



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

Case Reference : CHI/21UD/LRM/2022/0006

Property : Highkilm, 2 Tilekilm Lane, Hastings,
East Sussex, TN35 5EN

Applicant : Highkilm RTM Company Ltd

Representative : Dudley Joiner, RTMF Services Ltd

Respondent : Tapestart Limited

Representative : Ben Hammond, solicitor, Compton Group

Type of Application : Commonhold and Leasehold Reform Act
2002 (Right to Manage)

Tribunal Member : Judge Mark Loveday

Date and venue of hearing : 18 April 2023 (remote hearing)

Date of Decision : 25 May 2023

DETERMINATION

Introduction

1. The applicant RTM company seeks a declaration under s.84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that it is entitled to acquire the right to manage. The sole issue is whether on the relevant the membership of the applicant company included sufficient qualifying tenants. For the reasons given below, the tribunal finds there was a sufficient number of members on that date, and that the applicant is therefore entitled to acquire the right to manage.

Background

2. The matter relates to premises at Highkilyn, 2 Tilekilyn Lane, Hastings, East Sussex, TN35 5EN, which it is accepted were qualifying premises under s.72 of the Act. It is unnecessary to describe the premises for the purposes of this application, save to say that it is common ground that at all material times they comprised 13 flats held by qualifying tenants. The respondent is the freehold owner of Highkilyn and landlord for the purposes of s.79(6) of the Act.
3. Throughout the process of exercising the right to manage, the applicant and the lessees of the flats were assisted by Right to Manage Services Ltd (“RTMF”), which also became the Applicant’s company secretary. Before registering the applicant at Companies House, RTMF asked interested leaseholders to complete a form headed “RTM Consent Form”. This form named the premises, stated that the signatory was a sole or joint leaseholder and supplied the address of the flat. There were two boxes for the names of the leaseholders “(Name)” and “(Name 2)”. In the body of the form, it asked signatories to confirm seven statements as follows:

“I/we confirm that in accordance with my/our legal right under the Commonhold and Leasehold Reform Act 2002 I/we support the proposal to engage the services of the RTMF to act for leaseholders and form a Right to Manage Company”

I/we agree to become member(s) of the company and note that my/our total liability is limited to £1

I/we agree to pay my/our contribution to RTM costs

I/We understand that additional costs may be incurred if our RTM claim is challenged by counter-notice.

I/We agree that RTMF shall act as corporate secretary of our RTM company and shall be authorized to sign all notices on the companies [sic] behalf.

I/we understand that the RTM Company will be liable for the landlord’s reasonable costs in consequence of our RTM claim.

I have consulted all other joint owners of my flat (if applicable) and they all consent to the terms of this consent form.”

At the bottom of the form was a tick box with the words “By ticking this box, I the applicant, agree to the terms and conditions and declare that the information given in this consent form is correct to my knowledge”. Between

10 and 17 August 2022, 11 forms were completed and digitally signed by various lessees.

4. The applicant was incorporated for the purposes of acquiring the right to manage the premises on 25 August 2022 (Co. No.14318790). A copy of its articles in prescribed form was provided to the tribunal. The initial subscribers were David Martin (Flat 1), Colin Gilkerson (Flat 3), Peter Humphreys (Flat 4), Nigel Mansley (Flat 10) and Colin Faucherand (Flat 12).
5. Shortly afterwards, RTM Services, as company secretary, prepared a register of members. A copy of which was provided to the tribunal, which showed the membership updated to 15 September 2022.
6. The applicant then gave the qualifying tenants Notices Inviting Participation under s.78 of the Act, and there is no dispute about the validity of these. On 7 October 2022 the applicant gave the respondent a s.79 Notice of Claim, and this is therefore the “relevant date” for the purposes of the Act. The respondent gave a counternotice on 14 November 2022 disputing the right to manage.
7. The applicant applied to the tribunal for the appropriate declaration on 25 November 2022. Directions were given on 30 January and 24 March 2023, and the parties each served statements of case. The matter was then listed for a remote video hearing on 18 April 2023. At the hearing, the applicant was represented by Mr Dudley Joiner of RTMF, and the respondent was represented by Mr Ben Hammond, in house solicitor at the Compton Group. Mr Joiner provided a helpful skeleton argument and both representatives were asked to address the tribunal about the material legislation and caselaw. The tribunal is grateful to both representatives for their succinct and helpful submissions.

The legislative scheme

8. The principal requirement under s.79(3) and (4) of the Act is that:
 - “(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
 - (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
 - (5) In any other case, **the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.**”
9. Membership is covered by s.74 of the Act. Section 74(1) deals with entitlement to membership, not the process by which a person becomes a member, the latter being covered by regulations made under s.74(2). The material regulations are the RTM Companies (Model Articles) (England) Regs 2009, which prescribe the model articles for RTM companies at Sch.1.
10. The material provisions of the model articles are as follows:
 - Becoming a member**

26.—(1) Every person who is entitled to be, and who wishes to become, a member of the company shall deliver to the company an application for membership executed by him in the following form (or in a form as near to the following form as circumstances allow or in any other form which is usual or which the directors may approve):

To the Board of [name of company] I, [name] of [address] am a qualifying tenant of [address of flat] and wish to become a member of [name of company] subject to the provisions of the Articles of Association of the company and to any rules made under those Articles. I agree to pay the company an amount of up to £1 if the company is wound up while I am a member or for up to 12 months after I have ceased to become a member. Signed Dated

(2) No person shall be admitted to membership of the company unless that person, whether alone or jointly with others, is—

(a) a qualifying tenant of a flat contained in the Premises as specified in section 75 of the 2002 Act; or

(b) from the date upon which the company acquires the right to manage the Premises pursuant to the 2002 Act, a landlord under a lease of the whole or any part of the Premises.

(3) Membership of the company shall not be transferable.

(4) A person who, together with another or others, is to be regarded as jointly being the qualifying tenant of a flat, or as jointly constituting the landlord under a lease of the whole or any part of the Premises, shall, once admitted, be regarded as jointly being a member of the company in respect of that flat or lease (as the case may be).

(5) Applications for membership by persons who are to be regarded as jointly being the qualifying tenant of a flat, or who jointly constitute the landlord under a lease of the whole or any part of the Premises, shall state the names and addresses of all others who are jointly interested with them, and the order in which they wish to appear on the register of members in respect of such flat or lease (as the case may be.)

(6) The directors shall, upon being satisfied as to a person's application and entitlement to membership, register such person as a member of the company.”

Art.27 deals with ceasing to be a member:

“27.—(1) A member who at any time fails to satisfy the requirements for membership set out in article 26 shall cease to be a member of the company with immediate effect.”

11. Finally, the tribunal should mention ss.112 and 127 of the Companies Act 2006, which state:

“112 The members of a company

(1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.

...

127 Register to be evidence

“127. The register of members is prima facie evidence of any matters which are by this Act directed or authorised to be inserted in it...”

The dispute

12. Given the number of flats in the premises, it was accepted that the applicant would succeed if it could establish the qualifying tenants of 7 flats were members on 7 October 2022. The applicant’s case is that the tenants of 11 out of the 14 flats were members on that date. The respondent’s argument is that only one qualifying tenant was a member of the applicant company.
13. The tribunal will consider in turn the arguments in relation to each flat.

Flat 1 (Mr Martin)

14. On the relevant date, the registered proprietor of Flat 1 was David Jon Martin. He was also a subscriber to the applicant’s memorandum. In the statements of case, and before the tribunal, it was common ground that Mr Martin was the qualifying tenant of Flat 1 on the relevant date.

Flat 2 (Mr and Mrs Spencer)

15. On 17 August 2022, an RTM Consent Form was digitally signed, that gave the details of the registered owners of Flat 2 in two boxes as “(Name) Michael Spencer” and “(Name 2) Michael Spencer”. On the relevant date, the joint registered proprietors were Janet Spencer and Michael Spencer, and the register of members recorded them both as members.
16. The applicant’s primary case relied on the statutory presumption in s.127 of the Companies Act 2006 that the register of members was *prima facie* evidence of membership, and that in this instance the names in the register corresponded to the names in the register of title. The burden therefore lay on the Respondent to displace the presumption of membership.

The Respondent’s case

17. Mr Hammond submitted that there was a “golden thread” which ran through from the incorporation of a RTM company to the appearance of a name in the register of a members which was prescribed by the Act, the Companies Acts and the model articles.
18. In relation to the RTM Consent Form, the respondent identified various points which it suggested rendered it “ineffective” as an application for membership under Art.26(1):
 - a. It pre-dated the date of incorporation of the applicant. The prospective members were therefore unable to “deliver” it the company.
 - b. It did not state that each respective prospective member of the applicant company was a qualifying tenant of the relevant flat.

- c. The prospective members did not agree to contribute the sum guaranteed for a period of 12 months after he or she ceased to be a member.
19. There was also no evidence (by way of minuted board resolutions) that the directors had ever considered and approved the membership applications, as required by Art.26(6).
20. In the specific case of Flat 2, the respondent advanced a further argument. The Flat 2 RTM Consent Form named only Mr Spencer, and not both joint qualifying tenants. The RTM Consent Form did not therefore contain the information required by Art.26(5). Mrs Spencer had never applied for membership, and Mr Spencer alone was not the qualifying tenant of the flat.
21. For all these reasons, the membership application was ineffective, whatever was said in the register of membership. The applicant pointed to various alleged discrepancies in the register which indicated that the applicant had failed to maintain the register properly. The register was a “false representation of law and fact made dishonestly by the applicant’s company secretary” (para 27 of the respondent’s statement of case), and it was not therefore conclusive.
22. The respondent had suffered prejudice as a result of the failings of the applicant to maintain a proper register of members and/or to admit members when there was no lawful basis for admission. In para 35 of its statement of case, the respondent cited two examples, namely (1) that there was now a risk that the premises would not be insured by the applicant, and (2) that a lessee might later claim the right to manage was invalidly exercised and then seek remedies against the respondent for breach of its covenant to provide services.

The Applicant’s case

23. Mr Joiner started by referring to the approach to alleged procedural defects in right to manage applications laid down by the Court of Appeal in *Elim Court v Avon* [2017] EWCA Civ 89; [2018] QB 571¹. In relation to the various general criticisms of the RTM Consent Forms, he said:
 - a. There was nothing in Art.26(1) which stated when an application for membership had to be signed or delivered to the company. There was nothing to stop the application form from being completed before incorporation and then delivered to the company after incorporation. The forms in this case had a dual function of (i) an Art.26(1) membership application and (ii) an agreement to become a member under s.78(1)(b) of the Act. He referred to the decision in *Milton House (Newton Abbot) RTM Co v Avon* (CHI-18UH-LRM-2014-0007), where a tribunal had found (at para 67) that an application for membership “signed prior to the formation of a company” was valid.

¹ Tribunal note: For a recent summary of the principles in *Elim Court* (and the earlier decision in *Natt v Osman* [2014] EWCA Civ 1520; [2015] 1 W.L.R. 1536), see *Eastern Pyramid Group Corporation SA v Spire House RTM Co* [2021] EWCA Civ 1658; [2021] W.L.R. 503 at [36] to [40].

- b. Mr Joiner did not accept that the RTM Consent Forms did not meet the requirements of Art.26(1).
 - c. In any event, the articles plainly envisaged a degree of flexibility in the form of application for membership. The specific words in Art.26(1) only provided a “simple template”. The RTM Consent Forms used in this case made it clear that the relevant qualifying tenants wanted to become members of the RTM company and they accepted the responsibilities of a member of a company limited by guarantee. The forms were “as near to the [wording set out in Art.26(1)] ... as circumstances allow” and/or they were in another “form which is usual”. The same ap[plied to Art.26(5).
 - d. In any event, applying the principles in *Elim Court*, any failure to comply with Art.26(1) (or indeed Art.26(5)) was not fatal to the right to manage.
24. In relation to Art.26(6), the directors delegated their functions under Art.10(1) to the company secretary.
25. As to the specific RTM Consent Form used for Flat 2, it contained an obvious mistake on its face. The form included Mr Spencer’s name twice. The reasonable recipient of the application form would have had no doubt about the intention behind the notice, which was that both joint lessees wished to be members. The RTM Consent Form for Flat 2 engaged the rule in *Mannai Investments v Eagle Star Assurance* [1997] UKHL 19; [1997] AC 749.

Discussion

26. The tribunal starts with the general arguments about the RTM Consent Forms.
27. It agrees with the applicant’s submissions that Art.26(1) is intended to be applied flexibly. A literal reading suggests there are four options for a membership application, namely:
- a. a form which uses the precise words set out in Art.26(1);
 - b. a form “as near to [that form] as circumstances allow”;
 - c. a form “which is usual”; or
 - d. a form “which the directors may approve”.
- It is significant that (unlike the first option), the third and fourth options contain no minimum content requirements for an application form. Neither is there any automatic sanction for non-compliance with Art.26(1), other than no doubt permitting a refusal of an application for membership under Art.26(6).
28. By all accounts, the RTM Consent Form in this case was devised as a dual function document, and it has apparently been used for every flat at Highkiln. It has therefore been adapted for those “circumstances”. Moreover, it is “near” to the formula used in the indented words of Art.26(1), because it conveys the essential information specified in the articles. It identifies the qualifying tenant(s) and the flat, states the wish to become a member of the RTM company, and accepts a liability limited to £1. There is no express statement that the member will be bound by the articles, but that is implicit in

membership. The tribunal is therefore satisfied the RTM Consent Forms meet the second option set out above.

29. But if not, the form is “usual”, in the sense that it has been used (and has been accepted) as an application for membership for every single flat. It therefore meets the third option under Art.26(1) as well.
30. As to the timing of the forms, the tribunal has no hesitation in rejecting the respondent’s arguments on that point. The tribunal is not bound by the decision of the previous tribunal in *Milton House* but finds the reasoning in that decision persuasive. Moreover, the words of Art.26(1) simply do not sustain the respondent’s argument about timing. There is nothing in Art.26(1) which concerns the signing or date of the application for membership, and it is common enough for property notices of all kinds to be prepared and signed in advance of the date for service. Neither does Art.26(1) require the application to be conveyed to the company as soon as it is signed. It is not therefore impossible to meet the required conditions with a membership application signed before the RTM company is registered.
31. The tribunal further considers the words used in the RTM Consent form comply with the Art.26(5). The boxes allow space for the names of the persons who are jointly interested with the first named qualifying tenant, and the number by the second box plainly shows the order in which the joint tenants wish to appear on the register of members. Art.26(5) is notable in not requiring all qualifying tenants to sign the application for membership. The other owners only need to be named.
32. Finally, even if the RTM Consent Forms did not meet the requirements of Art.26(1), the tribunal has regard to the *Natt v Osman* principles (as applied by *Elim Court*). In particular, the form of an application under Art.26(1) is ancillary to the fact of membership under s.79. The requirements of Art.26(1) are not a requirement of primary legislation, but of subsidiary regulations. The tribunal does not agree that the kind of prejudice identified by the Applicant is either relevant to the *Natt v Osman* test, or that it exists at all. Only prejudice “in its generic sense” is relevant to the test (see *Elim Court* at [56]) and the two instances of prejudice given by the respondent above are features of the right to manage, not consequent upon any failure by a qualifying tenant to apply for membership using the correct form. Ultimately, parliament appears to have treated issues about the form of application for membership as something which are regulated by the company’s articles, and to have envisaged that any doubts are to be resolved between the member and the company, not between the company and third parties. This approach is consistent with para 21 of the Upper Tribunal decision in *Assethold Ltd v 14 Stansfield Road RTM Co Ltd* [2012] UKUT 262 (LC) at [21], where there was dispute about whether an RTM company’s membership register complied with s.113 Companies Act 2006. It said:
“21. The appellant’s case, therefore, has always been, not that the RTM company does not comply with section 79(5), but that the register of members that was supplied was not valid and therefore the company had failed to show that it did comply with this provision.... In any event a

defect in the register would not be sufficient to show that section 79(5) was not complied with, and indeed it could be insufficient even to raise a doubt as to compliance.”

The same must apply (with perhaps even greater force) to an alleged failure to comply with an RTM company’s articles. The Tribunal therefore concludes that Art.26(1) is not of “critical importance” to the scheme of the right to manage: see para [52] of *Elim*.

33. That leaves the specific argument relating to the form of the Flat 2 RTM Consent Form and the omission of Mrs Spencer’s name. The form could not have a more obvious mistake on its face, because it includes the name of one of the two qualifying tenants for the flat twice. The tribunal is satisfied this was an obvious mistake, and that in the context of a form which expressly states there are “joint leaseholders” of the flat, the reasonable recipient (namely an RTM company) would have been in no doubt that Mrs Spencer also wished to be a member of the company. The application form for Flat 2 therefore quite clearly meets the reasonable recipient test in *Mannai Investments*.
34. There is then the issue about the authority of the secretary to consider and approve membership. Mr Joiner submitted that the board had delegated its duties and powers under Art.26(6) to the company secretary, and Art.10 certainly does give the board power to delegate these matters. The respondent pointed to the absence of any evidence of a specific board resolution delegating or ratifying registration. But the tribunal considers the principles of implied delegation clearly apply in this instance. It should be recalled that qualifying tenants have an absolute right to become company members, so the board effectively has no discretion to refuse their applications. In those circumstances, approval and registration of RTM company membership is a purely administrative act, which forms part of the usual functions of an RTM company secretary. Moreover, in this case, there is also the indication in the RTM Consent Forms that the members wished RTMF to act as corporate secretary of our RTM company and ... to sign all notices on the companies [sic] behalf”. That indicates that the members (all of whom were to become directors) envisaged RTMF having wide administrative powers. Finally, the tribunal would not consider this kind of procedural defect would render the s.79 notice void under the principles in *Natt v Osman* and *Elim Court*: see above.
35. Ultimately, the entries in the register of members have not been shown to be wrong. There is no evidence the register was a “false” or made “dishonestly”. But even if there were errors in the register, they are, for the reasons given in the *Assethold* case, not determinative of issues under s.79(5) of the Act.
36. For these reasons, the tribunal finds the presumption that the register is correct is not rebutted. On the relevant date the joint tenants of Flat 2 were both members of the company.

Flat 3 (Mr and Mrs Gilkerson)

37. On 11 August 2022, an RTM Consent Form was digitally signed, that gave the details of the registered owners in two boxes as “(Name) Colin Gilkerson” and “(Name 2) Theresa Elizabeth Gilkerson”. Mr Gilkerson was also a subscriber to the applicant’s memorandum. On the relevant date, the joint registered proprietors of Flat 3 were Colin Gilkerson and Theresa Elizabeth Gilkerson and the register of members for the applicant recorded them both as members.
38. The applicant again relied on s.127 of the Companies Act 2006, which was *prima facie* evidence that the qualifying tenants of Flat 3 were members on the relevant date.

The Respondent’s case

39. In relation to the RTM Consent Forms and the application for membership, the respondent repeated the general arguments set out above.
40. The Flat 3 form did not make the same specific mistake about the names of the qualifying tenants that occurred with Flat 2. But the respondent developed a separate argument in relation to Mr Gilkerson. Mr Hammond accepted that the effect of s.112(1) of the Companies Act 2006 was that on incorporation, Mr Gilkerson automatically became a member of the company on 25 August 2022. But Mr Gilkerson was only one of two joint qualifying tenants of Flat 3. He therefore immediately ceased to be a member by virtue of Art 27(1). On this basis, Mr Gilkerson’s membership ceased on 25 August 2022, but this was not reflected in the register of members.

The Applicant’s case

41. The applicant accepted the register did not refer to Mr Gilkerson’s original membership, which was conferred by s.112(1) of the Act. Mr Joiner also explained why both joint flat owners were not recorded as subscribers to the company. It was technically difficult to have joint subscribers to an RTM company since the online form only allowed one name to be entered per flat. It was therefore Mr Joiner’s practice to replace the individual subscribers on the register with the names on the RTM Consent Forms at the first opportunity. He accepted the register did not say the joint subscribers had ceased to be members. But that did not affect joint membership, which followed on from the application form.

Discussion

42. The tribunal has dealt with the general arguments above. It has already found that the RTM Consent Form is capable of being a valid application for membership and rejected the points made in relation to the company’s registration procedures. It follows that Mr Hammond’s argument that Mr Gilkerson ceased to be a member under s.79(5) of the Act cannot succeed. Whether or not he ceased to be a member on 25 August 2025, that position was rectified by the subsequent (valid) registration of both joint lessees of Flat 3 as members.

43. But in case the tribunal is wrong about this, it goes on to consider the contention that Mr Gilkerson was an original subscriber but that his membership immediately ceased. Mr Joiner's evidence is that the intention was certainly there to record both joint lessees of Flat 3 as subscribers, and this is supported by the RTM Consent Form. He also explained that the applicant was prevented from registering both names as a result of a technical problem with online registration. Such defects are generally insufficient to show that s.79(5) was not complied with: see *Stansfield Road* at [21]. On this alternative basis The tribunal would therefore find both qualifying tenants of Flat 3 were subscribers to the company, and that they remained members on the relevant date.

Flat 4 (Mr Humphreys and Ms Bacon)

44. On 10 August 2022, an RTM Consent Form was digitally signed that gave the details of the registered owners of Flat 4 in two boxes as "(Name) Peter Humphreys" and "(Name 2) Maureen Bacon". Mr Humphreys was a subscriber to the applicant's memorandum. On the relevant date, the joint registered proprietors were Peter William Humphreys and Maureen Bacon and the register of members recorded them both as members.
45. The arguments here were the same as for Flat 3, and the tribunal reaches the same conclusion.

Flat 6 (Mr and Mrs Lyall)

46. On 10 August 2022, an RTM Consent Form was digitally signed that gave the details of the registered owners of Flat 6 in two boxes as "(Name) Malcolm Andrew Lyall" and "(Name 2) Mavis Roseta Lyall". On the relevant date, the joint registered proprietors were Malcolm Andrew Lyall and Mavis Roseta Lyall. The register of members for the applicant named Malcolm Andrew Lyall and Mavis Roseta Lyall as members.
47. The arguments here were the same as for Flat 2 (save that no issue arises about the error in the RTM Consent Form), and the tribunal reaches the same conclusion.

Flat 8 (Ms De Zoysa)

48. On 11 August 2022, an RTM Consent form was digitally signed that gave the details of the registered owner of Flat 8 as "(Name) Nicole de Zoysa". On the relevant date, the registered proprietor was Nicole de Zoysa and the register of members recorded her as a member.
49. The arguments here were the same as for Flat 6, and the tribunal reaches the same conclusion.

Flat 9 (Mr Chambers)

50. On 12 August 2022, an RTM Consent form was digitally signed that gave the details of the registered owner of Flat 9 as "(Name) Jocelyn Chambers". On

the relevant date, the registered proprietor was Jocelyn Chambers and the register of members for the applicant recorded him as a member.

51. The arguments here were the same as for Flat 6, and the tribunal reaches the same conclusion.

Flat 10 (Mr and Mrs Mansley)

52. On 11 August 2022, an RTM Consent Form was digitally signed that gave the details of the registered owners of Flat 10 in two boxes as “(Name) Nigel Mansley” and “(Name 2) Caroline Mansley”. Mr Mansley was a subscriber to the applicant’s memorandum. On the relevant date, the joint registered proprietors were Nigel Stephen Mansley and Caroline Mansley and the register of members recorded them both as members.

53. The arguments here were the same as for Flat 3, and the tribunal reaches the same conclusion.

Flat 11 (Ms White)

54. On 12 August 2022, an RTM Consent form was digitally signed that gave the details of the registered owner of Flat 11 as “(Name) Wendy White”. On the relevant date, the registered proprietor was Wendy Jean White and the register of members for the applicant recorded her as a member.

55. The arguments here were the same as for Flat 6, and the tribunal reaches the same conclusion.

Flat 12 (Mr and Mrs Faucherand)

56. On 12 August 2022, an RTM Consent Form was digitally signed that gave the details of the registered owners of Flat 10 in two boxes as “(Name) Claudia Faucherand” and “(Name 2) Claudia Faucherand”. Mr Colin Faucherand was a subscriber to the applicant’s memorandum. On the relevant date, the joint registered proprietors were Colin Michael Faucherand and Claudia Faucherand and the register of members recorded them both as members.

57. The arguments here were the same as for Flat 2 (in respect of the obvious error with Mr Faucherand’s name) and Flat 3, and the tribunal reaches the same conclusion.

Flat 12a (Mr Procopides)

58. On 10 August 2022, an RTM Consent form was digitally signed that gave the details of the registered owner of Flat 12a as “(Name) Max Procopides”. On the relevant date, the registered proprietor was Max David Procopides and the register of members for the applicant recorded him as a member.

59. The arguments here were the same as for Flat 6, and the Tribunal reaches the same conclusion.

Conclusions

60. The tribunal therefore agrees with the applicant that on the relevant date, the qualifying tenants of 11 out of 13 flats were members of the RTM company. It follows that Under s.84(3) of the Act, the applicant is entitled to acquire the right to manage the premises at Highkiln, 2 Tilekiln Lane, Hastings, East Sussex, TN35 5EN.

Judge Mark Loveday

25 May 2023

Appeals

- 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.