



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

Case reference : **CAM/22UG/LRM/2021/0004&5**
HMCTS Code : **P:PAPERREMOTE**

Property : **14-19 and 6-13 Darkhouse Lane,
Rowhedge, Essex CO5 7HJ**

Applicant : **Darkhouse B2 RTM Company Ltd
and
Darkhouse B3 RTM Company Ltd**

Representative : **RTMF Services Limited**

Respondent : **Legra Investments Limited**

Representative : **Tolhurst Fisher LLP**

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

Tribunal member(s) : **Judge Wayte**

Date : **28 March 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not necessary and all issues could be determined on paper. I have considered submissions made by both representatives in accordance with the directions. The order made is described below.

(1) The tribunal determines that both applicants were on the relevant date entitled to acquire the right to manage the relevant premises pursuant to section 84(5)(a) of the Commonhold and

Leasehold Reform Act 2002, and the applicants will acquire such right three months after this determination becomes final.

(2) The tribunal also orders the respondent to pay the applicants £200 in respect of their tribunal fees.

The applications

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, Darkhouse B2 RTM Company Ltd (“Darkhouse B2”) was entitled to acquire the Right to Manage (“RTM”) premises known as 14-19 Darkhouse Lane, Rowhedge, Essex CO5 7HJ (“Block 2”) and that Darkhouse B3 RTM Company Ltd (“Darkhouse B3”) was entitled to acquire the RTM premises known as 6-13 Darkhouse Land, Rowhedge, Essex CO5 7HJ (“Block 3”).
2. By separate claim notices both dated 18 August 2021, the applicants gave notice to the respondent that they intended to acquire the right to manage the respective premises on 5 January 2022.
3. By counter-notices both dated 23 September 2021, the respondent disputed the claim. Two objections were raised under the 2002 Act: non-compliance with section 79(5), which refers to the membership of the RTM company and section 72(2) and (3) which refers to the premises.
4. The applications were made on 19 November 2021. Directions were issued on 17 January 2022 for a paper determination in the absence of a request for a hearing. No such request was received.
5. The relevant provisions of the 2002 Act are set out in an annex to this decision.

The respondent’s case

6. The respondent’s statement of case dated 17 February 2022 retracted its challenge under section 79(3). However, it maintained its allegation that the applicants were not entitled to acquire the RTM by reason of section 72(1) and 72(3) of the 2002 Act. The argument being that as each block was capable of vertical division into further self-contained parts, they were not premises to which the RTM applied.
7. The respondents provided copies of the lease plans for flat 7 in Block 3 and flat 16 in Block 2. Their argument was that both blocks could be vertically divided into three self-contained parts and services provided independently to the newly separated flats without significant interruption in the provision, satisfying section 72(3)(c).
8. They relied on the Court of Appeal decision of *Ninety Broomfield Road RTM Co. Ltd v Triplerose Ltd* [2015] EWCA Civ 282 which they stated held that a single RTM Company can only manage one self-contained

building or part of a building and not more. The applications were in respect of premises which consisted of a number of self-contained parts of a building of which there would need to be a separate RTM Company and claim brought in respect of each self-contained part of the building.

The applicants' reply

9. The applicants' statement of case dated 22 February 2022 maintained that the 2002 Act does not require premises to be broken down into its smallest possible self-contained part, unless any self-contained part is in different freehold ownership. They relied on the Court of Appeal decision in *Crafrule Ltd v 41-60 Albert Mansions (Freehold) Ltd* [2011] EWCA Civ 185. Although this case concerned sections 3 and 4 of the Leasehold Reform, Housing and Urban Development Act 1993, the wording is identical to section 72 (1) and (2). The Court of Appeal held that the phrase "self-contained part of a building" in the 1993 Act does not mean that a self-contained part of a building must be the smallest self-contained part of the building in question.
10. In this case, the two applicant companies each seek the RTM a self-contained building or block. They submitted that *Ninety Broomfield Road* is irrelevant in such circumstances.
11. The applicants sought a refund of their application fees of £200 as they had clearly set out their case in respect of each objection by letter dated 14 October 2021, before they made their application to the tribunal on 19 November 2021. The respondent had admitted receiving that letter in its statement of case and should have withdrawn both objections at that stage.

The tribunal's decision and reasons

12. I agree with the applicants that these are very straightforward RTM claims. Section 72 is clear on its face that the RTM applies to premises which consist of a self-contained building **or** (my emphasis) part of a building. It follows that the RTM can be sought for either arrangement, with the flexibility in favour of the applicants rather than a valid ground of objection for the respondent. The only exception is where the freehold ownership is split between different parts of the premises, which has not been argued here (Schedule 6, paragraph 2).
13. That interpretation has of course also been confirmed by the Court of Appeal in *Crafrule* in respect of the equivalent enfranchisement provisions in the 1993 Act.
14. For the avoidance of doubt *Ninety Broomfield Road* is of no assistance to the respondent as its focus was whether a RTM company could manage more than one set of "premises", which on the facts of the cases considered by the Court of Appeal referred to more than one block. Here, each RTM company applies in respect of each block.

15. I therefore determine that Darkhouse B2 was on the relevant date entitled to acquire the right to manage Block 2 and Darkhouse B3 was on the relevant date entitled to acquire the right to manage Block 3, both pursuant to section 84(5)(a) of the Act.
16. Therefore, in accordance with section 90(4), the acquisition date is the date three months after this determination becomes final. 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.”
17. I also agree with the applicants that this is an appropriate case to exercise the tribunal’s discretion under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to order the respondent to reimburse the application fees of £200. On receipt of the applicants’ letter dated 14 October 2021 a reasonable respondent would have conceded both grounds of objection without putting the applicants to the expense of issuing these applications.

Name: Judge Wayte

Date: 28 March 2022

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).

Annex: Commonhold and Leasehold Reform Act 2002 (excerpts)

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.

SCHEDULE 6

PREMISES EXCLUDED FROM RIGHT TO MANAGE

Buildings with self-contained parts in different ownership

2 Where different persons own the freehold of different parts of premises falling within section 72(1), this Chapter does not apply to the premises if any of those parts is a self-contained part of a building.