FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference **HMCTS Code**	**:**	**CAM/00KB/LRM/2021/0003** **P:PAPERREMOTE**
Property	**:**	**19-25 Pendennis Road & 48-54 Dover Crescent, Bedford MK41 8NJ**
Applicant	**:**	**19-25 Pendennis Road & 48-54 Dover Crescent RTM Company Limited**
Representative	**:**	**Vestra Property Management Limited**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Scott Cohen Solicitors Limited**
Type of application	**:**	**Application in relation to the denial of the Right to Manage**
Tribunal member(s)	**:**	**Judge Wayte**
Date	**:**	**12 April 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 the applicant was on the relevant date entitled to acquire the right to manage the relevant property pursuant to section 84(5)(a) of the Commonhold and Leasehold

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

(2) The tribunal also orders the respondent to pay the applicant £100 in respect of the application fee.

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 Right to Manage (RTM) company was entitled to acquire the RTM premises known as 19-25 Pendennis Road & 48-54 Dover Crescent, Bedford MK41 8NJ ("the property").

2. By a claim notice dated 6 August 2021, the applicant gave notice to the respondent that it intended to acquire the right to manage the property on 12 December 2021.

3. By counter-notice dated 7 September 2021, the respondent disputed the claim. Two objections were raised under the 2002 Act: firstly that the property did not comply with the definition of premises in section 72(1) and secondly that by reason of 73(2), that the Company was not a RTM company as defined by that section. No further particulars were provided.

4. The applicant's representative attempted to seek further information in order to avoid the costs of an application to the tribunal but in the absence of the respondent's agreement, an application was made on 15 October 2021.

5. Directions were issued on 13 December 2021. In view of the objection as to the property, they stated that the Judge would decide whether an inspection and/or hearing was necessary having received the bundles. Dates were subsequently sought for an inspection in March or April but the respondent was apparently unable to attend before June 2022. In view of the delay, the tribunal decided to inspect the property without the parties on 5 April 2022. No request was received for a hearing and, in the light of the inspection, the tribunal decided one was unnecessary. The matter has therefore been determined on the basis of the written submissions filed in accordance with the directions.

6. The relevant provisions of the 2002 Act are set out in an annex to this decision.

The respondent's case

7. The respondent's statement of case dated 4 January 2022 maintained both grounds of objection. In terms of whether the property qualified as premises under section 72(1) of the 2002 Act, it stated that "*there is prima facie evidence that the premises constitute multiple buildings*". No explanation of that statement was provided but the next paragraph maintained that "*as far as the respondent is aware, there is also a*

vertical division between the Pendennis Road and Dover Crescent properties", with separate entrances and car parks.

8. The respondent quoted the Court of Appeal decision of *Ninety Broomfield Road RTM Co. Ltd v Triplerose Ltd* [2015] EWCA Civ 282 as authority that the RTM only applies to a single block or self-contained part of a block and contended it was for the RTM company to prove that the elements of its case were made out.

9. The second ground of objection referred to the identification of the premises in the articles of association and claim notice as extending past the premises contained in the freehold title. In particular, the description of 19-25 Pendennis Road & 48-54 Dover Crescent without distinguishing odd/even as per the title, included properties that were outside the ownership of the respondent. In the circumstances the respondent stated as the identification of the premises was ambiguous, the company had failed to meet section 73(2) of the 2002 Act.

10. The respondent's bundle included a copy of the freehold title and plan, photographs of the property and a plan from a sample lease.

The applicants' reply

11. The applicant's statement of case, prepared by Wallace LLP, was dated 26 January 2022. The background section referred to the correspondence before the application, with Vestra Property Management requesting details of the respondent's objections on 4 October 2021. No response was received and therefore the applicant was forced to issue proceedings to seek a determination from the tribunal.

12. The applicant stated that the question of whether or not premises in respect of which an RTM is claimed comprises a self-contained building is an issue of fact and degree, which depends on the nature and degree of any attachment between the subject building and any other adjoining structures – see the discussion at pages 89-106 of the Upper Tribunal decision in *Albion Residential v Albion Riverside Residents RTM Company* [2014] UKUT 0006.

13. In this case, the applicant submitted that the eight flats at the property are all contained within the same footprint of the building under one continuous roof and the building is not attached, structurally or otherwise, to any other building. The property was therefore structurally detached and therefore, pursuant to section 72(2) is a self-contained building for the purposes of the 2002 Act. The submissions were supported by Google Earth photographs showing an aerial view and the view from Dover Crescent and Pendennis Road respectively.

14. In addition to that photographic evidence, the applicant relied on the leases which refer to eight flats, sharing all relevant services. The service charges themselves are split eight ways and treat the building containing the flats as a single building. The respondent's agents have

issued demands in accordance with the leases which the applicant submitted provides evidence that the landlord also treats the property as a single self-contained building for the purposes of recovering expenditure. Copies of the demands were included in the bundle.

15. The respondent's suggestion that 19-25 Pendennis Road and 46-54 Dover Crescent are two separate self-contained premises because they are vertically divided and have two separate entrances was wrong at law, misconceived and spurious. The test to determine whether a property is a self-contained building for the purposes of the 2002 Act is purely physical and the fact that a building might be able to be vertically divided immaterial.

16. Even if Pendennis Road and Dover Crescent were considered to be two separate self-contained premises, which was denied, the applicant relied on *Craftrule Ltd v 41-60 Albert Mansions (Freehold) Ltd* [2011] EWCA Civ 185 as establishing that properties which are separate self-contained premises could join together to acquire the freehold title, provided that the united structure was a self-contained building and that the relevant number of participators were involved. Although this decision concerned section 3 of the Leasehold Reform, Housing and Urban Development Act 1993, the wording mirrors that of section 72 of the 2002 Act. Here, there are 6 participators, the requisite majority of both the Pendennis and Dover flats and therefore the property would meet the *Craftrule* test.

17. On the argument under section 73(2), the applicant stated there was no ambiguity in the definition of the premises in the articles of association. The demands for payment of service charges used the same address without reference to odd and even numbers and the specific postcode was stated in the articles. There are no properties numbers 49, 51 or 53 Dover Crescent and the properties at 20, 22 and 24 are separate terraced houses with different postcodes.

18. Even if there was any ambiguity, which was denied, the applicant submitted that the definition must be interpreted to give it the meaning which is more consistent with the intention of the members of the applicant in incorporating the RTM company – see *Avon Ground Rents Limited v 51 Earls Court Square RTM Company Limited* [2016] UKUT 0022. Clearly, the members did not intend the definition of the premises to include the three non-existent properties at 49, 51 and 52 Dover Crescent nor the three terraced houses at 20, 22 and 24 Pendennis Road.

19. The directions permitted the respondent to reply to the applicant's statement of case but no such document was received.

The inspection

20. The tribunal attended the property at 3pm on Tuesday 5 April 2022. The RTM directors were there to allow access to the common parts, as requested. The property, which is arranged on two storeys, was built in

or about the 1990s and as shown by the photographs, has an unusual configuration, similar to the letter Z but on its side. However, it was clearly a single detached building, with a single roof structure, albeit with two entrances as is clear from the address. The tribunal were able to walk around the building on one side and see down the other side which is divided only by a timber fence at ground level. The meters for the services to Pendennis Road are in a cupboard on one side of the building and the meters for Dover Crescent in a similar cupboard on the opposite side. Any vertical division was not obvious from the outside or the common parts.

The tribunal's decision and reasons

21. In the circumstances, the tribunal is clear that there is no argument in respect of section 72(1). Even if the property can be vertically divided, the tribunal agrees with the applicant's submissions that the premises would still meet the definition in section 72. *Craftrule* is clear that there is no requirement to reduce the building to its smallest self-contained part.

22. The tribunal agrees with the applicant that the respondent's argument in respect of the identification of the premises in the articles is disingenuous, particularly given its agents' use of the same address to demand service charges for the property. Even if there was any ambiguity, any doubt would be resolved in favour of the applicant following *Avon Ground Rents v 51 Earls Court Square*.

23. The tribunal therefore determines that the applicant was on the relevant date entitled to acquire the right to manage the property.

24. 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—
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> (a) if not appealed against, at the end of the period for bringing an appeal, or
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> (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of."

25. Given the weak arguments made by the respondent and their failure to engage with the applicant's representative prior to the application being made, the tribunal considers 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 £100.

Name: Judge Wayte **Date:** 12 April 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.

73RTM companies

(1)This section specifies what is a RTM company.

(2)A company is a RTM company in relation to premises if—

(a)it is a private company limited by guarantee, and

(b)its articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.