



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

**Case reference** : **LON/00BK/HTA/2020/0001**

**HMCTS code  
(paper, video,  
audio)** : **P: PAPER REMOTE**

**Property** : **The Colonnades, 34 Porchester Square,  
London W2 6AS.**

**Applicant** : **The Colonnades Leasehold and  
Residents' Tenants Association.**

**Representative** : **Ms. G. Fallon – Joint Secretary.**

**Respondent** : **T.R. Property Investment Trust PLC**

**Representative** : **Strangford Management**

**Type of application** : **Application under S.29 Landlord and  
Tenant Act 1985 for recognition of a  
tenants' association.**

**Tribunal members** : **Judge Hamilton-Farey**

**Remote Paper** : **Remote Paper Determination.**

**Date of decision** : **28 August 2020**

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**DECISION**

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## **Covid-19 pandemic: description of hearing:**

This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERRMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper]. The documents that I was referred to are in an application and supporting documents, including confirmation from the respondent that they would not recognise the tenants' association, and e-mail correspondence from the members of the association, confirming their agreement to join that association. I have noted this correspondence in reaching my decision. The order made is described at the end of these reasons.

## **Decision of the tribunal**

- (1) The tribunal GRANTS a Certificate of Recognition under S.29 of the Landlord and Tenant Act 1985 to the applicants for a period for four years with effect from today's date.
- (2) The certificate is appended to this decision and reasons and has been electronically signed.
- (3) The relevant legislation and regulations are appended to this decision.

## **The application**

1. The applicants apply for a Certificate of Recognition under S.29 of the Landlord and Tenant Act 1985 ("the 1985 Act") in relation to the Leaseholders and Tenants Association formed in relation to the property known as the Colonnades, 34 Porchester Square, London W2 6AS ("the Property"). The application is dated 9 June 2020.
2. The application relates to three blocks of flats/maisonettes and leasehold mews houses. The three blocks are numbered 100, 200 and 300. In total there are 228 flats/maisonettes and 14 mews houses.
3. In support of the application, the applicants have included copies of minutes of EGM's, circulars to residents, and copies of e-mail correspondence from owners/residents to confirm their agreement to join the Association. At the time of the application 125 owners/residents had confirmed that they wished to join the association and representing 51.65% of the total potential members. This number meets the recommended threshold of 50% membership.
4. Having held their EGM (at which 102 members attended), the applicants contacted the respondent landlord and agent on 10 March 2020. The landlord responded to say that all applications should be referred to the agents. The agents responded on 13 March 2020 to say that the landlord would not recognise the association, because there was already a recognised Residents Committee which had been in existence for over 20 years, was actively and engaged in communication with residents and held a leaseholders' AGM.

5. The representatives of the association then responded to say that this was not the case. That the 'informal' residents' group had come into effect in 2017, had not engaged with leaseholders and did not provide regular updates of issues in the buildings. The applicants also say that this group withheld relevant information from leaseholders and failed to consult with them properly – it is not clear whether this was a S.20 Consultation under the Landlord and Tenant Act 1985, however this would not have been a duty under the relevant Regulations for a residents' association in any event.
6. The applicants also say that they sent out copies of the EGM minutes to all residents, including those who were members of the 'informal' group regarding the formation of this association, but had received no objections. They also say that there had never been a democratic vote in relation to the informal group and that no formal constitution existed.
7. Finally, the applicants say that no certificate of recognition has been granted by the freeholder or its agents, and there are no records of such recognition having been made.

### **The issues**

8. The issues before the tribunal, are whether the applicants had met the criteria for recognition of an association. The Regulations appended to this decision set out those criteria.
9. In particular, the tribunal has to have regard to whether there is a majority of members; whether there is an appropriate constitution; and whether there is another recognised association in existence.
10. The tribunal is satisfied that the membership exceeds that required by the regulations (50%) and that there is an appropriate constitution in place.
11. The final consideration is whether there is already a residents' association in place. On balance I find that there is not.
12. No evidence has been provided in the form of minutes from AGM's, or any documents demonstrating that the landlord has recognised the informal group mentioned above. I would expect a landlord to provide these documents, especially when relying on an existing association, to show that the buildings already had a recognised association.
13. I am therefore not satisfied that a recognised association already exists as defined in the Regulations, and I therefore grant a Certificate of Recognition to the Colonnades Leasehold and Residents Tenants Association, with effect from 28 August 2020, for a period of four years, expiring on 27 August 2024.

**Name:** Judge Hamilton-Farey

**Date:** 28 August 2020

### **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).

**29.— Meaning of “recognised tenants’ association.”**

(1) A recognised tenants’ association is an association of [qualifying tenants (whether with or without other tenants)] which is recognised for the purposes of the provisions of this Act relating to service charges either—

(a) by notice in writing given by the landlord to the secretary of the association, or

(b) by a certificate—

(i) in relation to dwellings in England, of the First-tier Tribunal; and

(ii) in relation to dwellings in Wales, of a member of the local rent assessment committee panel.

(2) A notice given under subsection (1)(a) may be withdrawn by the landlord by notice in writing given to the secretary of the association not less than six months before the date on which it is to be withdrawn.

(3) A certificate given [under subsection (1)(b)(i) may be cancelled by the First-tier Tribunal, and a certificate given under subsection (1)(b)(ii)] may be cancelled by any member of the local rent assessment committee panel.

(4) In this section the “*local rent assessment committee panel*” means the persons appointed by the Lord Chancellor under the [Rent Act 1977](#) to the panel of persons to act as members of a rent assessment committee for the registration area [ in Wales] in which [the dwellings let to the qualifying tenants are situated, and for the purposes of this section a number of tenants are qualifying tenants if each of them may be required under the terms of his lease to contribute to the same costs by the payment of a service charge.]

(5) The Secretary of State may by regulations specify—

(a) the procedure which is to be followed in connection with an application for, or for the cancellation of, a certificate under [subsection (1)(b)(ii)]

(b) the matters to which regard is to be had in giving or cancelling [a certificate under subsection (1)(b)]

(c) the duration of such a certificate; and

(d) any circumstances in which a certificate is not to be given under subsection (1)(b).

(6) Regulations under subsection (5)—

(a) may make different provisions with respect to different cases or descriptions of case, including different provision for different areas, and

(b) shall be made by statutory instrument which shall be subject to annulment in pursuance

of a resolution of either House of Parliament.

## Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018/1043

### **1.— Citation, commencement, and application**

(1) These Regulations may be cited as the Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018 and come into force on 1st November 2018.

(2) These Regulations apply in relation to dwellings in England only.

### **2. Interpretation of Part 2**

In this Part—

*"certificate"* means a certificate given by the First-tier Tribunal under [section 29\(1\)\(b\)\(i\)](#) of the [Landlord and Tenant Act 1985](#) (certificate recognising a tenants' association);

*"related premises"* means more than one premises which have a common landlord.

### **3. Matters to which regard must be had by the First-tier Tribunal in giving a certificate**

The First-tier Tribunal must, in particular, have regard to the following matters in giving a certificate—

- (a) the composition of the membership of the tenants' association.
- (b) the tenants' association's rules regarding membership, including whether tenants who are not qualifying tenants are entitled to become members.
- (c) the tenants' association's rules regarding decision making.
- (d) the tenants' association's rules regarding voting.
- (e) the extent to which any fees or charges payable in connection with membership of the tenants' association apply equally to all members.
- (f) the extent to which the constitution of the tenants' association takes account of the interests of all members.
- (g) the extent to which the tenants' association is independent of the landlord of the dwellings to which the association relates.
- (h) whether the tenants' association has a chairperson, secretary, and treasurer.
- (i) whether the constitution of the tenants' association may be amended by resolution of the members and the rules regarding amendment.

(j) whether the tenants' association's constitution, accounts and list of members are—

- (i) kept up to date; and
- (ii) available for public inspection.

(k) the extent to which the association operates in an open and transparent way.

#### **4.— Circumstances in which a certificate is not to be given**

(1) The First-tier Tribunal must not give a certificate to a tenants' association in relation to a premise where the tenants' association represents fewer than 50% of the qualifying tenants of dwellings situated in the premises.

(2) But where—

- (a) the tenants' association represents qualifying tenants in dwellings situated in related premises; and
- (b) those qualifying tenants contribute to the same costs by the payment of a service charge,

the First-tier Tribunal must not give a certificate to the tenants' association in relation to the related premises if the tenants' association represents an aggregate of fewer than 50% of the qualifying tenants of dwellings situated in the related premises.

(3) The First-tier Tribunal must not give a certificate to a tenants' association in relation to any premises if a certificate has previously been given to a tenants' association in relation to the premises and the certificate is in force.

(4) The First-tier Tribunal must not give a certificate to a tenants' association if the First-tier Tribunal is not satisfied that the constitution and rules of the tenants' association are fair and democratic.

(5) Paragraphs (1) and (3) do not apply where—

- (a) the landlord has failed to comply with an order made by the First-tier tribunal in relation to the tenants' association under [regulation 11](#) (an order requiring the landlord to comply with [regulation 8, 9 or 10](#)); and
- (b) the tenant's association represents a substantial number of qualifying tenants of dwellings in the premises or, as the case may be, the related premises.

(6) This regulation is without prejudice to any powers the First-tier Tribunal has, including its powers to not give a certificate.

#### **5. Matters to which regard must be had by the First-tier Tribunal in cancelling a certificate**



The First-tier Tribunal must, in particular, have regard to the following matters in cancelling a certificate—

- (a) whether the certificate was obtained by deception or fraud.
- (b) whether the tenants' association to which the certificate relates represents fewer than 50% of the qualifying tenants of dwellings situated in the premises to which the association relates.
- (c) where the tenants' association relates to related premises and the qualifying tenants in dwellings situated in the related premises contribute to the same costs by the payment of a service charge, the tenants' association to which the certificate relates represents an aggregate of fewer than 50% of the qualifying tenants of dwellings situated in the related premises;
- (d) whether the office of chairperson, treasurer or secretary of the tenants' association are vacant and, if so, the length of time for which the position has remained vacant.
- (e) whether any provision of the constitution of the tenants' association has been breached and, if so, the extent and nature of the breach.
- (f) whether an amendment to the constitution, as passed by a resolution of its members, has not been implemented and, if so, the nature of the amendment and the length of time for which it has not been implemented.
- (g) any irregularities in the tenants' association's—
  - (i) voting process.
  - (ii) decision making.
  - (iii) implementing of decisions; or
  - (iv) recording of decisions, and the nature of the irregularities and their effect.

## **6. Interpretation of Part 3**

In this Part—

*"information form"* has the meaning given in [regulation 9\(2\)](#) (landlord's method of contacting relevant qualifying tenants<sup>1</sup>);

*"known information"* has the meaning in [regulation 7\(6\)](#) (request by relevant tenants' association for known information);

*"request notice"* has the meaning given in [regulation 7](#).

## **7.— Request by relevant tenants' association for known information**

- (1) The secretary of a relevant tenants' association<sup>1</sup> may serve a notice (a "request notice") on the landlord of a dwelling to which the association relates which contains

a request for the landlord to provide known information about relevant qualifying tenants who are not members of the association.

(2) A request notice must—

(a) include—

- (i) a schedule listing the relevant qualifying tenants who are members of the relevant tenants' association.
- (ii) the postal address of the relevant tenants' association; and
- (iii) an email address for the relevant tenants' association if it has one; and

(b) be signed and dated by the secretary of the relevant tenants' association.

(3) Where the secretary of a relevant tenants' association gives more than one request notice in respect of the same relevant qualifying tenant, the later notice supersedes all earlier notices.

(4) The request notice must be accompanied by a statement that—

(a) the known information being requested will be used only to ask the relevant qualifying tenants concerned if they wish to become members of the relevant tenants' association; and

(b) is signed and dated by the secretary of the relevant tenants' association.

(5) A request notice is duly served on a landlord under this regulation if it is served on the landlord's managing agent.

(6) In this regulation—

*"known information"*, in relation to a relevant qualifying tenant ("T"), means any of the following information that is in the possession of the landlord or the landlord's managing agent—

(a) T's name.

(b) the address of the dwelling for which T pays a service charge.

(c) any address to which service charge demands for T are sent.

(d) T's email address.

*"managing agent"* means an agent appointed by the landlord to discharge any of the landlord's obligations to the tenants represented by the relevant tenants' association which relate to the management by the landlord of the tenants' dwellings.

## **8.— Landlords' duty: acknowledgement of request notice**

(1) A landlord who has been served with a request notice must, within 7 days beginning with the date on which the request notice was received—

- (a) acknowledge receipt of the request notice in writing; and
- (b) inform the secretary of the relevant tenants' association that the landlord will provide a substantive response to the notice.

(2) Where the landlord does not consider the notice received to be a valid request notice, the landlord must, within 7 days beginning with the date on which the notice was received—

- (a) inform the secretary of the relevant tenant's association in writing that the landlord will not provide a substantive response to the notice because the landlord does not consider the notice received to be a valid request notice; and
- (b) give reasons as to why the landlord does not consider the notice received to be a valid request notice.

(3) "*Substantive response*" has the meaning given in [regulation 10\(2\)](#).

#### **9.— Landlords' duty: contacting relevant qualifying tenants**

(1) A landlord who has been served with a request notice must, as soon as practicable after the request notice was received, give an information form to each relevant qualifying tenant ("T") in relation to whom known information has been requested.

(2) An "information form" is a written document which—

- (a) informs T that a relevant tenants' association has requested that the landlord provide known information relating to T.
- (b) sets out what known information has been requested in relation to T.
- (c) identifies the relevant tenants' association that has made the request.
- (d) includes—
  - (i) the postal address of the relevant tenants' association; and
  - (ii) an email address for the relevant tenants' association if it has one.
- (e) asks T for written consent to disclose the known information to the relevant tenants' association.
- (f) informs T that the known information will not be disclosed without that consent.
- (g) informs T that the relevant tenant's association has stated in its request that the known information will be used only to ask T if T wishes to become a member

of the relevant tenants' association.

(h) informs T that any queries relating to the relevant tenants' association should be directed to the relevant tenants' association.

(i) asks T to reply within 28 days beginning with the date of receipt of the information form—

(i) confirming that T consents to all of the known information being disclosed to the relevant tenants' association.

(ii) confirming that T consents to some of the known information being disclosed to the relevant tenants' association, and stating the known information that may be disclosed; or

(iii) confirming that T does not consent to any of the known information being disclosed to the relevant tenants' association.

(j) gives a postal address and, if the landlord has one, an email address, which can be used to reply to the landlord; and

(k) is signed and dated by the landlord.

#### **10.— Landlords' duty: substantive response to request notice**

(1) A landlord who has been served with a request notice which does not fall within [regulation 8\(2\)](#) must provide a substantive response to the relevant tenant's association which served the notice within 4 months beginning with the date on which the notice was received ("the 4 month period").

(2) A "substantive response" is a written document which—

(a) states—

(i) all known information requested in the request notice which the landlord has consent to disclose; or

(ii) that there is no such known information.

(b) states the number of relevant qualifying tenants to whom the landlord sent an information form in connection with the request notice.

(c) states the number of relevant qualifying tenants in relation to whom known information was requested who did not give written consent for known information to be disclosed by the landlord; and

(d) is signed and dated by the landlord.

(3) The substantive response must be accompanied by a statement that—

(a) the information contained in the substantive response is true to the best of the landlord's knowledge and belief; and

(b) is signed and dated by the landlord.

(4) Where the landlord receives consent from a relevant qualifying tenant to disclose known information after the 4-month period, the landlord must disclose the known information as soon as reasonably practicable after the consent is received (“further disclosure”).

(5) Further disclosure under paragraph (4) must—

(a) be in writing; and

(b) be accompanied by a statement that—

(i) the information comprising the further disclosure is true to the best of the landlord’s knowledge and belief; and

(ii) is signed and dated by the landlord

#### **11.— Power of First-tier Tribunal to remedy failure by a landlord to comply**

(1) The secretary of a relevant tenants’ association may apply to the First-tier tribunal for an order requiring the landlord to perform a duty under [regulation 8, 9 or 10](#) of these Regulations.

(2) The First-tier Tribunal may make such an order where—

(a) the landlord has failed to perform a duty under [regulation 8, 9](#) or, as the case may be, [10](#); and

(b) the landlord does not have a reasonable excuse for failing to perform the duty.