FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KB/LRM/2021/0003**
HMCTS code (paper, video, audio)	**:**	**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 for permission to appeal**
Tribunal member(s)	**:**	**Judge Wayte**
Date of decision	**:**	**7 June 2022**

DECISION REFUSING PERMISSION TO APPEAL

Covid-19 pandemic: description of determination

This has been a determination on the papers A face-to-face hearing was not held because no-one requested one and all issues could be determined on paper in accordance with the usual practice for dealing with applications for permission to appeal.

DECISION OF THE TRIBUNAL

1. The tribunal has considered the respondent's request for permission to appeal dated 10 May 2022 and determines that:

(a) it will not review its decision; and

(b) permission be refused.

2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the respondent may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

3. Where possible, you should send your further application for permission to appeal **by email** to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.

4. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

REASONS FOR THE DECISION

5. The test for whether to grant permission to appeal is whether there is a realistic prospect of success.

6. In the present case, the tribunal does not consider that any ground of appeal has a realistic prospect of success.

7. For the benefit of the parties and the Upper Tribunal (Lands Chamber), the tribunal records below its comments on the grounds of appeal and any procedural points raised, adopting where appropriate the paragraph numbering of the original request for permission. References in square brackets are to those paragraphs in the main body of the original tribunal decision.

8. The respondent originally objected to the application for the Right to Manage (RTM) the property on two grounds. The Grounds for Appeal take issue with the decision dated 12 April 2022 in only one respect, the dismissal of the respondent's ground of objection which stated that "*there is prima facie evidence that the premises constitute multiple buildings*". The respondent relied on the Court of Appeal decision in *Triplerose Ltd v Ninety Broomfield Road RTM Co Ltd* [2015] EWCA Civ 282 "*which held that the RTM only applies to a single block or self-contained part of a block*" (Respondent's Statement of Case paragraphs 7 and 11).

9. As stated in the decision, the tribunal inspected the property and came to the conclusion that it was a single detached building [paragraph 20]. The tribunal was not satisfied that the property was vertically divided but referred to the Court of Appeal decision in *Craftrule Ltd v 41-60*

Albert Mansions (Freehold) Ltd [2011] EWCA Civ 185 concerning the interpretation of identically worded provisions in the Leasehold Reform, Housing and Urban Development Act 1993, when deciding that as a matter of statutory construction even if the property was so divided, it would still meet the statutory test set out in section 72 of the 2002 Act [paragraph 21].

10. The respondent's Grounds of Appeal develop their argument as to the application of *Triplerose*, relying on Lady Justice Gloster's conclusion in paragraph 62 which states "*Accordingly in my view it is not open to an RTM company to acquire the right to manage more than one self-contained building or part of a building*." They say that means that the RTM in this case is restricted to only part of the property as the vertical division means that it is more than one self-contained part. They also argue that *Craftrule* is limited to the 1993 Act.

11. Firstly, it was for the respondent to establish that the property was vertically divided. They failed to discharge that burden, merely arguing that there was "*prima facie evidence*" and pointing to one of the lease plans, which was of limited assistance. Having inspected the property, I came to the conclusion that it was a single detached building which met the definition in section 72(1) of the 2002 Act. It is important to note that section 72(2) states that "*a building is a self-contained building if it is structurally detached*".

12. In any event, I do not accept that their interpretation of *Triplerose* is correct. That decision considered three appeals, all involving estates of separate blocks where the RTM had been upheld in relation to more than one block. The conclusion of Lady Justice Gloster, which merely reflects the statutory wording, has to be read with that context in mind. This decision involves a single detached block of flats. Secondly, Lady Justice Gloster accepted that support can be derived from the 1993 Act. In paragraph 59 of her judgment she states that "*the qualifying conditions are otherwise identical*". In particular, section 3, which uses the same wording for "*premises*" as section 72 of the 2002 Act.

13. The *Craftrule* decision is also referenced in Tanfield Chambers' text on *Service Charges and Management* (5th Edition) at paragraph 23-15 with the conclusion that: "*It follows that the right to manage might be sought globally for a contiguous series of non-detached buildings such as a row of mansion blocks, so long as the whole may reasonably be called one "building" and so long as all parts are in the same freehold ownership*". This case is much simpler, involving a single detached building owned by the respondent. If *Craftrule* and *Triplerose* are contradictory, which is not accepted, this case is not in my view the one to test that hypothesis.

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DECISION OF THE TRIBUNAL

1. The tribunal has considered the respondent's request for permission to appeal dated 10 May 2022 and determines that:

(a) it will not review its decision; and

(b) permission be refused.

2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the respondent may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

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REASONS FOR THE DECISION

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7. For the benefit of the parties and the Upper Tribunal (Lands Chamber), the tribunal records below its comments on the grounds of appeal and any procedural points raised, adopting where appropriate the paragraph numbering of the original request for permission. References in square brackets are to those paragraphs in the main body of the original tribunal decision.

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