



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

Case reference : **MAN/00CM/LRM/2023/0008**

Property : **The property known at the time of the previous RTM application as ‘Kensington House’, 12-14 Gray Road and 1-2 Kensington Esplanade, Sunderland, Tyne and Wear SR2 8HB**

Applicants : **Kensington House (2023) RTM Company Limited**

Applicant’s Representative : **Savage Silk**

Respondent : **MW Freeholds Limited**

Respondent’s Representative : **Mr Paul Simon**

Type of Application : **Commonhold and Leasehold Reform Act 2002 - Section 84(3)**

Tribunal Members : **Tribunal Judge S Moorhouse LLB
Mr C Snowball MRICS**

Date of Decision : **11 March 2024**

Date of issue : **20 March 2024**

DECISION

DECISION

1. Having heard the Application the tribunal decides pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 that the Applicant was on the relevant date entitled to acquire the right to manage the Property (defined below).

REASONS

The Application

2. The Application was made on 2 August 2023 by Kensington House (2023) RTM Company Limited ('the Applicant'). The Applicant seeks a determination from the tribunal under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ('CLARA') that on the relevant date it was entitled to acquire the right to manage ('RTM') the property known at the time of the previous RTM application as 'Kensington House', the postal address for which is given in the register of the freehold title as 12-14 Gray Road and 1-2 Kensington Esplanade, Sunderland, Tyne & Wear SR2 8HB ('the Property'). The Property comprises 36 flats held by the leaseholders for terms of 150 years calculated from 1 January 2013. The Respondent, MW Freeholds Limited, is the freehold proprietor of the Property.
3. The previous application (referred to hereafter as 'the First Application') was made on 11 March 2022 by Kensington House 12-14 Gray Road RTM Company Limited. The First Application was determined following an inspection and face-to-face hearing by a First-tier Tribunal comprising the members of the present tribunal. The tribunal decided that the First Application did not succeed and that the applicant was not entitled to exercise the RTM. The issues raised on the First Application concerned the requirement of sections 72, 78(1), 79(8) and 80(2) of CLARA.
4. Pursuant to Directions the Respondent and the Applicant each submitted a written statement of case. In the Respondent's case this included witness statements, two from Laurence Freilich, one from Sterna Sarah Freilich his wife and one from Paul Simon. There was no 'reply' by the Respondent.
5. The video-hearing took place by FVH on 11 March 2024 and was attended by Fiona Todd of Counsel (appearing for the Applicant) and Paul Simon (the Respondent's in-house legal representative). The tribunal went on to reach a decision the same day. In view of the matters in issue, the fact that both members of the tribunal had viewed the Property at the inspection related to the First Application and the inclusion of photographic evidence within the agreed hearing bundle, the tribunal considered it unnecessary to inspect the Property on this occasion.

Preliminary and procedural matters

6. A number of preliminary matters were addressed at the outset of the hearing. Neither of the legal representatives present objected to the absence of their opposite number's client. Each were able to take instructions during breaks in the hearing and indeed did so. A written document setting out the skeleton arguments of Counsel for the Applicant was received by the tribunal on the morning of the hearing. The Respondent's representative had received a copy and had no objection to this being referred to in the hearing. The tribunal therefore accepted the submission of the skeleton arguments.

7. Since the First Application the Respondent had re-named the Property, identifying this as 3 separate blocks named Moreland Place, Moreland Works and Little Jarvis House, with related renumbering of the flats. The re-naming process was relevant to various issues within the proceedings. The tribunal reached the following findings of fact in relation to the re-naming.
8. The Property was known as 'Kensington House' since its development prior to 2014. On 28 March 2023 the Respondent applied to Sunderland City Council to change the addresses. There was no consultation with the leaseholders or occupants (other than those associated with the Respondent) concerning the changes to their addresses. Email correspondence with the Council is included within the bundle.
9. On 22 May, in response to the question of when the new addresses took effect, the Council informed the Respondent that these had been confirmed by Royal Mail on 3 May 2023. A template letter to leaseholders informing them of the changes to their postal addresses is included in the bundle and is dated 15 May 2023. This states that the premises have been re-named by the local authority and that the Royal Mail records have been updated. The letter cannot therefore have been issued until at least 22 May 2023.
10. In a letter dated 23 May 2023 (incorrectly typed as 2022), in responding to the Applicant on the notices of invitation to participate, the Respondent included a statement that since around 3 May 2023 the development had been given new addresses pursuant to an application dated 28 March 2023 made to Sunderland City Council. The Respondent's representative mentioned in the hearing that there had been objections by some leaseholders or occupiers raised with Sunderland City Council but there was no formal right of appeal. The freeholder was entitled to re-name the development irrespective of whether the leaseholders or occupiers placed any value on the existing name.
11. It is common ground that in September 2023 plaques were added to the exterior of the Property bearing the separate names for the three blocks but that no other steps were taken by the Respondent to physically rename the Property on-site, it being the responsibility of the leaseholders to change the numbering of the letter boxes within the entrance halls and their door furniture should they choose to do so.
12. Having addressed various preliminary matters the tribunal invited the Respondent's representative to present his client's case, Counsel for the Applicant to respond to this and the Respondent's representative to reply.
13. On two issues (the retrospective nature of certificates of service completed by the Applicant's company secretary and an issue concerning the membership of the Applicant company) having considered representations for both parties the tribunal permitted an additional brief comment by Counsel for the Applicant. The first issue had been first raised for the Respondent during the hearing within the reply to the Applicant's statement of case. It could have been addressed in a written reply to the written statement of case or raised earlier in the hearing, and it could have been identified for the Respondent at the outset of the hearing that it would assist for the author of the certificates to attend.

14. The second issue was referred to in a document accompanying the Respondent's statement of case but there were no written supporting arguments, the issue was brought up during the Respondent's statement of case at the hearing and then re-framed during the oral reply. The tribunal considered on the application of the Applicant whether to address the second issue and has decided to do so since it was incorporated by reference into the Respondent's written statement of case, however on both the first and second issue it was appropriate to allow Counsel for the Applicant leeway by way of an additional opportunity for brief comment.

The issues

15. The issues are set out in the Respondent's written statement of case as follows:

Section 78(1) CLARA

16. It is contended that notices inviting participation were not served on one or more qualifying tenants. It was not in issue at the hearing that the notices had been received, however the written submission contends that the notices are invalid for the reasons set out in letters to the Applicant from the Respondent, Laurence Freilich and Sterna Freilich.
17. Whilst the letters from Laurence and Sterna Freilich to the Applicant simply state that the notices are invalid, the letter dated 23 May 2022 from the Respondent gives three reasons for this contention: (1) (in relation to the Applicant's name) there is no property known as Kensington House or Kensington House (2023); (2) (in relation to the Applicant's Articles of Association) there is no property known as Kensington House (2023), Kensington House, 12-14 Gray Road, Sunderland SR2 8HW; and (3) (in relation to membership) only leaseholders can be members of the company.

Section 79(8) CLARA

18. It is contended that copy claim notices were not served on Laurence Freilich or Sterna Freilich as qualifying leaseholders in relation to the flats within the Property of which they were the leasehold proprietors. It was not in issue at the hearing that the claim notice had been received by the Respondent, and that the Respondent had received copies in its capacity as a leaseholder.

Section 80(2) CLARA

19. It is contended that the claim notice does not accurately specify the premises to which the claim relates owing to the re-naming of the Property, differences between the claim notice and the Articles of Association, and the omission within the claim notice of 1-2 Kensington Esplanade.

Section 72 CLARA

20. Additionally the Respondent challenged the Application on the basis of the requirements of section 72 of CLARA. Section 72(1) provides inter alia that the Chapter applies to premises if they consist of a self-contained building or part of a building. Section 72(2) provides that a building is a self-contained building if it is structurally detached. It was common ground at the hearing that the Property comprises a single structurally detached building. Whilst the Respondent contended that the Property also contained 3 self-contained parts of a building, in the light of the recent Court or Appeal decision in the case of *Assethold Ltd v Eveline Road RTM Co Ltd* the Respondent's challenge to the Application under section 72 was discontinued. Compliance with section 72 (1) was conceded.

s78(1) - notice inviting participation

21. Section 78(1) of CLARA provides:- *‘Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given - (a) is the qualifying tenant of a flat contained in the premises, but (b) neither is nor has agreed to become a member of the RTM company’.*
22. On the issue referred to earlier as issue (1), the Applicant’s name, the company was incorporated on 1 May 2023, prior to the re-naming of the building being known to the Applicant, or even confirmed to Sunderland City Council by Royal Mail. On issue (2), the inclusion of ‘Kensington House 2023’ within the definition of the ‘premises’ within the company’s Articles is clearly an error. The remainder of the address was correct unless, as was pointed out for the Respondent in the hearing, this should include ‘1-2 Kensington Esplanade’ as per the property register in the freehold registered title. It was clarified for the Applicant that the reference to Kensington Esplanade was relevant to the former care home on the site as this had been accessible from both Gray Road and Kensington Esplanade, unlike the Property.
23. In any event, the Respondent’s arguments did not go so far as to explain why, in the Respondent’s view, these matters rendered the notices inviting participation invalid.
24. On issue (3), that only leaseholders can be members of the company, it was contended in the oral presentation of the Respondent’s case that one of the original subscribers to the Memorandum of Association, Rosamund Ann Newton, was not a leaseholder but was in control of and/or a director of two corporate leaseholders. There was no documentary evidence before the tribunal to substantiate this. It was contended that since section 78(2) required the notices to state the names of the members of the RTM company, the inclusion of a non-leaseholder invalidated them.
25. In the Respondent’s oral reply, the argument was re-framed, it being contended that under the Articles of Association Rosamund Ann Newton would have automatically ceased to be a member and should not have been included therefore as a member within the notices inviting participation.
26. The tribunal considered that the requirement at section 78(2) to state the names of the members had been met – the individual the Respondent argues was the sole member at that time had been included. The Respondent’s argument that Rosamund Ann Newton was not a leaseholder and had automatically ceased to be a member as a consequence had not been proven. Even if this were the case the inclusion of her name in the notices was at most an inaccuracy. Section 78(7) provides that notices of invitation to participate are not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 78.
27. Accordingly the tribunal determined that notices inviting participation were valid and had been served on the relevant leaseholders.

s79(8) - service of the claim notice

28. Section 79(8) of CLARA provides:- *‘A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises’.*

29. Laurence and Sterna Freilich each stated within their witness statements that they had not received copies of the claim notice. It was common ground that if the tribunal determined that these had been posted, then they were deemed to have been served regardless of whether they had actually been received.
30. The Applicant's submission included copy certificates in relation to the service of copies of the claim notice upon Laurence Freilich, Sterna Freilich and upon the Respondent in its capacity as a leaseholder. The Applicant had utilised civil procedure form N215 however this had been completed retrospectively.
31. The form stated that the copy claim notices were served by first class post on 8 June 2023 with a 'date of service' of 12 June 2023. The latter date was challenged for the Respondent as being incorrect and reference was made to arrangements in place to forward Sterna Freilich's post to the office, Mr Simon commenting in the hearing that Sterna Freilich's post actually came to him and not to Sterna Freilich (notwithstanding the witness statement having been given by Sterna Freilich).
32. The tribunal considered the date given in the certificates as the 'date of service' to represent the Applicant's view as to when the copy notices would be deemed to be have been served. The question of whether or not the Applicant had been correct as to the date of deemed service did not undermine the evidentiary value of the certificates on the issue of whether the copy notices had been posted.
33. The certificates had been signed by the Applicant's company secretary, included a statement of truth and were dated 23 January 2024. The tribunal was unable to ask questions of the company secretary as he was not present. As previously noted, there had been no objection by the Respondent to his absence.
34. Notwithstanding the time elapsed between the alleged posting of the copy claim notices and the signing of the certificates, the tribunal accepted that these provided documentary evidenced of the posting of the copy notices. Whilst the Respondent had provided witness statements stating that the copy notices had not been received, provided they were posted they were deemed to have been served. On the balance of probabilities the tribunal accepted that the copy claim notices had been served.

s80(2) - specify the premises

35. Section 80(2) of CLARA provides that the claim notice must '*specify the premises*'.
36. The premises are defined in the claim notice as 'the block of flats numbered 1-37 Kensington House, 12-14 Gray Road, Sunderland SR2 8HW.'
37. The Respondent contends that this is incorrect owing to the re-naming which had been completed and communicated by the time the claim notice was issued and owing to the omission referred to earlier of 1-2 Kensington Esplanade.
38. The Applicant had been notified of the re-naming in a letter of 23 May 2023 and was therefore aware of this at the time the claim notice and copies were issued. It was submitted for the Applicant that the reference to Kensington House within the claim notice, rather than the new names, was deliberate and was intended to ensure consistency with the preceding documents.

39. The Property had been known since 2014 as Kensington House, there had been no changes to external signage on-site at that point. There was no access directly onto Kensington Esplanade therefore the absence of reference to that particular street, even though it is referenced within the property register of the freehold title, did not materially affect the identification of the premises.
40. Section 81(1) of CLARA provides:- *‘A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.’*
41. Within the Respondent’s written submission it is stated that the claim notice must specify the premises and that the claim notice ‘does not accurately do this because since 3 May 2023 there is no block of flats numbered 1-37 Kensington House’. The Respondent goes on to submit that there is more than an inaccuracy, the omission of the full and correct address amounts to a failure to specify the premises, by reason of the omission of reference to Kensington Esplanade and consequential inconsistency with the register of the freehold title, and by reason of the inclusion of reference to flats numbered 1-37 which is omitted from the definition of ‘premises’ within the Articles of Association.
42. The tribunal determined that the premises had been specified. It is common ground that the former Kensington House is a structurally detached building, there is no scope to confuse this with a neighbouring building, the name ‘Kensington House’ had been in use since 2014, the address of 12-14 Gray Road was correct, as was the postcode. The absence of reference to Kensington Esplanade was not considered by the tribunal to be material for the reasons already given. The reference to flats numbered 1 to 37 did not undermine the specification of the premises, notwithstanding the absence of this reference within the definition of premises in the Articles of Association. Whilst the re-naming had taken place in the records of Sunderland City Council and Royal Mail, it had not physically been implemented on-site by the addition of new external signage to identify which block was which. Taking all of these factors into consideration there was no ambiguity as to the specified premises.
43. The tribunal considered that the difference between the building name and flat numbers within the claim notice and those within the Council and Royal Mail records was at most an ‘inaccuracy’ in the claim notice. Under section 81(1) this did not invalidate the notice.

Overall Determination

44. The tribunal finds for the Applicant on each of the challenges to the RTM raised by the Respondent. As a consequence the tribunal determines, pursuant to section 84(3) of the Act that the Applicant was, on the relevant date, entitled to acquire the RTM.

S Moorhouse, Tribunal Judge