos.0031 & 0032)	:	(1) Laing Homes Ltd (2) Trinity (Estates) Property Management Ltd
Representatives	:	(1) DAC Beechcroft LLP (2) Ms I Dodds, counsel
Type of Applications		Right to manage
Date & venue of hearing		22 February 2019 10 Alfred Place , London WC1E 7LR
Tribunal	:	Judge Tagliavini Mr. M Taylor FRICS
Date of decision		20 May 2019

DECISION

THE TRIBUNAL'S SUMMARY DECISIONS

Phoenix Way/80 North Side – ‘the Articles issue’

- (i) The tribunal finds that the Articles of Association of the First Applicant Phoenix Way RTM Co. Ltd are to be interpreted as including Phoenix Way, London SW18 8PW and Apartments 1-14 North Side, 80 Spanish Road, Wandsworth Common SW18 2QX.

Phoenix Way/80 North Side – ‘the shared ownership issue’

- (ii) The tribunal determines that the ‘stepped’ leases of more than 21 years and comprising of less than a 100% share, granted to the members of the Phoenix Way RTM Company Limited are long leases for the purpose of seeking to acquire the ‘right to manage.’

Phoenix Way/80 North Side - ‘the structural issue’

- (iii) The tribunal finds that Phoenix Way/80 North Side is a structurally detached building to which the First Applicant Phoenix Way RTM Co. Ltd has acquired the right to manage.

Rule 13 costs

- (iv) The tribunal makes no order for costs in respect of the preliminary issue.

5 Spanish Road – ‘the structural issue’

- (i) The tribunal finds that 5 Spanish Road is a structurally detached building to which the Second Applicant 5 Spanish Road RTM Co. Ltd has acquired the right to manage.

The applications

1. These are two linked applications that the tribunal has determined should be heard together, which are made under the provisions of section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). The First and Second Applicants were represented by Mr. Mark Loveday of counsel and the Second Respondent by Ms Imogen Dodds of counsel. The First Respondent indicated to the tribunal that it did not intend to actively participate in the hearing.

The parties

2. The First Respondent Laing Homes Limited, is the registered freehold proprietor of the development comprising a large modern purpose built development known as “The Trinity.” This Development (The Trinity) was constructed on the site of a former Vauxhall garage and showroom. Between December 2006 and October 2007, the First Respondent granted 79 long residential leases of the flats within the Development of flats 31-83 Phoenix Way; Apartments 1-11, 12, 12A and 14 at 80 North Side; and Apartments 1-12 at 5 Spanish Road. All residential leases are in tripartite form between (1) Laing Homes Limited (as landlord) (2) Trinity (Estates) Property Management Limited (“the Manager”) and (3) the Tenant(s). The First Respondent has also granted a lease of commercial unit A and commercial unit B.
3. The First Respondent has also granted a head lease (“the Head Lease”) to Notting Hill Home Ownership Limited of Flats 1-29 Phoenix Way, who has in turn, granted individual underleases of flats 1-29 Phoenix Way on a ‘shared ownership’ basis for a term of 150 years (less 5 days). These leases allow the lessee(s) to acquire additional ‘shares’ in their property until the lessee(s) eventually own 100% of their property.
4. The costs incurred by “the Manager” in maintaining and managing the Development are apportioned equally between all the tenants regardless of which block in the Development their property is located. There are 43 spaces in the Development’s underground car park, some of which are allocated to particular flats. There is a small plant room in the underground car park which houses a water booster pump which, serves all of the properties in the Development.

The premises – Phoenix Way/80 North Side

5. The premises at Phoenix Way/80 North Side comprises 96 residential flats and 2 commercial units arranged around 5 service ‘cores’ along a modern accessway running north to south along the eastern parapet of the Trinity road underpass. The majority of the flats have postal addresses at 1-83 Phoenix Way, with flats 1-14 having postal addresses at 80 North Side (referring to Wandsworth Common). Together, 1-83 Phoenix Way and 80 North Side comprise 5 blocks with a number of flats of residential flats, which are let under long term leases or through a shared ownership lease scheme where the interest of some lessees is less than 100%.

The premises – 5 Spanish Road

6. The premises at 5 Spanish Road is a separate block of 12 flats built at around the same time and by the same developers as Phoenix Way/80 North Side. Vehicular access for both of these parts of the Development, which are the subject of these two application, runs from

Spanish Road along the southern flank of 5 Spanish Road. There is an electrically operated gate across this accessway between the flank wall of 5 Spanish Road and the garden wall of the adjacent property at 68 North Side.

Background - Phoenix Way

7. By a Claim Notice dated 28 July 2018, the First Applicant listed 54 members of the company and sought to acquire “*the right to manage Phoenix Way, London SW18 2PW and Apartment 1-14, 80 North Side Wandsworth Common, SW18 2QX.*” In a Counter Notice dated 5 September 2018, the Second Respondent did not accept the Second Applicant’s right to manage Phoenix Way and Apartment 1-14, 80 North Side and asserted that the Articles of Association specified the premises to be acquired were defined as *Phoenix Way, London SW18 2PW* and therefore do not state that its object or one of its objects, is the acquisition and exercise of the right to manage the premises identified in the Claim Notice.
8. The Second Respondent opposed the First Applicant’s claim to a ‘right to manage’ and asserted that the subject property was not a self-contained building or part of a building, with or without appurtenant property. It was asserted that Phoenix Way/80 North Side consists of 5 self-contained buildings or, alternatively consists of 1 building that is not self-contained by reason of its connection to neighbouring premises at Spanish Way by way of electric vehicle gates, a pedestrian entrance gate and a ramp leading to a car park. It was also asserted that the building at Phoenix Way/80 North Side is not a self-contained building or part of a building owing to the fact it shares facilities and services with 8 Spanish Way, namely a plant room located in the underground car park, which houses a shared cold water storage tank and booster pump. However, this point was later conceded by the Second Respondent, who accepted that Phoenix Way met the requirements of s. 72(1)(a) of the 2002 Act.
9. In a Counter Notice dated 11 September 2018 the First Respondent did not accept that the First Applicant was entitled to acquire the right to manage Phoenix Way and Apartment 1-14, 80 North Side and the validity of the Claim Notice and the First Applicant was put to proof of its membership and number of qualifying tenants on the date of service of the Claim Notice.

Background – 5 Spanish Road

10. By a Notice of Claim dated 28 July 2018 the Second Applicant listed 7 members of the company and sought to acquire ‘the right to manage’ the premises known as 5 Spanish Road. In a Counter Notice dated 6 September 2018, the Second Respondent asserted that the Second Applicant was not entitled to acquire the right to manage, as the premises do not consist of a self-contained building or part of a building with or without appurtenant property, due to the its

connection to neighbouring premises, namely Phoenix Way/80 North Side by way of an electric vehicle gate, a pedestrian gate and a ramp leading to car parking. The Counter Notice also stated that this property is not a self-contained part of a building owing to the fact that it shares facilities and services with Phoenix Way/80 North Side, namely a plant room located in the underground car park which houses a cold water storage tank and booster pump.

11. In a Counter Notice dated 11 September 2018 the First Respondent did not accept the Second Applicant's claim to a 'right to manage' and put it to strict proof of its membership and the number of qualified tenants as at the date of service of the Claim Notice.

The preliminary issue

12. At the hearing of the two applications, the Second Respondent sought the tribunal's permission to rely upon a new argument. This argument was to the effect that the Notice of Claim served by the First Applicant was not valid, as 23 of the 54 members of its RTM company are lessees under a 'shared ownership' scheme. The Second Respondent asserted that any lessee holding less than a 100% share of the lease is not a long lease for the purposes of the 2002 Act.
13. The Second Respondent accepted that it was not able to say definitively, how many of the 23 members of the RTM company held a 100% interest in their leases acquired under the shared ownership scheme but accepted that between 1 to 4 flats may be in that position. In any event, a reduction by 19 lessees reduced the number of qualifying tenants from 54 to 35. Therefore, on the day of service of the Notice of Claim only 35 qualifying tenants out of 96 were members of the right to manage company.
14. Ms Dobbs submitted that the Second Respondent had only recently become aware of this 'new' argument by way of the report of the Law Commission dated February 2019. It had sought at the first opportunity to notify the First Applicant of its intention to rely upon it, by serving a Supplemental Statement of Case dated 8 February 2019, although it did not have a direction from the tribunal to do so. Ms Dobbs submitted that the Second Respondent was entitled to rely upon a point not raised in the Counter Notice as the overriding objective of the 2013 Tribunal Rules, required a determination of all meritorious points. Ms Dodds submitted that there were a number of authorities in respect of this issue, which the tribunal should consider. Although, the Second Respondent did not have the factual evidence to determine precisely how many members held leases of a less than 100% interest, it should not be a difficult matter for the First Applicant to determine, as it had access to that information and therefore, there was no prejudice caused to the First Applicant by this late argument.
15. In a letter dated 13 February 2019 from Realty Law Ltd, the First Applicant set out its detailed grounds for opposing the application by

the Second Respondent to rely on this new issue, drawing the tribunal's attention to the fact that there was no factual evidence as to how many member's lease were held on less than 100% under the shared ownership scheme. The letter also stated that the First Applicant was entitled to know the arguments it had to meet with sufficient time to prepare.

16. In a letter dated 18 February 2019 to the tribunal, Mr. Loveday opposed the Second Respondent's application to rely upon this additional argument as it had not been mentioned in the Second Respondent's Counter Notice or in its original Statement of Case (as replaced), the latter having been only served a few weeks earlier. Mr. Loveday asserted that additional costs had been incurred as a result of this late additional issue in the region of £1,000 plus VAT.

The tribunal's determination on the preliminary issue

17. The tribunal determines that the First Applicant is not unduly prejudiced by the late reliance of the Second Respondent on the issue of 'shared ownership' leases in the context of acquiring the right to manage. Mr. Loveday has demonstrated that he is able to deal with his argument by its inclusion in his Skeleton Argument and the number of authorities he has provided to the tribunal. The tribunal determines that this issue is not only relevant to this application but could also be of a wider interest, having regard to the number of shared ownership lease schemes that are in existence. Further, the tribunal also has regard to the overriding objective under rule 3 of The Tribunal (First-tier Tribunal) (Property Chamber) Rules 2013 (as amended) and determines that the Second Respondent may amend its Statement of Case to rely upon this new issue of shared ownership leases. Any issues of costs are dealt with separately.

The substantive issues – Phoenix Way

18. The tribunal is asked to determine;
 - (i) Whether the Phoenix Way RTM's Company's Articles of Association comply with section 73(2)(b) of the 2002 Act ('the 'Articles issue')?
 - (ii) Whether the 'stepped' leases of the shared ownership leaseholders are to be taken into account, for the purposes of qualifying leaseholders ('the shared ownership issue')?
 - (iii) Whether Phoenix Way/80 North Side is "structurally detached" for the purposes of section 72(2) of the 2002 Act ('the structural issue')?

The substantive issue - 5 Spanish Road

19. The tribunal is asked to determine;

- (i) Whether the premises at 5 Spanish Road are “structurally detached” for the purposes of section 72(2) of the 2002 Act (‘the ‘structural issue’)?

The hearing

20. The tribunal was provided with a lever arch file of relevant documents together with copies of authorities on which the parties sought to rely. The First Respondent did not wish to play an active role in opposing the applications and therefore was not represented at the oral hearing and relied only on the issues raised in its Counter Notices in respect of each Applicant. The First and Second Applicants and the Second Respondent sought to rely on the documentary evidence, the witness statements provided and the written and oral legal submissions of counsel.

The First and Second Applicant’s case

21. In a witness statement of Richard Delaney, Company Director of Haus Block Management dated December 2018 in which, the tribunal noted that he wrongly referred to London & Quadrant Housing Association instead of Notting Hill Home Ownership Ltd as having acquired a long leasehold interest in a number of the flats. Mr. Delaney stated that he had been retained by the members of First Applicant RTM Company to assist and advise them on the factual matters necessary to support the application for a right to manage. Mr. Delaney provided a full description of the subject property at Phoenix Way /80 North side and referred to the plans provided of this building. Mr. Delaney described these premises as having been built in about 2006/07 comprising a multi-storey structure with the flats built to the 5th floor. He described the building as being made up five service cores providing lifts, hallways, access control and other services arranged as:

- 1-29 Phoenix Way (Core 1).
- 30-46 Phoenix Way (Core 2).
- 47-67 Phoenix Way (Core 3).
- 68-83 Phoenix Way (Core 4).
- 1-14 80 North Side (Core 5).
- 2 commercial units on the ground floor.
- Underground car park and ancillary rooms below cores 1-4.
- Vehicular access ramp leads up from the car park to ground level and access to the highway at Spanish Road.

22. Mr. Delaney stated that it is clear that the premises at Phoenix Way/80 North Side, are a building within the meaning of the 2002 Act, as they

comprise a single reinforced concrete frame structure cast in situ with solid floor, sharing common roofs, elevators, floor services etc. Mr. Delaney stated that 1-83 Phoenix Way (Cores 1-4) are constructed over a basement car park which has no vertical separation/vertical walls at basement level. 1-14, 80 North Side (Core 5) adjoins 1-83 Phoenix Way with a stepped the party wall and a roof terrace at the 5th floor level that sits partly over the footprint of both. Mr. Delaney also stated that the only physical connection between Cores 1-5 and other structures is with Huguenot Terrace, 9-15 East Hill, as the flank wall between Phoenix Way and Huguenot Terrace rises vertically from the ground to the 2nd floor level with no internal or external access between the two.

23. In his statement, Mr. Delaney informed the tribunal that his description and assessment of Phoenix Way/80North Side had been confirmed by Mr. N Highfield MRICS. Mr. Highfield had also inspected the premises at Phoenix Way/80 North Side and whose preliminary report he exhibited to his witness statement. Mr. Highfield's report confirmed that there is no significant degree of vertical separation between the cores which, would indicate that they are wholly separate structures.
24. Mr. Delaney went on to state that Phoenix Way cannot be structurally attached to 8 Spanish Way by way of vehicle ramps and a gate as asserted by the Second Respondent, as 8 Spanish Way does not exist, rather, the reference appears to be to 5 Spanish Road. However, the vehicle ramp is not connected to any other structure but emerges into space at the rear of the premises. There are electrically operated steel vehicle gates and a pedestrian entrance gate at the entrance road to the car parking area at the junction with Spanish Road. These gates are attached to the flank wall of 5 Spanish Road and to the old boundary wall to the rear of 68 North Side.
25. Mr. Delaney disputed that Phoenix Way/80 North Side share water services with 8 Spanish Way, 5 Spanish Road or any other premises and stated that this assertion is "simply wrong."
26. Mr. Delaney also gave details of the incorporation of the First Applicant RTM Company and the service of Notice of Invitation to Participate and the Claim Notice on each lessee. He stated that as there are a maximum of 96 qualifying tenants in Phoenix Way, the list of 54 qualifying tenants who are also members of the First Applicant RTM Company is sufficient to satisfy the statutory requirement of one-half. Mr. Delaney concluded his statement by stating that there can be no confusion that the reference to Phoenix Way in the Articles of Association includes 1-14, 80 North Way as the latter face onto Phoenix Way and are an integral part of these premises.
27. In a Reply dated 8 February 2019 to the Second Respondent's Response, the First Applicant asserted that Phoenix Way/80 North Side are not structurally attached to the metal gates or to 68 North Side as claimed by the Respondents. The Reply stated that there is a pair of

1-1.5 metre high vehicle gates attached to metal posts at each end with two 'hook and eye' hinges. The Reply also stated that the 1 metre high, smaller single adjoining pedestrian gate is at the northern end of the gate assembly and is attached to a metal gate post in the wall of Phoenix Way by means of two 'hook and eye' hinges. The First Applicant asserted that that this metal gate arrangement cannot be regarded as 'structural' and that no part of 68 North Side bears part of the load of Phoenix Way/80 North Side as the degree of attachment with the boundary wall of 68 North Side is minimal. Further, any attachment is transient as whenever any of the 3 gates are open, there is no attachment at all with the boundary wall of 68 North Side which includes the flank wall of a garage.

28. The Second Applicant asserted that 5 Spanish Road is not structurally attached to the flank wall of 4 Spanish Road as it no more than touches the flank wall. Alternatively, the two premises are connected by non-structural decorative or weathering features and neither property bears any part of the load of the other and there is no other structural reliance or inter-dependence between them.
29. The Second Applicant also relied upon similar arguments to those raised by the First Applicant and the Second Respondent, in respect of whether or not, 5 Spanish Road is a structurally attached building, by way of the vehicular/pedestrian access gates it shares with Phoenix Way/80 North Side.

The Second Respondent's case

30. In a Statement of Case dated 24 January 2019 (replacing its original Statement of Case dated 19 December 2018), the Second Respondent asserted that contrary to s.72(2) of the 2002 Act, the property at 5 Spanish Road is not structurally detached by virtue of its attachment, on one side, to the electric vehicle gate and to the other side, the flank wall of the neighbouring premises at 4 Spanish Road. Consequently, the 5 Spanish Road does not consist of a self-contained building pursuant to section 71(1)(a) of the Act.
31. In a supplementary Statement of Case dated 8 February 2019 the Second Respondent conceded that Phoenix Way meets the requirements of section 72(1)(a) of the 2002 Act (being a self-contained building).
32. The Second Respondent sought to rely on an additional ground not raised in its Counter Notice dated 5 September 2018. The Second Respondent asserted that of the 54 members of the first Applicant's RTM company, 23 of were granted their lease on a 'shared ownership' basis. However, the Second Respondent's records indicate the lessees of Flats 3, 16, 22 and 25 Phoenix Way may have acquired a 100% share in their property although only Flat 16 appears to have registered a memorandum of final staircasing. Consequently, the second Respondent asserted that by reason of the shared ownership leases of

less than 100%, there were insufficient qualifying tenants for the purpose of qualifying for a right to manage the Premises as it reduces the 54 tenants relied upon by the first Applicant by 19 from 54 to 35 qualifying tenants. Consequently, that on 28th July 2018 when the notice claiming the right to manage was served, there were only 35 qualifying tenants out of the 96 lessees at the Premises and therefore the first Applicant was not entitled to acquire the right to manage.

The First and Second Applicant's legal arguments

Phoenix Way – ‘the Articles issue’

33. Mr. Loveday referred the tribunal to the s.71 of the 2002 Act, which states that the right to manage is only exercisable by a RTM company whose *‘articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.’* The Articles of Association for the First Applicant RTM company define the ‘Premises’ as ‘Phoenix Way, London SW18 8PW’ and that the objects of the RTM Company are to acquire and exercise the right to manage the ‘Premises.’
34. Mr. Loveday submitted that the tribunal should not accept the Second Respondent’s argument that the failure of the Articles of Association to refer to Apartment 1-14, 80 North Side, Wandsworth Common, SW18 2QX in the definition of the ‘Premises’ effectively invalidates the Notice of Claim. Mr. Loveday submitted that the principles which the tribunal should consider were clearly established in the case of *Avon Ground Rents Ltd v 51 Earls Court Square RTM Company Ltd* [2016] UKUT 1221 (LC). Therefore, the tribunal should consider what the founding members of the RTM Company meant by their description of the ‘Premises.’ Mr. Loveday submitted that the tribunal should give the meaning to the ‘Premises’ which is more consistent with the parties’ presumed intention.
35. Mr. Loveday asserted that where a document contains an obvious mistake and it is clear what the parties must have intended, the document will be interpreted in accordance with that intention. In support of this argument, Mr. Loveday referred the tribunal to the decision in *51 Earls Court Square* where the Upper Tribunal found that, it was “obvious” in relation to the RTM Company articles which described the “premises” as “Flat 1-13, 51 Earls Court Square” meant this phrase was intended to refer to the whole of the building at 51 Earls Court Square, including the common parts. Mr. Loveday submitted that the definition of the ‘Premises’ in the Articles of Association of the First Applicant is not ambiguous, and in any event should be interpreted as having the natural meaning of including Apartment 1-14, 80 North Side, Wandsworth Common, SW18 2QX.
36. Mr. Loveday submitted that in this application by the First Applicant, the meaning of the reference to “Phoenix Way” includes the building served by all 5 Cores. Mr. Loveday stated that the 5 cores together

comprise a single composite building which was built at the same time in a common style. Mr. Loveday submitted that it would have been odd for the RTM Company's founding members to have intended to exercise the right to manage only four-fifths of the structure by excluding 80 North Side. Mr. Loveday submitted that the tribunal should have regard to the factual matrix as it appeared at the time of the registration of the RTM company on 13 June 2018 and not in the light of a Claim Notice drafted seven weeks later. In any event, Article 5 of the First Applicant's Articles of Association, expressly permits the "widest interpretation" to be given to the RTM Company's objects and if in doubt, enables the promoters to exercise the right to manage a wider area than originally specified in Article 1. In any event, the only premises susceptible to the right to manage is the whole building comprising Cores 1 to 5, as Cores 1 to 4 only, are not a "structurally detached building" within the meaning of section 72(2) of the 2002 Act.

Phoenix Way - the 'shared ownership issue'

37. Mr. Loveday submitted that the Second Respondent's argument that long lessees holding less than 100% interest are not qualifying tenant "is hopeless." Mr. Loveday submitted that there is the "clearest possible authority that shared ownership leases which have not fully 'stair-cased' to 100% are still "long leases" within the meaning of section 76(1) of the 2002 Act; *Corscombe Close Block 8 RTM Ltd v Roselab Ltd* [2013] UKUT 81 (LC); 2013 L.&T. R. 16. Further, Mr. Loveday submitted that The Law Commission recognised the tribunal is bound by this decision of the Upper Tribunal and therefore, this tribunal is required to follow it.

5 Spanish Road – 'the structural issue'

38. Mr. Loveday referred the tribunal to section 72 of the 2002 Act which provides the definition of a building that is susceptible to a right to manage which includes at 72(2) "A *building is a self-contained building if it is structurally detached.*" Mr. Loveday referred the tribunal to three Upper Tribunal decisions of *Albion Residential Limited v Albion Riverside Residents RTM Company Limited* [2014] ULUT 6 (LC); *No.1 Deansgate (residential) Ltd v No.1 Deansgate RTM Co Ltd* [2013] UKUT 580 (LC) and *CQN RTM Co Ltd v Broad Quay North Block Freehold Ltd* [2018] UKUT 183 (LC); [2018] L.& T.R. 26. Mr. Loveday relied upon the decision of HHJ Hodge in the latter case as setting out the requirement for the tribunal to give the words "building" and "structurally detached" their ordinary and natural meaning and not to substitute a test of 'structurally independent' or 'having no load-bearing connection' for that of "structurally detached." Therefore, the tribunal should simply consider whether there is any 'structural attachment' between the building and some other structure.'
39. Mr. Loveday submitted that, the Second Respondent's argument that 5 Spanish Road is not 'self-contained' as it is attached to the wall at 68 North Side by a post, is not supported by the case law referred to and is

contrary to the test set out by HHJ Hodge. Mr. Loveday submitted that the degree of attachment to the boundary wall of 68 North Side and 5 Spanish Road is minimal and is at times transient, as whenever any of the 3 gates is open, it is not attached at all.

The Second Respondent's legal arguments

Phoenix Way – ‘the Articles issue’

40. Ms Dodds submitted that the Articles of Association of the First Applicant stated that its objects, or one of its objects, is the acquisition and exercise of the right to manage premises it defined as Phoenix Way, London SW18 29W. No reference was made in these Articles to the property known as Apartments 1-14, 80 North Side, Wandsworth Common, SW18 2QX. Consequently, the Second Applicant could not acquire the right to manage as claimed in the Notice of Claim, which referred to premises as being Phoenix Way and 80 North Side. In support of this argument Ms Dodd relied on *Avon Ground Rents Limited v 51 Earls Court Square RTM Company Ltd* [2016] UKUT 22 (LC) in which, the Deputy President Martin Rodger QC a Company said “...the premises in respect of which a Company seeks the right to manage must be those which are identified by their name and address in its articles of association.” Ms Dodds submitted that the First Applicant’s argument that the term “Phoenix Way, London SW18 2PW must be interpreted as including the apartments at 80 North Side is misconceived and should be rejected.

Phoenix Way - ‘the shared ownership issue’

41. Ms Dodds submitted that by reason of section 76(2) of the 2000 Act which defines a long lease as a lease granted from a terms exceeding 21 years and “it is a shared ownership lease, whether granted in pursuance of that Part of the Act or otherwise, where the tenant’s total share is 100 per cent...”, section 77 (e) of the 2002 Act. Consequently, those lessees holding a less than 100% interest in their lease cannot be classified as having a long lease for the purposes of the 2002 Act.
42. Ms Dodds, acknowledged that there were conflicting authorities on this issue and drew the tribunal’s attention to *Brick Farm Management Ltd v Richmond Housing Partnership Ltd* [2005] EWHC 1650 (QB) in which ‘obiter’ comments were made to the effect that a shared ownership in excess of 21 years is a ‘long lease.’ In *Rebecca Richardson v Midland Heart Limited* [2008] L&TR 31, it was held that a tenant under a shared ownership lease whose share is less than 100% does not have a long lease. This view was not followed in *Corscombe Close Block 8 RTM CO Ltd v Roselab Ltd* [2013] UKUT 81 (LC) which held that a tenant who held a lease of more than 21 years but had a less than a 00% interest, had a ‘long lease.’
43. Ms Dodds also drew the tribunal’s attention to the report of the Law Commission consultation paper dated January 2019 and titled

‘Leasehold home ownership: exercising the right to manage’ in which, it was acknowledged there was legal uncertainty regarding share ownership lease and proposed that “...the position for RTM, as determined by the Upper Tribunal, is that shared ownership leases of less than 100% qualify for the RTM.”

44. Ms Dodds submitted, that the tribunal should interpret sections 76 and 77 of the 2002 Act, as excluding shared ownership leases of less than 100% from being long lessees for the purposes of the right to manage. Paragraph 132 of the explanatory notes to the 2002 Act, which deals with section 76(2) states “Where the lease is a shared ownership lease, it is only counted as a long lease for the purpose of the right to manage if the leaseholder owns a 100 percent share.”

5 Spanish Road – ‘the structural issue’

45. Ms Dobbs submitted to the tribunal that the premises at 5 Spanish Road comprising 12 flats across 4 floors, do not form a self-contained building or part of a building as required by section 72(1)(a) of the 2002 Act, by virtue of the building’s attachment on one side to a set of electrical vehicle gates and on the other side, to the flank wall of the neighbouring premises at 4 Spanish Road. In reliance on this submission Ms Dobbs referred the tribunal to previous decision of the Upper Tribunal in *CQN RTM Company Limited v Broad Quay* [2018] UKUT 183 (LC). Ms Dodds submitted that the tribunal should apply the principles set out in that case and give an ordinary and natural meaning to the words “structurally detached.” Ms Dodds submitted therefore, if it is attached to a structural part of another building the premises at 5 Spanish Road is itself unlikely to be “structurally detached.”

The tribunal’s inspection

46. On 19 March 2019, the tribunal carried out inspections of both buildings which are the subject of these two applications. The inspections involved the tribunal looking at the front, side and rear elevations of the buildings, part of the internal communal areas together with the external parking and amenity areas, the access gates from Spanish Road, the ramp to the basement area and the car parking area located there.

The tribunal’s findings, decision and reasons

Phoenix Way – the ‘Articles’ issue

47. The tribunal finds that the Articles of Association of the First Applicant are to be interpreted as including Phoenix Way, London SW18 8PW and Apartments 1-14 North Side, 80 Spanish Road, Wandsworth Common SW18 2QX. Having inspected these premises the tribunal finds that all 5 Cores form part of one self-contained building of a similar style in or around the same time and built with similar

materials and share underground garages and communal services. The tribunal finds that the ‘accident’ of Core 5 having a different postal address to Cores 1-4 does not detract from the reality that a reference to ‘Phoenix Way’ is intended to refer to all parts of the building that make up its 5 Cores.

48. The tribunal finds that although the Articles of Association of the First Applicant are ambiguous, there are no words of limitation that could be construed as excluding the premises at 80 North Side. The tribunal also finds that the widest interpretation should be given to the premises described in these Articles of Association, in order to give effect to what the tribunal considers is consistent with the First Applicant’s presumed intended meaning. To do otherwise, would deny the First Applicant of a right to manage as Cores 1-4 cannot be considered to be a “structurally detached” building by reason of its structural connection to Core 5.

Phoenix Way – ‘the shared ownership issue’

49. The tribunal finds that is required to follow the precedent set by the Upper Tribunal in *Corscombe Close Block 8 RTM CO Ltd v Roselab Ltd* [2013] UKUT 81 (LC) which held that a tenant who held a lease of more than 21 years but had a less than a 100% interest, had a ‘long lease.’ The tribunal notes the conflicting case law that currently exists but prefers and is expected to follow the precedent set by the tribunal’s appellate jurisdiction. Therefore, the tribunal determines that the ‘stepped’ leases of more than 21 years and comprising of less than a 100% share, granted to the members of the Phoenix Way RTM Company Limited, are long leases for the purpose of seeking to acquire the “right to manage.”

Phoenix Way – ‘the structural issue’

50. Notwithstanding the Second Respondent’s concession, the tribunal accepts Mr. Delaney’s opinion which is supported by Mr. Highfield in his report and by its own inspection and finds that Phoenix Way/80 North Side is a “structurally detached” building.

5 Spanish Road – ‘the structural issue’

51. Having inspected these premises and considered the documents and arguments relied upon by counsel for the Second Applicant and the Second Respondent, together with the case law upon which the parties have relied, the tribunal adopts an ordinary and natural meaning to the words “structurally detached” and finds that the premises at 5 Spanish Road are not structurally attached to 4 Spanish Road or any other building, whether by virtue of an adjoining flank wall or vehicular and pedestrian gates. The tribunal considers that any attachment, including the metal gates and posts assembly cannot properly considered to be of a ‘structural’ nature. In any event, the tribunal accepts the submissions made by Mr. Loveday and finds that, at the highest, 5 Spanish Road can only be construed as being minimally

attached to an adjoining building either along the flank wall of 68 North Side or the electric/pedestrian gates. The tribunal rejects the Second Respondent's argument that 5 Spanish Road is structurally attached to 4 Spanish Road, as it regards the 'attachment' to comprise of non-load bearing decorative masonry only. Consequently, the tribunal concludes that 5 Spanish Road is a structurally detached building to which, the First Applicant has acquired the right to manage.

52. Although the First Respondent played no active role at the hearing of these applications and failed to put forward any substantive evidence to support its opposition to the First and Second Applicant's 'right to manage' the respective properties, the tribunal finds that the First and Second Applicants have met the statutory requirements imposed by the 2002 Act in respect of its membership and participating and qualifying lessees.

Rule 13 costs

53. Mr. Loveday submitted that the additional costs incurred by the First Applicant as a result of the late introduction of the "shared ownership" issue, should be paid by the Second Respondent as it was plainly unreasonable conduct within the meaning of Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. A fee schedule of these additional costs incurred by the First Applicant was also provided to the tribunal.
54. The tribunal accepts that the 'shared ownership' issue was raised at a late stage by the Second Respondent. However, the tribunal considered that this issue had merit and required argument by both parties. The tribunal does not consider that an order for costs should be made under rule 13 as it is not satisfied that the conduct of the Second Respondent in raising and pursuing this argument was unreasonable or unmeritorious.

Signed: Judge Tagliavini

Dated: 20 May 2019

Rights of appeal

In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the parties may seek permission to appeal. Such application must be made in writing to the First-tier Tribunal so that it is received within 28 days of this decision being sent to the parties.

Relevant extracts from the Commonhold and Leasehold Reform Act 2002

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 [F1 articles of association state] 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.

76 Long leases

(1) This section and section 77 specify what is a long lease for the purposes of this Chapter.

(2) Subject to section 77, a lease is a long lease if—

(a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise,

(b) it is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal (but is not a lease by sub-demise from one which is not a long lease),

(c) it takes effect under section 149(6) of the Law of Property Act 1925 (c. 20) (leases terminable after a death or marriage [F1 or the formation of a civil partnership]),

(d) it was granted in pursuance of the right to buy conferred by Part 5 of the Housing Act 1985 (c. 68) or in pursuance of the right to acquire on rent to mortgage terms conferred by that Part of that Act,

(e) it is a shared ownership lease, whether granted in pursuance of that Part of that Act or otherwise, where the tenant's total share is 100 per cent., or

(f) it was granted in pursuance of that Part of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (c. 52) (the right to acquire).

(3) "Shared ownership lease" means a lease—

(a) granted on payment of a premium calculated by reference to a percentage of the value of the demised premises or the cost of providing them, or

(b) under which the tenant (or his personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of those premises.

(4) "Total share", in relation to the interest of a tenant under a shared ownership lease, means his initial share plus any additional share or shares in the demised premises which he has acquired.