



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

Case Reference : CHI/29UH/LRM/2020/0004

Property : 27 Essex Road, Maidstone, Kent, ME15
7QL

Applicant : 27 Essex Road (Maidstone) RTM Company
Limited

Representative : Mike Stapleton and Co

Respondent : Martin Peter Simpson

Representative :

Type of Application : Determination of entitlement to acquire
the Right to Manage – Chapter 1
Commonhold and Leasehold Reform Act
2002

Tribunal Member(s) : Judge J Dobson

Date and venue : On the papers

Date of Decision : 20th April 2021

DECISION

Summary of the Decisions of the Tribunal

- 1. The Tribunal determines that the Applicant was not entitled on the relevant date to acquire the right to manage 27 Essex Road, Maidstone, Kent, ME15 7QL.**

The application made and history of the case

2. The Applicant made an application dated 15th October 2020 under Section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for the Tribunal to determine whether the Applicant is entitled to acquire the right to manage (“the Right to Manage”) in respect of a property described as 27 Essex Road, Maidstone, Kent, ME15 7QL (“the Premises”).
3. By a claim notice dated 9th July 2020 (“the Claim Notice”), the Applicant gave notice that it intended to acquire the Right to Manage the Premises on 21st November 2020. The Premises were defined as “27 Essex Road, Maidstone, ME15 9QY Title no K725750 but excluding Title K950420”. By a counter-notice dated 19th August 2020 (“the Counter- Notice), the Respondent disputed the Applicant’s entitlement to acquire the Right to Manage, alleging that the Applicant had failed to establish compliance with sections 72(1), 72(2), 79(1) and 80(7) of the Act.
4. The Directions identified that there is a single overall issue for determination, namely whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage the premises specified in the notice. The Directions also stated that the Tribunal would not inspect the Premises but that the parties could provide photographs. No application has been made to vary that direction and for there to be any inspection.
5. The Directions given by the Tribunal on 27th October 2020 stated that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days of the date of receipt of the directions. No such objection has been received.
6. An issue arose with the Respondent’s response to the application and certain other queries, addressed in previous Directions and not directly relevant to the determination of the application now made.
7. A bundle has been received from the Applicant’s representative, which is relatively short- 55 pages. It should be noted that the pages are not consecutively numbered, whether electronically as provided for in the bundle guidance or at all. That is not helpful. Whilst the PDF document provides numbers of pages within the PDF, the bundle is not compliant such that the Tribunal could have taken action accordingly. There have

been previous issues with the bundle and the Directions dated 1st March 2021 were clear.

8. The Tribunal has proceeded by way of a paper determination on the documents produced by the parties. This is the decision made following that paper determination.

The Parties' cases and the Issues in Dispute

9. In the Counter Notice dated 19th August 2020, the Respondent asserted, and pursuant to the sections of the Act identified above, seven reasons why the Respondent rejected the asserted right of the Applicant to manage the Premises. The first five of those were as follows:

- i) The building is not self-contained to the two proposed properties – section 72 (1)(a).
- ii) The proposed properties do not form two-thirds of the self-contained properties on the site
- section 72 (1)(c)
- iii) The proposed properties are not self-contained
- section 72 (2)
- iv) The claim notice fails to include the necessary dates
- section 79(1)
- v) The claim notice fails to include the necessary dates
- Section 80(7).

10. In addition, the Respondent said:

- vi) The current properties are being maintained by the Respondent but properties of 27A and 27B have for years outstanding monies due for non-payment of maintenance and ground rents. Therefore, the tenants and management company would have no credibility to manage the finances and maintenance in the future. [No provision in the Act is quoted.]
- vii) The management of 27A and 27B are only part of the properties plus one hardstanding at the site. The other four flats are owned by the Respondent. [Again, no provision in the Act is quoted.]

11. By the Respondent's case/ submissions the Respondent explains that it no longer relies on iv) above, which the Tribunal will not therefore consider. The Respondent adds nothing more in relation to vi) and vii). There are further comments in relation to the other reasons.

12. In relation to section 72, the Respondent says that 27A and 27B form part of a larger title, including "part of 27" and other properties. Notably, it is said that 27 Essex Road is the adjacent property to that containing flats 27A and 27B, that the Applicant's members do not live there, have no interest in it and have no right to manage it. Reference is made to a photograph and to two doors shown on that.

13. In relation to section 80, the Respondent asserts that the Premises are not correctly identified in that the postcode is incorrect, that the full names of two of the lessees have not been provided and that two of the lessees – one joint lessee of each of 27A and 27B- are not members of the Applicant company. These arguments are termed “additional element A)” below.
14. The Respondent attaches a document headed “History” which refers to part of the Respondent’s freehold land being sold to 27 Essex Road but also that at the Land Registry there are two title numbers, it appears one being the part sold off, and that both are titled 27 Essex Road at the Land Registry. There are said to be three leasehold titles, one for 27A and one for 27B. The third is described as a flying leasehold of 27, although no other detail or explanation is given. It is additionally said that 27, 27A and B and the block of four flats share mains drainage and an electricity supply for lighting to hallways.
15. The Respondent attaches a 3D drawing, which shows the upper flat of 27A and 27B, the latter of those, extending at first floor level over part of the ground floor of the property numbered 27, to which the photographic evidence provides other support. This may be as good a point as any for the Tribunal to record that it surmises that it is that which the Respondent describes as the flying leasehold of 27.
16. The Respondent additionally attaches a plan, entitled “Essex Road Site Management Plan” of freehold titles, including to the flats shown behind 27A and 27B.
17. The Applicant has responded to the Respondent’s case in a letter described as the Applicant’s statement of case and dated 18th March 2021 making a general point and then responding to specific matters raised by the Respondent. The general point, identified as “additional element B)” for these purposes, is that the Respondent was required to respond with a counter-notice no later than 20th August 2020 but that the Counter-Notice was not received until 24th August and hence was out of time and of no effect. The Applicant asks that the Tribunal therefore determine that there was an entitlement to acquire the right to manage.
18. The Applicant states in respect of section 72 (items i) to iii) above) that the Premises are self-contained, that the Claim Notice excludes the adjacent property in title number K950420, which the Applicant says “is also referred to as 27 Essex Road” and which property is asserted to be structurally separate and that the flats 27A and 27b form the whole of the subject property. The block of four flats is asserted to be separate and is surmised to have independent services. The Tribunal understands that K950420 is the title for the house to the side of flats 27A and 27B and in part under 27B and that K725750 is a title including 27 and areas of land, part of which is occupied by the Premises.

19. In relation to section 80 (item v above), the Applicant says that the Claim Notice sets out the relevant dates, says the names are clearly set out and says that the required notices inviting participation (“the Notices Inviting Participation”) were sent to the lessees not currently members of the Applicant company. It is said vi) is irrelevant and, effectively, the same is said about vii).
20. Consequently, there are seven issues to address- i) to iii) and v) to vii) inclusive above and additional element A) as raised by the Respondent and additional element B) as raised by the Applicant.
21. Neither party has produced any Land Registry documentation in relation to titles to the Premises or any other part of the land and buildings to which reference is made in the papers.

The Relevant Facts

22. The Premises comprise a two- storey building containing two flats- 27A and 27B. No issue arises that they are flats for the purpose of the Act or that they are held on long leases. The Applicant is a right to manage company (“RTM company”).
23. The Applicant company”, was incorporated on 22nd May 2020. There were two subscribers/ founder members, not disputed to have been members of the company from that date.
24. Four members of the Company, all stated to be qualifying tenants, are listed in the Claim Notice, namely Martin Neary, Paul Neary, Victoria Elizabeth Barton and Adam Nicholas Barton. Between them, they owned both of the two flats referred to, namely 27A and 27B.
25. The articles of association of the Company (“the Articles of Association”) adopt the model form prescribed by the RTM Companies (Model Articles) Regulations 2009 “the Articles Regulations”. The particular premises defined in the Articles of Association of the Company are as being “27 Essex Road, Maidstone, Kent, ME15 7QL”.
26. It is not in dispute that the Claim Notice informing the Respondent of its claim to acquire the Right to Manage was served by the Applicant dated 9th July 2020 or that the Counter-Notice was stated to be required to be given by 20th August 2020.
27. It also appears to be agreed that the Respondent served a Counter-Notice dated 19th August 2020.
28. No issue has been taken by the Applicant with the contents of Respondent’s plan and drawing or that the photograph is accurate. Accordingly, the Tribunal treats such factual matters as are contained as being agreed.

29. That includes the location of the block of flats 70-76 and the garden to 74 and includes the extent of the titles shown on the plan.

The Statutory Background

30. The statutory scheme is set out in sections 71 to 94 inclusive of the Act. The relevant parts of that scheme for the purpose of this application are those which set out the key general provisions and those upon which the Respondent has based its objections.

31. Section 71 provides that a Right to Manage company may acquire the right to manage premises.

32. Section 72(1) defines premises as needing to (a) consist of “a self-contained building or part of a building, with or without appurtenant property” and (b) contain two or more flats held by qualifying tenants and also requires that (c) the number of flats held by the qualifying tenants is not less than two-thirds of the total in the premises.

33. Section 72(2) then states that “A building is a self-contained building if it is structurally detached”. Section 72(3) add that a part of a building is a self-contained 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 to it.

34. Section 72(4) says that it applies if the relevant services provided for occupiers are provided independently of services for occupiers of the rest of the building or could be without involving works likely to cause significant interruption in the provision of any relevant services for occupiers of the rest of the building.

35. Section 73(2) provides that a Right to Manage Company is a private company limited by guarantee whose Articles of Association state that its object, or one of them, is the acquisition and exercise of the right to manage premises.

36. Section 78(1) requires that the Notice Inviting Participation is to be served on all qualifying tenants who are not members of the Right to Manage company and have not agreed to become members of the company. A qualifying tenant is one who holds a long lease. The following clause, section 78(2) sets out the information to be provided.

37. The relevant parts of Section 79 similarly provide that (79(2) the claim notice may not be given unless each person required to be given a Notice inviting Participation has been given such a notice at least 14 days before, that (79(3) the Claim Notice must be given by an RTM company which complies with subsection (4) and (5) [which relate to the membership of the RTM company] and that the Claim Notice must

be given to the landlord, as well as (79(8) a copy of the Claim Notice being given to every qualifying tenant of a flat.

38. Section 80 of the Act states that the Claim Notice must comply with certain requirements, including (3) stating the full name of each person who is both a qualifying tenant and a member of the RTM company and (7) specifying a date at least three months after the date for the Counter-Notice on which the RTM company intends to acquire the right to manage the Premises.
39. However, section 81 states that the Claim Notice is not invalidated by any inaccuracy in any of the particulars required by section 80. If any of the members of the RTM company stated on the Claim Notice was not a qualifying tenant, the Claim Notice is specifically not invalidated by that, provided that a sufficient number of qualifying tenants of flats are members of the RTM company.
40. Article 1(1) of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (“the Forms Regulations”) comprises a list of defined expressions, including most importantly for the purpose of this application, a definition of “the Premises” as meaning the “name and address”. The term “name and address” is contained in square brackets in the Regulations, indicating the need to insert the relevant actual address in the Articles of the specific Right to Manage company and so define the premises in relation to which the Right to Manage Company is intended to be such a company.
41. It merits noting that here has been a significant quantity of decisions variously of the First Tier Tribunal (Property Chamber), the Upper Tribunal (Lands Chamber) and the Court of Appeal in respect of disputed claims for the right to manage, involving what has been described as “trench warfare”. Insofar as specific case authorities are relevant, those are referred to below when considering the specific matters to which they relate.

Consideration of the issues identified

42. The Tribunal does not take the items in the order raised by the parties but rather in the order that the Tribunal considers sensible, starting with matters specific to the Notices.

Additional element B- late service of the Counter-Notice

43. The Tribunal takes this issue first in light of the assertion by the Applicant that if the Counter-Notice was served late, any issues fall away and the Applicant is entitled to acquire the right to manage.
44. The Counter- Notice is dated 19th August 2020. The Claim Notice required the Counter- Notice to be given by 20th August 2020. The Applicant asserts that service was late because of receipt 24th August 2020.

45. The date of receipt is not the relevant point. That relevant point is that the Counter- Notice may be given by post and that the ordinary course of post in respect of first class post is that letters are aimed to be delivered the next working day. A notice sent out on a given date in the first- class post is to be treated for these purposes as having been received that next working day.
46. 19th August 2020 was a Wednesday. The next working day was Thursday 20th August 2020. The Tribunal determines that the counter- notice was given in time.
47. In any event, and whilst there is no definitive answer, Upper Tribunal decisions have suggested that even in the absence of a (valid) counter-notice, there cannot be a right to manage acquired on the basis of an unlawful claim notice and that there must be premises to which the Act applies in that the conditions in section 72 are satisfied. Much of the Respondent's case would therefore still be relevant even if the Counter-Notice itself could not be relied on.
48. It should be added for the sake of completeness, that Upper Tribunal decision also provide that the Respondent may add grounds in the proceedings to the matters raised in the Counter- Notice.

Additional element A- points about the claim notice

49. The Respondent's arguments were that the full names of two_of the lessees have not been provided and that two of the lessees – one joint lessee of each of 27A and 27B- are not members of the Applicant company.
50. It is apparent from section 80 of the Act that the Claim Notice must give the full name of each person who is both a qualifying tenant and a member of the RTM company. The names challenged by the Respondent are those of Martin Neary and Paul Neary. It is therefore said those are not the full names of those lessees.
51. The Applicant says that the lessees' names and addresses are set out in the claim notice, apparently asserting Martin Neary and Paul Neary to be the full names of those persons. Oddly, the Applicant's representative, when referring to the lessees in the reply to the Respondent's case, chooses to refer to all four of them by their first initial and surname.
52. It is the Respondent who asserts that Martin Neary and Paul Neary are not the full names of the particular lessees. It is for the Respondent to demonstrate that to be correct.
53. There is no evidence before the Tribunal that the names set out are not the full names of those lessees. Accordingly, on the evidence presented

to the Tribunal, the Respondents' challenge to the claim notice on that point fails.

54. If there were a failure to provide the names of the lessees, the Claim Notice would be invalid. It is not clear whether the inclusion of names but not full names would have the same effect. The requirement is contained in the statute, it is very specific and it is not hard to comply. However, the question is left to another occasion on which the answer is relevant.
55. In terms of two of the lessees named in the Claim Notice not being members of the Applicant company, the Applicant's case is rather less than clear.
56. The Applicant's statement of case in reply to the Respondent's case says that Notices Inviting Participation were given to Mrs Victoria Elizabeth Barton and Mr Paul Neary, that membership applications were received and that those are held in the Applicant's company records.
57. That statement of case does not go on to say "and the membership applications were processed/ approved/ similar and the two became members of the Applicant." No copy of the register of members of the Applicant has been produced. The Tribunal would not in the ordinary course require the Applicant to prove the Register, particularly in the absence of evidence to suggest the names of members stated in the claim notice to be wrong.
58. However, in this instance, there is a reason to do so, because the Respondent has raised an issue. The evidence in support is the statement of the Respondent, endorsed with a statement of truth, that the Respondent checked the Register of Members of the Applicant. Whilst it would have been preferable for the Respondent to have exhibited a copy of the Register as checked, the Tribunal has no reason to disbelieve the Respondent. Notably, the Applicant's reply does not suggest the Respondent to be incorrect in the evidence given.
59. A lessee becomes a member of the RTM company on the date that their name is entered into the Register of Members and not at any earlier date. In *Southall Court Residents Ltd V Buy Your Freehold Ltd* (LRX/124/2007) the Lands Tribunal (the precursor to the Upper Tribunal (Lands Chamber) and the decisions of which are therefore binding on this Tribunal) set out the above and held that to prove membership, it is necessary to produce the Register (and indeed prove that it complies with company law). In the absence of the Register, it was held that there were no members other than the original subscribers.
60. It may be that between 24th June 2020 and 9th July 2020 both Victoria Elizabeth Barton and Paul Neary became members of the Applicant. However, that and membership generally has been denied by the Respondent and the Applicant has not demonstrated

membership was obtained. Indeed, the statement that the membership applications are held within the Applicant's records but without also saying that anything happened with them, is more easily interpreted as indicating that the two did not become members than that they did.

61. The Tribunal cannot be satisfied on the evidence presented that Victoria Elizabeth Barton and Paul Neary were members of the Applicant at the time of the Claim Notice as the notice contends them to be. Accordingly, the Applicant has failed to demonstrate that Claim Notice complies with the requirements, including most particularly section 80(3) of the Act by stating the full name of each person who is both a qualifying tenant and a member of the RTM company.
62. The Tribunal therefore determines that the Claim Notice is defective. The point which then arises is the effect of that and in the context of section 81 of the Act.
63. Section 81 of the Act says that the Claim Notice is not invalidated by any inaccuracy in the particulars required by section 80. The particular point about a member of the RTM company named not being a qualifying tenant is not relevant here. The position is the opposite one, namely that a qualifying tenant is not a member of the RTM company.
64. It is apparent that half of the of the qualifying tenants of Flats A and B- Martin Neary and Adam Barton- are members of the Applicant.
65. There has been an inaccuracy rather than an omission. The Tribunal considers that the names of the qualifying tenants who are members of the RTM company is one of the particulars of the Claim Notice. Such particulars are not limited to the particulars of the Lease set out in section 80(4).
66. Accordingly, the inaccuracy in the Claim Notice with regard to the members of the Applicant does not render the Notice invalid, such that there was a valid Claim Notice on which an application could be based.
67. Neither party has said anything about the allegedly inaccurate postcode beyond the bald statement in the Counter- Notice. There is nothing to indicate that the statement remains part of the Respondent's case and in any event what the postcode should be and what relevance any error has in terms of the validity, or otherwise, of the Claim Notice served by the Applicant.
68. In those circumstances, the Tribunal dismisses the Respondent's argument on that particular point, the Respondent having failed to demonstrate an error at all or that such error should prevent the validity of the Notice.

Elements i) The building is not self-contained to the two proposed properties – section 72 (1)(a),
ii) The proposed properties do not form two-thirds of the self-contained properties on the site- section 72 (1)(c) and
iii) The proposed properties are not self-contained-section 72 (2)

69. The Tribunal takes these matters together as apparently amounting to the same or much the same factually and in any event of being too closely linked to make it appropriate to address them separately.
70. Whilst the Counter- Notice elements are stated as above, the Respondent's Case/ Submissions puts the matters differently and as set out at paragraphs 11 to 16 above. However, the Respondent is not limited to the matters raised in the Counter- Notice and so is not precluded from raising additional arguments.
71. The Respondent has not in terms explained further the point asserted in the Case/ Submissions about Flats 27A and 27B forming part of a larger title. The point raised that 27 Essex Road is not the property in which the flats are situated, but rather is the property next door, over part of the ground floor of which Flat 27B extends is not expanded upon either and the consequences are not argued.
72. However, as the points have nevertheless been raised, the Tribunal must address them, not least where they appear significant.
73. As identified above, the Applicant's representative's reply is that the Premises are self-contained, being the two-storey premises comprising the two flats. The representative refers to the specific exclusion of the contents of title K950420. The Applicant says nothing more about the "self-contained" point.
74. It is well-established that an RTM company must have as its object the acquisition of the Right to Manage the relevant property. It can only acquire the Right to Manage the property for the acquisition of such right it was created.
75. It was held by the Upper Tribunal in *Avon Ground Rents Ltd v 51 Earls Court Square RTM Co Ltd* [2016] UKUT 22 (LC) that an unambiguous identification of the property in relation to which the company is an RTM Company is important, although in that particular case the ambiguity was held to need to be interpreted consistently with the parties' presumed intention and the property was found to be sufficiently defined. However, the company cannot be an RTM Company in relation to a different property.
76. In relation to the Premises forming part of a larger title, the Tribunal is helped not at all by the lack of Land Registry entries. Those would have clarified exactly that which is contained in any given relevant title. That is especially so when that which the Applicant claims to be entitled to

acquire the Right to Manage is specifically defined in the Claim Notice as being the contents of a title less the contents of another title.

77. However, as the Applicant has not challenged the Respondent's plan of the titles, the Tribunal treats it as correct, such that the title which includes the Premises, K725750, also includes part of 74 and 76 and most of the garden to 74. If that is not in fact correct, the Applicant ought to have challenged the content of the plan and provided evidence that it is not correct, which the Applicant did not do.
78. The Claim Notice therefore has the effect of seeking to acquire those parts of 74 and 76 that fall within K725750. It is plain that the Applicant does not have entitlement to include those parts- the lessees of those flats are not members of the company and have not been given any relevant notice and whilst the members are two of four qualifying tenants of Flats 27A and 27B, they are not more than half of those four plus the one or more lessees of flats 74 and 76, the members have no interest in flats 74 and 76 or the garden to 74 and so comment could go on. The Claim Notice does not limit itself to the Premises themselves (and the appurtenant property to that).
79. The Applicant's reply says that there are only two flats in the property the subject of the claim. However, that would only be correct if the claim were limited to the Premises as opposed to the remainder of the title number having excluded the specific title for the house at 27.
80. In terms of the Respondent's point about 27 Essex Road not being the Premises but being the house next door, the picture is, putting the Applicant's case at best rather less than clear. Nevertheless, the application having been made by the Applicant, it is the Applicant that bears the effects of that lack of clarity.
81. From the perspective of a postal address or address as a person would be likely to describe it, 27 Essex Road is the house next door to the Premises. There can be little doubt that if the owner of that house were asked their address, their answer would be 27 Essex Road. In a similar vein, the Tribunal considers that if the lessees of Flats 27A or 27B were to be asked their address, they would be likely to say the given flat: they would be unlikely to say 27 Essex Road, which they would know as the house next door.
82. The object of the Applicant as set out in its Articles is to acquire the right to manage 27 Essex Road. Either that means the house alone or it means the house and the two Flats- and only the later if 27 Essex Road can properly be taken to encompass Flats 27A and 27B as well as 27 itself. It cannot sensibly be interpreted as meaning the Premises only, therefore only Flats 27A and 27B Essex Road, because it makes no mention of those and they are either only part of 27 Essex Road or are none of it at all.

83. The Tribunal considers that there cannot be said to be ambiguity such that it can be presumed that the intention was to acquire the Premises and hence the property to be the subject of acquisition of the right to manage can be found to be sufficiently defined. To the extent that 27 Essex Road as a description can be termed ambiguous, it is ambiguous as to whether it is the house alone or the house and Flats 27A and B Essex Road combined.
84. To find a definition of 27 Essex Road as excluding the property known as 27 Essex Road and as in fact meaning only the separate premises comprising Flats 27A and B Essex Road goes beyond ambiguity.
85. The Applicant is not entitled to acquire 27 Essex Road the house and cannot be an RTM company in respect of 27 Essex Road even if that is taken to include Flats 27 A and B as well as the house.
86. It also necessarily follows that the Applicant company is not, by its objects in its Articles or otherwise, entitled to acquire any part of flats 74 and/ or 76, which is not mentioned in its objects at all.
87. It appears to the Tribunal regrettable that in the knowledge of there being a house known as 27 Essex Road, the object of the Applicant company- and indeed it might be said the name of the company- was not more carefully defined. It is also regrettable that the description of the property claimed to be able to be acquired in the Articles and the description in the Claim Notice are quite different. However, that is a matter for the Applicant.
88. Ultimately, nothing turns on the issues with the Premises the right to acquire the management of was sought, given that in relation to the Respondent's case that the Premises are not self- contained, the Tribunal agrees with the Respondent and that is sufficient on its own to decide the application.
89. The Premises are not detached but rather is the end one of a row of properties. Whilst it has no direct relevance, the premises look to have been an addition built to the side of the house known as 27 Essex Road. That house appears to have been built at the same time as the remainder of the row and in the same style as the remainder of the row.
90. A building is a self-contained building if it is structurally detached. That is not quite the same as actually detached. There can be some attachment to another property provided that is non-structural. However, in this instance, it is clear that the Premises are attached to the house next to them structurally and otherwise.
91. The Premises are not a self-contained building. Rather they are part of a building, which includes the house at 27 Essex Road and any other linked structures in the row.

92. Neither can it be said that the Premises is a self-contained part of a building. In order to be, there has to be a vertical division which can be developed independently of the remainder of the building. It has been held by the Lands Tribunal in *Re Holding and Management (Solitaire) Ltd* [2008] L.&T.R. 16 that this means a strict vertical divide and that any (other than de minimis) deviation disqualified a property from the right to manage. Separate development means that it can be demolished and something else built in its place without damaging the structure of the remainder of the building or requiring significant development work to be carried out to the remaining part.
93. The issue particularly arises in relation to part of Flat 27B extending over part of the ground floor of the house at 27. It is abundantly clear from the fact that Flat 27 B extends over part of 27, that there is not a vertical divide.
94. It is doubtful that the Premises could be separately developed either, although in the circumstances that issue does not arise.
95. Even if the Applicant had defined that which it claimed to be entitled to acquire differently, or even if the Tribunal is wrong in its determination in respect of that, the application necessarily fails because the Premises are neither a self-contained building or part of a building.
96. There is potentially another question as to services which arises from the Respondent's case. The Tribunal's initial view is that the application would not fail for that reason. However, in the circumstances, it is unnecessary to seek to answer that question and so the Tribunal says no more about it.
97. The Premises do not therefore meet the requirements in section 72 of the Act. It necessarily follows that the Applicant's application fails.
98. The application is dismissed.

Elements vi) and vii) raised by the Respondent in the counter-notice

99. The Tribunal considers that it can deal with these matters- outstanding money and other properties on what the Respondent describes as "the site" in short order, both because nothing turns on them in light of the above and generally.
100. The Respondent has not identified which sections of the Act the matters are said to relate to. Whilst they are listed in the counter-notice, it is not identifiable the Respondent has sought to make comments in his statement of case in relation to the elements. It may be that the issue about other properties being "on site" alluded to the issue identified by the Tribunal as to the extent of the title which the Claim Notice claims the Right to Manage.

101. If so, the Tribunal need not add to the matters addressed above. If not and the Respondent sought to refer to a different issue, it appears to the Tribunal that the Respondent raised the matters in the counter-notice but that they no longer form part of his case for the purpose of this application.

102. In any event and in light of the determinations made more generally, the Tribunal considers therefore that no matters requires determination for the purpose of this application. However, in case the Tribunal is wrong in that regard, the Tribunal also determines that neither element as presented on the limited basis advanced raises an available ground of opposition to the application pursuant to the Act. Therefore, those elements fail.

Applications in respect of costs and refund of fees

103. The Respondent is not ordered to reimburse the Applicant with the £100 Tribunal application fee.

104. The Applicant has failed in its application. The application was always bound to fail in relation to section 72- the Premises could not ever have been properly argued to be self- contained where they plainly are not.

105. Whilst the Respondent has failed in certain of its challenges to the Applicant's case, that cannot detract from the fact that the Applicant has been unsuccessful in its application and cannot therefore be entitled to have the Respondent pay the fee that it incurred in bring an unsuccessful claim.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking