



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

Case Reference : **MAN/30UH/LRM/2020/0014**

Property : **18-20 Alexandra Road, Morecambe
LA3 1 TG**

Applicant : **Lakeland Right to Manage Company Limited**

Respondent : **Freehold ESS 1 Limited**

Type of Application : **Commonhold and Leasehold Reform Act
2002, Section 71 etc: Right to manage**

Tribunal Members : **Mr J R Rimmer
Mr J Faulkner**

Date of Decision : **6th April 2021**

Date of Determination : **22 June 2021**

Order : The Tribunal upholds the claim notice and dismisses the Respondent's objection thereto.

A. Application and background

- 1 The Applicant is a management company established for the purpose of managing the 4 flats within the building at 18-20, Alexandra Road, Morecambe ("The RTM Company"). The flats occupy, respectively, the basement and 1st to 4th floors of the building. There is a flat on each of those floors. The ground floor is occupied as commercial premises. It seeks ultimately to manage the property on its own behalf. The Respondent is the current freehold owner of the building, represented by Kebbles LLP of Doncaster, South Yorkshire.
- 2 The Respondent objects to the application solely upon the ground that the Tribunal should not be satisfied, on the evidence presented by the Applicant, that the commercial premises within the building represent 25%, or less, of the total floor area of the building. If it exceeds 25% the right to apply is removed.
- 3 A Claim Notice seeking the right to manage the property under the "no fault" provisions of the Commonhold and Leasehold Reform Act 2002 and dated 10th October 2020 was served on behalf of the applicant Company upon the Respondent.
- 4 Each of the tenants of the 4 flats has become a member of the RTM Company.
- 5 The relevant legislation, and its application by the Tribunal to the circumstances of this application, are set out below, but in summary the principle of the "no fault" right to manage provisions is that once an application is made seeking the right to manage it is then for the Respondent to show why, within the parameters of the legislation, that right should not, or cannot, be exercised.
- 6 In its statement of case the Respondent has put forward the single ground for objecting to the application as mentioned in paragraph 2, above.

B Inspection

- 7 In order to comply with current guidance in relation to the Covid-19 pandemic the Tribunal did not inspect the property at 18-20 Alexandra Road and has relied upon the information within the application as to the layout and occupation of the building. So far as the issue of the floor area of the commercial premises is concerned, this is dealt with below.

The Law

- 8 The law relating to the “no fault” right to manage might usefully be set out at this point as its application is crucial to the determination that is required to be made by the Tribunal. It is contained in sections 71-112 Commonhold and Leasehold Reform Act 2002, together with Schedules 6 to 8. Those provisions are reproduced here only insofar as the Tribunal considers them relevant to the consideration of this application.
- 9 Section 72 provides for the right to manage premises if-
 - (a) They consist of a self-contained building or part of a building...
 - (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 premisesThereafter the section defines a building as being self-contained if it is structurally detached and a self-contained part of a 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) Relevant services by way of pipes, cables and other fixed installations are provided independently to the rest of the building or could be so provided without causing significant disruption to the occupiers of the rest of the building.
- 10 Sections 75-77 set out the criteria for being a qualifying tenant for the purposes of the exercise of the right to manage, being an appropriate leaseholder, holding a long lease of a flat that satisfies the criteria set out in Sections 76-77.
- 11 Sections 79 onwards deal with the requirements of a notice of claim to acquire the right to manage and within Section 79 (at sub-section 5) is the requirement, for a development which is the size of 18-20 Alexandra Road, that there must be at least qualifying tenants for at least one half of the total number of flats in the premises as members of the Right to Manage Company. It appears on the face of the Applicant’s Notice of Claim that this is the case and no issue upon that point has been taken by the Respondent.

- 12 Paragraph 1 of Schedule 6 to the Act then provides:
- (1) This Chapter does not apply to premises falling within Section 72(1) if the internal floor area-
 - (a) Of any non-residential part, or
 - (b) (where there is more than one such part) of those parts (taken together)
Exceeds 25% of the internal floor area of the premises (taken as a whole)
 - (2) A part of premises is a non-residential part if it is neither-
 - (a) Occupied, or intended to be occupied, for residential purposes, nor
 - (b) Comprised in any common parts of the premises.
 - (3) ...
 - (4) For the purposes of determining the internal floor area of a building or of any part of a building the floor or floors of the building or part shall be taken to extend (without interruption) throughout the whole of the interior of the building or part, except that the area of any common parts of the building or part shall be disregarded.

Determination

- 13 The Tribunal notes that the only objection raised by the Respondent to the making of an order is in relation to the issue of the floor area of the non-residential ground floor of the building and whether its floor area exceeds 25% total floor area of the building, as assessed under the provisions of Schedule 6(1).
- 14 The extent of the floor area will be a question of fact. The Tribunal is not impressed that no effort has been made to effect a relevant measurement and calculation. It is a relatively easy task for any qualified surveyor and not particularly expensive. Had the members of the Tribunal attended upon an inspection they would not have been pleased to find that they might have been expected to do that work.
- 15 The Tribunal would also suggest that it is very likely that such a calculation may already exist as, from the Respondent's perspective, it is likely to have been carried out in order to provide a floor area for a reinstatement cost assessment for building insurance purposes.
- 16 This is a difficulty that the Tribunal feels it can overcome within the limits of its own mathematical abilities. There are 4 flats on four floors of the building and non-residential premises on the ground floor. It is likely that the ratio is therefore 80% residential to 20% non-residential for the total floor area. There may be some minor adjustment to be made depending upon the means of access and stairways to the residential parts and how

they impinge upon the floor area at ground floor level 1, being common parts, but, in the Tribunal's view, this is unlikely to tip the balance sufficiently in favour of the Respondent's argument.

17 The Tribunal will therefore grant an order in favour of the Applicant as set out in its application.

18 No doubt if the Respondent seeks to apply to review this decision some evidential measurements will be provided in support.

Tribunal Judge: J R RIMMER

