



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

Case reference : **BIR/00BY/LRM/2023/0001**

Property : **8 Vernon Street, Liverpool L2 2AY**

Applicant : **8 Vernon Street RTM Company Limited**

Representative : **Mr Crossfield from The RTM Company**

Respondent : **Commercial Property Investments Ltd**

Representative : **Mr Simon Wanderer**

Type of application : **Application relating to (no fault) right to manage**

Tribunal member : **Judge C Goodall
Mr N Wint FRICS**

Date and place of hearing : **10 November 2023 through the video hearing service**

Date of decision : **22 November 2023**

DECISION

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Background

1. 8 Vernon Street RTM Company Limited (“the Applicant”) is a right to manage company formed for the purpose of acquiring the right to manage 8 Vernon St, Liverpool (“the Property”) by virtue of the provisions of the Commonhold and Leasehold Reform Act 2002 (“the Act”). Commercial Property Investments Ltd (“the Respondent”) is the freehold owner of the Property.
2. On 24 November 2022, a notice claiming the right to manage (“the Claim Notice”) was served on the Respondent. The Respondent served a counter notice dated 13 December 2022 disputing the Applicant’s right to acquire the right to manage.
3. By an application dated 11 February 2023, the Applicant applied to this Tribunal for a determination that it was entitled to acquire the right to manage. The application was stayed for a period to allow the parties to seek to resolve issues, but that attempt was unsuccessful. Accordingly, the parties have provided written statements of case. The Tribunal inspected the Property on 9 November 2023 and conducted a hearing by video on 10 November 2023. The Applicant was represented by Mr Edward Crossfield and the Respondent by Mr Simon Wanderer.
4. This is the decision of the Tribunal on the application with reasons.

The issues

5. The Respondent has objected to the acquisition of the right to manage on two grounds:
 - a. That the Claim Notice was inaccurate in listing all seven long leaseholders at the Property as members of the Applicant when in fact there were only two members at the date of the Claim Notice (“the Notice Validity Issue”); and
 - b. That the internal floor area of the non-residential part of the Property exceeds 25% of the internal floor area of the Property (taken as a whole) (“the Floor Area Issue”).

Law

6. The Act permits long leasehold tenants in a self-contained building to acquire the right to manage their own premises. There are various procedural conditions that must be satisfied, but no question has been raised on procedural conditions apart from those identified above as the issues in this case.
7. A claim for the right to manage starts with service of a claim notice by a specially formed entity created to manage the premises on acquisition of the right to manage. If the recipient objects to the acquisition of the right to manage, a counter-notice must be served. If it is, the applicant may

apply to this Tribunal, under section 84(3) of the Act, for a determination that it was entitled to acquire the right to manage.

8. We set out below provisions of the Act which are important in determining the issues in this case, being:

On the Notice Validity Issue

- a. Section 80(3) of the Act requires that a claim notice must state the full name of each person who is both a qualifying tenant of a flat contained in the premises, and a member of the RTM company.

On the Floor Area Issue

- b. Section 72(6) provides that “Schedule 6 (premises excepted from this Chapter) has effect;
- c. Schedule 6 (headed Premises Excluded from Right to Manage) paragraph 1 which provides:

“Buildings with substantial non-residential parts

1(1) This Chapter does not apply to premises falling within section 72(1) if the internal floor area—

(a) of any non-residential part, or

(b) (where there is more than one such part) of those parts (taken together),

exceeds 25 per cent. of the internal floor area of the premises (taken as a whole).

(2) A part of premises is a non-residential part if it is neither—

(a) occupied, or intended to be occupied, for residential purposes, nor

(b) comprised in any common parts of the premises.

(3) Where in the case of any such premises any part of the premises (such as, for example, a garage, parking space or storage area) is used, or intended for use, in conjunction with a particular dwelling contained in the premises (and accordingly is not comprised in any common parts of the premises), it shall be taken to be occupied, or intended to be occupied, for residential purposes.

(4) For the purpose of determining the internal floor area of a building or of any part of a building, the floor or floors of the building or part shall be taken to extend (without interruption) throughout the whole of the interior of the building or part, except that the area of any common parts of the building or part shall be disregarded.”

The Property

9. The Property is on five floors on Vernon Street in Liverpool with seven residential flats on the ground to fourth floors, and commercial premises in the basement. There is a street level front entrance door leading to a ground floor passage from the front to the rear of the Property (“the Ground Floor Corridor”). On the left hand side of the Ground Floor Corridor is the front door to Flat 1. Stairs are located on the right hand side of the passage leading up to three upper floors. Flats 2 and 3 have front doors at first floor level, Flats 4 and 5 at second floor level and Flats 6 and 7 at third floor level. Through a door on the left at the end of the Ground Floor Corridor is a bin store.
10. There is an entrance door on the right hand side of the far end of the Ground Floor Corridor which provide access to stairs to a basement floor. In practice (though possibly not as originally intended) the main access to the basement accommodation is through a door at the rear of the building leading to steps down to the basement. Thus, the basement can be accessed both directly from this rear door and also through the access door off the Ground Floor Corridor.
11. It is evident from the signage that the access to the basement from the Ground Floor Corridor is treated as an emergency exit route.
12. The basement floor is used for commercial purposes as a club / bar. The seven Flats on the ground and upper floors are used as residential flats.
13. Flat 6 is on the fourth floor. It is a single large room within the roof space of the Property, attractively converted into a living area, with sitting area, kitchen, and a sleeping area. The roof is fairly steeply pitched, but there is a small part of the lounge section with a ceiling height below 1.5m (“the Limited Height Area”).

The measured survey

14. The parties jointly instructed a surveying firm to prepare a measured survey of the floor area of the Property. There is no dispute about the actual measurements. It is accepted that, assuming;
 - a. the Ground Floor Corridor is part of the common parts, and
 - b. The Limited Height Area is included within the residential part of the Property,

the measurements are:

	Sq M	% age
Residential Area	553.60	77.15

Commercial Area	164.00	22.85
Total	717.60	100

15. It is also agreed that the Ground Floor Corridor measures 19.4 sq m, and the Limited Height Area measures 5.2 sq m.

The commercial lease

16. The lease is dated 16 October 2015, and is for 999 years from that date. It is subject to an occupational lease for 25 years from 15 November 1994.

17. In paragraph LR4 of the prescribed clauses, the premises are described as:

“Basement premises at 8 Vernon Street Liverpool L2 2AY together with the stairs to the ground floor and the main entrance shown edged red on the plan Number 2 and together with the emergency exit stairs to the ground floor and the shared use of the ground floor passageway shown edged green on the plan Number 3. In the case of conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.”

18. Clause 2.1 defines the Premises as:

“Basement Premises at 8 Vernon Street Liverpool L2 2AY more particularly described at Schedule A.”

19. Clause 2.19 defines the Emergency Access as:

“the emergency exit stairs to the ground floor and together with the free and unhindered use of the ground floor passageway and entrance shown edged green on the plan Number 3.”

20. Plan number 3 in the lease shows the area edged green corresponds substantially with the Ground Floor Corridor. The correlation is not exact as the plan does not reflect the actual physical layout of the Ground Floor Corridor.

21. Clause 4.1 provides:

“the Landlord demises the Premises to the Tenant for the Term ...”.

22. Schedule A describes the Premises as follows:

“Basement Premises at 8 Vernon Street Liverpool L2 2AY together with the stairs to the ground floor and the ground floor entrance shown edged red on the plan Number 2 and together with the Emergency Access ...”

The Respondent’s case

The Notice Validity Issue

23. By inference from the Memorandum of Association of the Applicant (which was signed by only two of the original subscribing members of the Applicant) and the absence of any further filings at Companies House establishing that any more leaseholders had become members of the Applicant, the Respondent says that there were only two members of the Applicant at the date of the Claim Notice, and accordingly, the Claim Notice was invalid.

The Floor Area Issue

24. The Respondent claims that the Ground Floor Area is included within the demise of the commercial lease. Accordingly, the commercial area measurement needs to be increased to 183.8 sq m, by adding 19.4 sq m to it.
25. Also, it is incorrect to include any areas with a ceiling height below 1.5m within the measurement of the residential area, which accordingly needs to be reduced by 5.2 sq m to 548.4 sq m.
26. The percentage areas represented by commercial and residential use are therefore:

	Sq M	% age
Residential Area	548.40	74.90
Commercial Area	183.80	25.10
Total	732.20	100

27. Accordingly, the Property is excluded from being a property over which a right to manage can be acquired, in accordance with paragraph 1 of Schedule 6 of the Act.
28. The Respondent's claim that the Ground Floor Corridor is within the demise of the commercial part of the Property rests on its interpretation of Schedule A and paragraph 2.19 of the commercial lease. Schedule A clearly includes the area defined as the Emergency Access within the lease, this being the area described in this decision as the Ground Floor Corridor.

The Applicant's case

The Notice Validity Issue

29. The Applicant's case is simple. It says that all seven long leaseholders at the Property, who were all qualifying tenants at the date of the Claim Notice, were also members of the Applicant at that date. A copy of the Applicant's register of members was supplied to the Tribunal confirming this to be the case. The Applicant points out that under section 114 of the

Companies Act 2006, the register of members is not required to be kept at Companies House, but instead at the company's registered office.

The Floor Area Issue

A The Ground Floor Corridor

30. The Applicant says that the Ground Floor Corridor is shared, and must be considered to be part of the common parts of the Property, and so cannot be included within the commercial area.
31. A copy of a residential lease of one of the flats was provided by the Applicant.
32. Residential leaseholders are granted a right of access to their flats "over and along those parts of the Common Parts which afford access to and egress from the Property...". This supports the case that the Ground Floor Corridor is included within the common parts of the Property.
33. The Applicant pointed out that Prescribed Clause LR4 in the commercial lease expressly referred to "shared use" of the Ground Floor Corridor.
34. Furthermore, the Applicant relies upon the terms of the occupational lease, which contains a right for the lessee to have:

"the right so far as necessary and in emergencies only of ingress to and egress from the demised premises in over and along all usual entrances landings passenger lifts (if any) and passages leading to the demised premises in common with the Landlord and all others entitled thereto."

B The Limited Height Area

35. The Applicant's case is that the jointly instructed surveyor was correct to include the Limited Height Area in his calculations of the residential area. Reference is made to the RICS Code of Measuring Practice. At paragraph 2.14, the Code confirms that when measuring the Gross Internal Area, an area with a headroom of less than 1.5m should be included in the measurement.

Discussion

The Notice Validity Issue

36. The evidence from the Applicant showed that all seven leaseholders had applied to be members of the Applicant prior to the date of the Claim Notice, and that the Applicant's register of members showed them all to have been registered as such by or on that date. We accept that evidence.
37. Accordingly, we are unable to agree that there is any defect in the Claim Notice as suggested by the Respondent.

The Floor Area Issue

The Ground Floor Corridor

38. We consider that the correct interpretation of the commercial lease is that the Ground Floor Corridor (which corresponds to the area of the Emergency Access referred to in the lease) was not included in the demise to the commercial tenant.
39. Our reasons are:
 - a. The definition of Premises in the Prescribed Clauses expressly refers to the area being a shared area, which is not consistent with the idea that it is included in the area over which the lease is being granted;
 - b. Whilst Schedule A expressly includes the Emergency Access within the area over which the lease is granted, the definition of Emergency Access uses language more akin to the grant of an easement or a right than language to describe a demise:
 - c. The contextual background derived from the residential leases and the occupational lease suggests strongly that all users of the Property were intended to be able to use the Ground Floor Corridor in common;
 - d. Practically, it makes virtually no sense for the main entrance corridor for the Flats should have been demised to the commercial tenant who uses it only for emergency access. Conversely, it makes perfect sense for the entrance corridor to be considered to be part of the common parts of the Property.

The Limited Height Area

40. Our determination is that the Limited Height Area is to be included within the within the calculation of the internal floor area of the Property for the purposes of paragraph 1 of Schedule 6 to the Act. Our reasons are:
 - a. Paragraph 1(4) of Schedule 6 is determinative. For the purposes of measuring the internal floor area, that area must “extend (without interruption) throughout the whole of the interior of the building”. In our view, there is no basis for interpreting that provision in such a way that the measurement must stop at the point that the ceiling reduces to below 1.5m. The measurement should continue to the edge of the space being measured;
 - b. The RICS Code of Measuring Practice lends support to this interpretation.

Determination

41. Having reached the conclusions above, we determine that the Applicant is entitled to acquire the right to manage the Property under the Act. The date of acquisition is governed by sections 90(4) and 84(7) of the Act.

Appeal

42. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)