



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

**Case reference** : **LON/00AH/LOA/2019/0002**

**Property** : **76 Portland Road, London SE25 4PQ**

**Applicant** : **76 Portland Road RTM Company Limited**

**Representative** : **Morrison solicitors**  
(ref: MJH.136572.1)  
(Matthew.Hearsum@morrlaw.com)

**Respondent** : **South London Ground Rents Limited**

**Representative** : **Pier Legal Services**  
(ref: DB/PORTLAND076)  
(info@piermanagement.com)

**Type of application** : **Application in relation to the denial of the Right to Manage**

**Tribunal member(s)** : **Judge Timothy Powell**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **23 October 2019**

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**DECISION**

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**Summary of the tribunal's decision**

The tribunal determines that the applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Commonhold and Leasehold Reform Act 2002, and the applicant will acquire such right within three months after this determination becomes final.

**The application**

1. This was an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for a determination that,

on the relevant date, the applicant company was entitled to acquire the Right to Manage (“RTM”) premises known as 76 Portland Road, London SE25 4PQ (“the premises”).

2. By a claim notice dated 7 May 2019, the applicant gave notice to the respondent, South London Ground Rents Limited, that it intended to acquire the right to manage the premises on 10 September 2019.
3. By counter-notice dated 31 May 2019, the respondent freeholder disputed the claim, alleging that the applicant had failed to establish compliance with section 79(2) of the Act, for having failed to serve a Notice to Participate on flat 2.
4. The application was dated 8 July 2019 and received by the tribunal on 11 July 2019. Directions were issued on 9 August 2019 for a determination without an oral hearing, as part of the tribunal’s Digital Resolution Pilot, whereby all correspondence and documents were to be transmitted digitally.

### **The law**

5. The relevant provisions of the Act are referred to in the decision below.

### **The determination**

6. The tribunal received and considered the following documents:
  - The application form and supporting documents; and
  - The applicant’s hearing bundle received on 28 August 2019.
7. There was no response to the application or to directions from the respondent, or from its representatives, Pier Legal Services, who were copied into emails; and, therefore, there was no statement of case or evidence to support the respondent’s grounds for denying of the right to manage in the counter-notice.

### **The tribunal’s decision on the RTM application**

8. The tribunal determines the applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the 2002 Act.
9. Therefore, in accordance with section 90(4), within three months after this determination becomes final the applicant will acquire the right to manage these premises. According to section 84(7):
  - “(7) A determination on an application under subsection (3) becomes final—
    - (a) if not appealed against, at the end of the period for bringing an appeal, or
    - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.”

## **Reasons**

10. The background facts appear from the application form and supporting documents, and from the witness statement of Anne Daniels dated 15 August 2015 in the hearing bundle, none of which were disputed:
  - (1) The premises comprise a residential property containing three flats;
  - (2) The respondent is the freeholder of the premises;
  - (3) Each of the three flats is individually held on a long lease;
  - (4) The applicant RTM company (company number: 11534438) was incorporated on 23 August 2018;
  - (5) The owners of flats 1 and 3 are qualifying tenants who are members of the RTM company and participators in the RTM;
  - (6) By letter dated 13 September 2018, the applicant's solicitors gave a Notice of Invitation to Participate in the RTM (under section 78 of the 2002 Act) to Ms Theresa Ann Bridgeman, the qualifying tenant of flat 2. The letter and notice were printed and signed by Anne Daniels, a legal executive working for the applicant's solicitors, and placed in the outgoing post tray for first class post;
  - (7) Ms Bridgeman telephoned the applicant's solicitors on 28 September 2018 and spoke to Ms Daniels' paralegal, Conor Kelly, confirming receipt of the notice and indicating that she was interested in participating in the RTM (though nothing further was heard from her);
  - (8) A first notice of claim was sent to the respondent on 17 October 2018, and was met by a request from the respondent for copies of the notices of invitation. These were all provided to the respondent by letter dated 2 November 2018; but, due to an error in the notice of claim, it was later deemed withdrawn on 21 January 2019;
  - (9) A second notice of claim was served on 3 April 2019, but due to another error it was invalid. On 7 May 2019, a further notice of claim was served, at which point in time Ms Bridgeman was still the registered proprietor of flat 2;
  - (10) On 31 May 2019, the respondent gave a counter-notice under section 84 of the 2002 Act, alleging that the applicant was not entitled to acquire the right to manage, for having failed to serve a notice to participate on flat 2. The applicant's solicitors sent a further copy of the notice to participate sent to flat 2, by letter dated 6 June 2019, and invited the respondent to withdraw the counter-notice; though no reply was received;

- (11) The current application was received by the tribunal on 11 July 2019, seeking a determination that, on the relevant date, the RTM company was entitled to acquire the right to manage the premises.
11. Having considered the documentation provided by the applicant, I am satisfied that a notice of participation was served on Ms Bridgeman, the qualifying tenant of flat 2; and that she received such notice. There is no evidence from the respondent to gainsay this conclusion. I am therefore satisfied that the ground in the counter-notice is not made out and that, therefore, the applicant was on the relevant date entitled to acquire the right to manage the premises.

### **The respondent's costs of proceedings**

12. Section 88(3) of the 2002 Act states:
- “(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.”
13. In the light of my decision, there is no question of awarding any costs of the proceedings to the respondent under the 2002 Act, because the application for the right to acquire has not been dismissed.

**Name:** Timothy Powell

**Date:** 23 October 2019

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).