



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

Case Reference : **CHI/00MS/LRM/2023/0002**

Property : **29-67 CARPATHIA DRIVE,
SOUTHAMPTON, SO14 3GU**

Applicant : **29-67 CARPATHIA DRIVE
RTM COMPANY LIMITED**

Respondent : **TRINITY (ESTATES) PROPERTY
MANAGEMENT LIMITED**

Type of Application : **SECTION 84 CLRA'02**

Tribunal Members : **JUDGE DOVAR
MR MJF DONALDSON FRICS**

Date of Decision : **5th September 2023**

DECISION

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1. This an application under s.84 of the Commonhold and Leasehold Reform Act 2002 ('the Act') for a determination that on the relevant date the Applicant RTM Company was entitled to acquire the Right to Manage the Property. This matter has been dealt with without a hearing pursuant to Rule 31 of the Tribunal Procedure Rules 2013 and the Tribunal's directions of 19th May 2023.
2. The Respondent's one ground of resistance is that the premises do not constitute a self-contained building or part of a building for the purposes of s.72(1)(a) of the Act.
3. That section in full reads as follows:

“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.

4. The basis for the Respondent's contention is that the Property forms part of a terrace and so it is said it is not detached. Further it is said that it cannot be considered to be a self-contained part of a building in that

'As a matter of practicality, the Respondent does not consider that the Property could be demolished and re-built without damaging the structure of 28 Carpathia Drive or requiring significant remedial work needing to be carried out.'

5. It is true that the Property forms part of a terrace and is immediately attached to 28 Carpathia Drive. Therefore the first part of the section

cannot apply as the Applicant sensibly concedes. However, it goes onto contend that it falls within the section as a self-contained part of a building.

6. To that end they rely on the report of Mr Clark of Ely Langley Greig Chartered Surveyors (undated). He firstly confirms that although not detached, there is a vertical division between the Property and the adjacent one. Secondly, he notes, from photographs of the development of the site, that the Property was built after the adjoining block and independently of it. Further, that they are constructed out of different materials. He therefore is of the view that they are capable of being redeveloped independently. Finally, and this does not form part of the Respondent's objection, he considers that the services between the Property and the neighbouring property are independent of each other and therefore the final requirement of the section is met.
7. Whilst the Respondent seems to accept that the Property could be redeveloped independently, it contends, as set out above, that it does not fit the criteria as to do so would damage the structure and require substantial remedial works. They have produced no evidence of that. Mr Clark does not opine on that particular point; i.e. any damage and the level of remediation that would be required.
8. The Tribunal considers that the Property does fit the criteria set out in s.72. The objection on the basis of the lack of material structural detachment is not made out.

9. Firstly, the Tribunal does not consider that the section is as qualified as contended for by the Respondent. There is no mention in the section that it will only be a self-contained part, if no damage is done in the course of redevelopment. That is a gloss put on by the Respondent that we do not consider warranted. In all cases where there is a terrace and a vertical division, there will be some damage if the buildings were to be separated, but that is not what we construe the section to mean. It is postulating whether it *could* be redeveloped, not that it *will* be redeveloped. It is a means of determining how separate from the adjoining building it is. There will always be some damage caused by a separation.
10. In any event, the Respondent has simply asserted that it would require significant *remedial* works, without providing any evidence or further details of the same. On the evidence before the Tribunal, particularly that of the chronology of construction and the differing construction materials between the blocks, even if it were relevant, it seems unlikely that there would be significant works required; the blocks were built independently of each other and out of different materials.
11. Accordingly, the Tribunal determines that the Applicant has exercised the Right to Manage. The notice exercising the right is dated 7th December 2022, the date of this determination is 5th September 2023 and according to s.90 of the Act, the right to manage will take effect (subject to any appeal) on 4th December 2023.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

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.

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.

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.