FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/LRM/2023/0027**
Property	**:**	**6 – 24 (Even) Southgate Road and 2 – 8 (Even) Balmes Road, London N1**
Applicant	**:**	**N1 RTM Company Limited**
Representative	**:**	**Mr Richard Granby – Counsel instructed by Jobsons Solicitors**
Respondent	**:**	**Cedarcrest Limited and Brookvine Limited**
Representative	**:**	**Mr Stuart Armstrong – Counsel instructed by Sterling Estates Management Limited**
Type of Application	**:**	**Application in relation to the right to manage.**
Tribunal Members	**:**	**Judge Dutton** **Ms S Coughlin**
Date of Hearing	**:**	**22nd November 2023** **(inspection 27 November 2023)**
Date of Decision	**:**	**25 January 2024**

DECISION

DECISION OF THE TRIBUNAL

The Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Commonhold and Leasehold Reform Act 2002 (the Act) and that the Applicant will acquire such right within three months after this determination becomes final. The reasons for this decision are set out below.

THE APPLICATION

1. This application is to acquire the right to manage the premises at 6 – 24 (Even) Southgate Road and 2 – 8 (Even) Balmes Road, London N1 (the premises) under part 2 of chapter 1 of the Act.

2. A claim notice, the second in fact in this matter, was given on the 6th June 2023 with an intention to acquire the right to manage on 20th October 2023. By a counter notice dated 17th July 2023 the Respondent freeholder disputed the Applicant's right referring to non-compliance with sections 72(1) and (6) and/or section 78(1) and/or section 79(2)(5)(6) and/or section 80(2) of the Act. The directions issued provided that the counter notice should stand as the Respondent's statement of case. Thereafter a response to that statement of case was made by the Applicants, which in turn triggered a response to that reply. These documents were provided in a bundle given to us in advance of the hearing. Included with the Respondent's statement of case was a report from Mr Dominic Reader MRICS, Chartered Surveyor headed 'Expert report of Dominic Reader MRICS on the rules of the Commonhold and Leasehold Reform Act 2002'. We will return to this report in due course.

3. In addition to the above we received skeleton arguments from Mr Granby and from Mr Armstrong and we would like to thank them for their assistance.

THE HEARING

4. The matter came for hearing on 22nd November 2023 when the Applicants were represented by Mr Granby and the Respondents by Mr Armstrong. Mr Reader, who had produced the report, which was introduced at late notice, did not attend. There were no live witnesses. We have noted in detail the terms of the skeleton argument and we hope that Counsel will forgive us if we do not repeat those verbatim in the course of this decision. We also had the benefit of lengthy submissions from Mr Armstrong at the hearing and a shorter response from Mr Granby.

5. In the schedule, which was annexed to the counter notice and was settled by Counsel, the following issues are raised.

   (a) An allegation that the description of the premises was inaccurate by reference to title number EGL456506 where it appears no reference is made to 2 – 8 Balmes Road. It was therefore suggested that it was unclear as to the extent of the premises to which the claim notice was intended to relate.

(b) Moving from that to the next point, it is suggested that the company could not acquire the right to manage as the premises consists of three separate blocks and although accepted that they are connected, they constituted three buildings, and the RTM company could only acquire the right to manage one.

(c) It was suggested that there is a substantial non-residential part in excess of 25% of the internal floor area of the premises, particularly it seems relating to live work units.

(d) There is an allegation that there is a failure to comply with section 78 in connection with notices of invitation to participate (NIP) and that these were not served on all persons on whom they should have been served.

(e) The next allegation is that there were insufficient members of the company. It is said that there should be no less than 68 tenants of the flats on the basis that are 135 flats in the premises and that although the register purports to show there are 75 members, it was denied that they are in fact qualifying tenants. The allegation is that the company is required to prove that everybody named in the register of members did in fact apply to become a member of the company. It then lists certain individuals whose membership should be specifically confirmed.

(f) The next is a suggestion that not all persons named were qualifying tenants and lists a Mr Merkle who appears sadly to have died on 6th November 2022 so could not therefore have been a member of the RTM company as of 7th June 2023.

(g) There is an allegation that shared ownership leases do not qualify unless they have been staircased to 100%.

(h) The next concern relates to live work units, it being suggested that at least five were not qualifying tenants as they remain live work units and were therefore business leases within the meaning of section 23 of the Landlord and Tenant 1954. This it was said would mean they were not qualifying tenants under the Act.

(i) The next relates to the existence of corporate members and a suggestion that the freeholders were unaware who had signed the applications for membership and therefore may not have become members within the meaning of the Companies Act.

(j) The next suggestion is that there had not been service of the claim notice on all landlords.

(k) The next was an allegation that the claim notice did not bear a signature of an authorised member or officer of the company and details were requested.

(l) The next was an allegation of a failure to give claim notice to all landlords and in particular Rosario Property Holdings Limited and Gold Brown Limited. In addition, it is also alleged that long leaseholders of the flats had sub-let and would therefore become landlords and would be entitled to be given the claim notice and not merely provided with a copy.

6. This is responded to by the Applicants in a response which includes a number of documents including certificates of bulk posting, the register of members and documents relating to the live work units. We have noted all that has been said and will address these points in the findings section of this decision.

7. The Respondents then responded to the Applicant's reply but did not in reality confine themselves to merely responding to the Applicant's reply but raised additional matters and referred to a number of authorities in support of their contentions. Again, as with the Applicant's response, we have noted all that has been said and will address these issues in the findings section of this decision.

8. As we have indicated above, there was no evidence given to us save for the report of Mr Reader who did not actually attend the hearing. Accordingly, all submissions made have been fully set out in documentation.

9. We will refer to submissions made at the hearing but both Counsel adopted their skeleton arguments and did not depart from those in the lengthy submissions made to us save in one or two respects. Of note was Mr Armstrong's submission that the burden of proof remained with the Applicants throughout and that the Respondent had discharged its burden of proof in respect of certain matters by reliance on the expert's report. One matter that was conceded was the signature point on the original claim notice. In addition, it seems that the Respondent accepted that with the Court of Appeal authority covering the question of shared ownership and staircasing, their complaint in that regard was extremely difficult to uphold.

10. We did inspect the subject premises and we will comment on that in due course but before we do so, it is right to review the report of Mr Reader which appeared in the bundle at page 224 onwards and is dated 5th October 2023. The report sets out the details of his qualifications and instructions and confirms that the purpose of the report was to assess (1) whether the premises may consist of more than one building, (2) given there are substantial non-residential parts, and to conclude whether the non-residential parts exceeded 25% or not and (3) there are various live work units in the premises and whether they can be deemed residential or non-residential. It is said that his investigations included a site visit and a review of buildings documentation. He records that his overriding duty is to be impartial, and that the duty overrides the obligations to the freeholder. The Property is described under paragraph 2.4 and is followed by his opinions on the three matters he was asked to deal with. Under multiple buildings he recites section 72 of the Act. His conclusion was that the premises consist of three distinct buildings. Photographs have been included which show the front of the various blocks. It does not appear that any photographs were taken of the rear. Reference is made to the Court of Appeal decision of Triple Rose Limited v 90 Broomfield Road RTM Company Limited [2015]EWCACiv282 where it was accepted that a company can only acquire the right to manage a single building.

11. He then moved on at paragraph at 3.2 to deal with the defined area of the building. He sets out under his investigation heading Blocks A, B and C and in defined areas states that there are 105 residents' flats, 30 housing association flats, 22 live work units, one retail area, approximately 24 commercial areas under one leaseholder, non-residential common parts, a gym, cinema, sauna, above and below car parking, bicycle storage and waste bin areas. He accepts that the list of defined areas are distributed over the three buildings but he had not been instructed to nor was he able to conduct a full measured survey.

Accordingly, as he indicated, he was unable to give an exact allocation of the residential and non-residential areas in the building.

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12. Under the heading My Opinion’, he relies on his experience as a chartered surveyor to assess whether or not the residential parts exceed 75% of the total internal floor area. He takes the view that having visited the premises, apparently surveyed some of the defined areas, viewed various leases and documents and taking findings into consideration that his professional opinion is that the non-residential parts do exceed 25% of the total internal floor area. He refers to draft calculations although we could not see that those draft calculations were included with his report. He does accept that only a full measured survey will reveal the exact percentage figures.

13. On the question of the live work units, he has been asked to assess whether they should be considered residential or non-residential. He lists those units that were originally intended to be live work units, which was a total of 22 spread over Blocks A and B. Some history as to the reasoning behind live work units is provided and he then gives details of the legal issues addressing questions as to variations of leaseholds, planning permissions and the involvement of HM Revenue and Customs. His conclusion was that the live work units should be considered as non-residential.

14. Under his heading Conclusions, again indicating that this is as a result of his experience as a chartered surveyor, he has come to the conclusion that the premises may consist of more than one building, that he is of the strong opinion that the non-residential part exceeds 25% of the internal floor area and that he is also of the strong opinion that the live work units should be deemed to be non-residential. He then concludes that as a result on his professional opinion the right to manage the premises should be rejected as the Applicants claim fails to meet the requirements of the Act. The report then contains a statement of truth.

INSPECTION

15. Before we deal with our findings, we should record the inspection that we undertook on 27th November 2023. This was in the company of representatives from the Respondent’s managing agents and Mr Kaltsas, a tenant and Mr Davies who is the landlord of the commercial premises on the first and second floor. We made it clear to the parties that we were not prepared to accept evidence from anybody attending as that should have been included at the hearing.

16. The Property sits at the corner of Southgate Road and Balmes Road. It is as set out on the land registry plan, which was provided to us. The Property is divided into three blocks. When looking at it from Southgate Road, Block A sits in the middle with Block C to the right and Block B to the left on Balmes Road. At Ground Floor level it is predominantly either entrances to the blocks or commercial usage, some of which is empty. There is a fairly substantial Tesco Extra Shop. At the rear there is some above ground car parking seemingly used by the commercial units and the entrance via a lift to two floors of underground parking, which we inspected. We also noted the bin area, which was common for the three blocks.

17. Externally to the front there are different facades, which give the impression of there being three separate buildings. To the rear, however, this description is inaccurate because there is a homogenous exterior, which is largely rendered and painted in the same colour paint. Certainly, from the rear there were clear indications that the Property was a single building divided into three blocks.

18. We were able to internally inspect via Block A both some of the commercial rooms, which consisted of a small cinema and sauna as well as a gym, none extensive in size, and a couple of what had been live work units but which were now solely residential flats. We are grateful to the owners of Flats 210 and 307 for this chance to inspect. Certainly, such inspection clearly indicated that whatever the live work ratio may have been, it no longer existed, and these were nothing other than residential units of accommodation.

19. The commercial premises sit at ground and first floor level in Block A. These seemed to be predominantly of clerical\office usage. They were in the main occupied and we understand are the subject of applications to convert to residential accommodation. The floor areas are similar.

20. The underground car park sits at two levels and is extensive. It was difficult to align this with the blocks, in the absence of any plans but appeared to be under Block B, although there was, we were informed, a lift serving Block B. There is also a section where the chutes from Blocks C and A come to a common area for refuge disposal. Our inspection of the car park indicated that there appeared to be combined pipe works running throughout, although it was not possible to tell with certainty whether these were anything other than drainage and/or water. The parking is used by Blocks A and C and the leaseholders in Block B. The concierge desk, which sits in Block A, serves we were told both Block A and Block C as well as Block B although residents of Block B can only access Block A by going outside since there is no internal link from Block B to the other two blocks. The concierge also monitored the fire alarm for the three blocks, although there were separate fire alarm systems. A sounder for the system in Block B is in the lobby area of Block A. It appeared also that some external lighting ran across more than one block. Block B has entrances from Balmes Road whereas Block A and C have a common entrance on Southgate Road. There is a single Fire Service Information box located outside the Southgate Road entrance.

21. We did inspect some open areas providing access for residential users in block A. Generally, the building appeared to be in good condition.

FINDINGS

22. We now turn to our findings on the various matters in dispute. We will take those from the Respondent's response to the Applicant's statement of case as we are encouraged to do by Mr Armstrong in his skeleton argument.

23. The first issue is the identification of the premises. In the counter notice it is said by the Respondent that the description of the premises as showing those in Southgate Road and Balmes Road, is incorrect when compared to the Land Registry document. Reference is made to title EGL456506. No such Land Registry entry was provided. What was provided was title EGL388868 dated 4th

March 2013 showing the entries as at the 8th August 2022. This document refers to the Property edged in red on the plan as being 6 – 14 (Even) Southgate Road, London N1 3JJ. It shows the registered proprietor as Cedarcrest Limited and Brookvine Limited, they appearing to have acquired the Property in August of 2017. The schedule of leases includes leases showing the address both at Southgate Road but also at Balmes Road. The file plan, which is at page 91 of the bundle, shows an essentially square site with one corner cut off. Clearly the Property runs along Southgate Road and Balmes Road. There seems to be no doubt that the Respondents have been able to fully understand the extent of the Property which is the subject of these proceedings, given the extensive written and verbal submissions that we had from Counsel both before and during the hearing. In those circumstances we are satisfied that the description of the Property is accurate and there is no doubt as to the extent that the Applicant's sought to acquire the right to manage.

24. We then turn to the question of the building and whether there is in fact three buildings which would preclude the Applicant from managing them as is accepted we think by both parties. Whilst we accept from our inspection that externally to the front there does appear to be three blocks and indeed, we do not think that is an argument to the contrary as far as the Applicants are concerned. However, these three blocks are in our findings conjoined. This is the more so when one takes into account the inspection that we carried and our view of the Property from the rear where the residential elements are all rendered and painted the same colour. Blocks A and C use a common entrance, in addition, there is the sign at the entrance to Block B directing people to Block A to the concierge office and other matters that we found on our inspection satisfy us that contrary to Mr Reader's view, this is a single building comprising three blocks and, as we understand it, is managed as one. There are various shared services; the concierge for example provides assistance to residents in all Blocks and as we understand it is able to police the fire alarms in Block B. The underground car park is used by all leaseholders and so far as we are aware, the long leaseholders all have the right to use the common facilities such as the cinema room, sauna, gym and roof garden.

25. We have also considered the terms of the lease for flat A201 which was included in the bundle before us. This is a live/work unit. The definition of the Development is "*All that land known as 6-24 Southgate Road London N 1 and registered with Tittle Absolute at the Land Registry under Title Number GGL 388868 together with the buildings now or hereafter erected thereon or on some part or parts thereof*". The lease provides that the leaseholder of the demised unit will contribute towards three Group service charges which relate to the usage of the Development. There is no evidence of any block charge.

26. Given our inspection, the terms of the lease of A201 and our consideration of the submissions, we are of the view that this is a single building and is therefore capable of being managed by the Applicants.

27. The next matter relates to the relationship between commercial and residential. There are a number of elements to this. Insofar as the commercial units are concerned, these are to be found on the ground floor, although a number are not in use, and includes the Tesco Extra Store. In Block A there are commercial units

on the first floor as well, with access from the ground and although these may be due to be converted, they are not at the time of the claim notice. Also, our inspection did not clearly indicate whether any of the commercial units were in fact now being used for residential purposes. It might have been helpful to be advised as to the share of the service charges that these commercial units have to meet but such information was not provided to us. The question is whether they, together with the live work units, which we will turn to, constitute more than 25% of the floor area of the blocks. On their own it seems to us clearly, they do not, and we do not consider the Respondents so allege.

28. We then turn to the somewhat vexed question of the live work units. It is the Applicant's case that the live work units are in the vast majority of cases residential only and accordingly there is no element which would fall into the 25% commercial situation. It is suggested by the Respondents that because the leases are purportedly protected under part 2 of the Landlord and Tenant Act 1954, they do not fall within the definition of leases as provided for in the Act. Reference is made to the Gaingold Limited v WHRA RTM Company case in the Lands Tribunal involving the use of a basement in a restaurant as residential. The basis of the Applicant's case is that the premises are used as residential accommodation and in the majority of the 22 live work units there has been either a variation of the lease to allow this and/or an application and a grant of a certificate of lawful use by the local authority. Our attention is drawn to the 1954 Act where the use of the words 'occupied or intended to be occupied' for residential purposes is made and it is said is distinguished. A further point that the Respondents have raised is the suggestion that the Applicants who occupied these units as live work units were not entitled to make the changes and that accordingly there was illegality, and they are not entitled to benefit from this. A number of cases were put to us, and we have noted those. It is also pointed out by the Applicants that in connection with the live work units there is a differentiation between work areas and the remaining area of the unit and that accordingly only the dedicated work areas could be included within the non-residential part.

29. We need to consider the Respondent's reply to the Applicant's response and contained therein is a lengthy submission concerning the extent of non-residential parts. In particular at paragraph 27 onwards is the attention drawn to the live work units. Here it is confirmed that there are 22 of those and that it would seem four have either not received a certificate of lawful use and/or variation to the lease. It draws to our attention that the leases, of which we have seen one copy for Flat 201, contain a covenant to use the accommodation as a live work unit.

30. It appears from the Respondent's point of view that there is no legal guidance as to whether a mixed user unit should be treated as residential or non-residential, but we were directed to section 75(3) of the Act that sets out that a tenant under a lease protected by part II of the Landlord and Tenant Act 1954 cannot be a qualifying tenant. For our part, we could see no reference in the lease that was before us to the 1954 Landlord and Tenant Act. In addition, the 1954 Act appears to apply to properties that are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes. There is no definition as to what the work unit should be.

31. We do not support the Respondent's argument that the use of the premises for residential purposes notwithstanding the deed of variations granted by the landlord and/or the planning dealt with by the local authority, somehow still prevents them from being residential because they have obtained this position as a result of some form of dishonesty. The cases that are put to us show a far greater element of 'dishonesty' than is applicable here. What has been done is that the live work units have perhaps outlived their use. It seems from 2007 onwards there have been deeds of variation granted to enable the units to be purely residential and these have been coupled, in a number of cases, with permissions granted by the local authority. With such permission granted either by the landlord or by the local authority we cannot see that this usage could be deemed to be dishonest.

32. Accordingly, and for the purposes of these proceedings and considering the schedule of live work units which is at page 314 of the bundle, we are satisfied that in respect only of Unit 701 and Flats 31 and 32, has there been neither deeds of variation allowing the change of use and nor there have been changes to planning permission for these units. Unit 203 has a deed of variation allowing the change. Unit 206 does not have a deed of variation but does have planning permission granted in 2014. In those circumstances it seems to us that only those units that have neither a deed of variation nor planning permission for the change could still be classified as live work units. In any event we agree with the Applicant's point that the work part of the unit is the only part which might be excluded. Accordingly, we are not satisfied on the balance of probability that the Respondents have made out their case to persuade us that 25% of this building is occupied for commercial purposes. We must say that we are disappointed in the efforts made by Mr Reader to establish the areas involved. We have seen in the bundle provided, a number of plans which appear to have some form of measurements shown thereon and we would have thought that acting for the freeholder it would not have been difficult to have laid his hands on plans setting out the extent of the various properties at the floor levels. He has not done so and as we have indicated above, we have seen no calculations, which he says he has engendered, to support his findings in this regard.

33. The next issue raised by the Respondents is a failure to comply with section 78 of the Act. According to the response, these are confined to the following:

(a) The Peabody Trust – we understand from the Applicants that they were served and supporting material has been produced. This was not something that was in truth pursued greatly by Mr Armstrong and we accept that insofar as the Peabody Trust is concerned, this is not an issue.

(b) We then turn to Mr Merkle who died in November of 2022. At that time, it appears that he was a member of the RTM and whilst we accept the Respondent's contention that the personal representatives would automatically have been noted as the owners on the Property Register of the title on Mr Merkle's death, that has not in fact taken place as far as the Land Registry is concerned. But given that Mr Merkle was a member of the Applicant Company and remained the registered proprietor at the time of the notice of issue, it seems to us that this is a matter of little moment and in

those circumstances, we would not be satisfied that this threw into doubt the entitlement of the Applicants to acquire the right to manage of the Property.

(c) Other individuals, Miss Sahdev and Mr Yurtsever, are according to the skeleton argument properly served and it was not in fact a matter that was pursued by the Respondents before us.

34. The next point raised by the Respondents is the question of the address for service of the notice of intention to participate. It seems to be suggested here that because there may have been sub-letting the Applicants should have served not only at the flat address but any other addresses which may have been provided. There is no evidence to suggest that the relevant parties who were entitled to receive the NIPs did not receive them at whatever address may have been utilised. The Applicant's response at page 65 of the bundle sets out the position. No evidence was adduced to us to show that any of the qualifying tenants had not been served at the appropriate address. It is accepted it seems by the Respondents that they were entitled to serve at the flats of the qualifying tenants and the evidence that we have is that they did so. The list provided at pages 317 and 318 are presumably in the control of the Respondent. Service at the flat address is, we find, acceptable.

35. On the question of insufficient members, it does not seem to us that the Respondent is entitled to go behind the register of company members which, as we understand it, clearly shows a sufficient number to meet the requirements of the Act. The so-called evidence resulting from correspondence between the managing agents and one or two of the tenants does not really assist us as none of these people who are referred to, namely Mr Cather and Mr James, have provided a witness statement which assists the Respondent in their assertions.

36. We understand that in respect of the shared ownership leases the Respondent has accepted that as a result of a Court of Appeal Authority we must follow the law and that is clearly stated and the staircasing is not an issue.

37. The question of corporate members is also raised but not in truth pursued to any great degree at the hearing before us. We can see nothing of any merit in the suggestion that there is any problem with the corporate members who, as we understand it, are members of the RTM Company in any event and our comments at paragraph 35 above apply. In so far as Rosario Property Hildings Limited and Goldbrown Limited are concerned we accept the evidence of the Applicants that these companies are members of the RTM.

38. Another element of objection was the signature of the claim notice but that seems to have been accepted by the Respondents.

39. Finally, there appears to be a suggested that anybody who has sub-let and has thus become a landlord presumably of an assured short hold tenant, should have been served separately. This seems to us to be stretching the point. The Act refers to long leaseholders and clearly a landlord of an AST does not fall into that category. They are qualifying tenants who have sub-let. We prefer the submissions of the Applicant on this point.

40. There are, it would seem two major planks to the Respondent's argument centred on the extent of the building and whether or not more than 25% was commercial. We are satisfied on the balance of probabilities that the building is one, as for the reasons we have stated above.

41. The 25% element was raised by the Respondents, and we believe it is for them to satisfy us that that is the case. We were not impressed with the experts report as little attempt if any had been made to properly measure the extent of the units, which could have been done as we believe the Respondents would have had the necessary plans both perhaps from the original erection of the buildings but certainly in respect of fire and other issues which would need to have been updated during the passage of time. He has also strayed into opinions on the law. Furthermore, the live work unit points, again seem to us to be without merit. Eighteen of the 22 units have either got a variation approved by the landlord and/or planning permission to use the units as solely residential and that this has been the case for some time. Presumably the landlord has been accepting rent in the meantime and charging service charges. In those circumstances we are satisfied that the building is one and that the commercial area is less than 25%. The other issues raised concerning the service of notices and their accuracy are not, on our findings, fatal to the application before us.

42. For the reasons stated above we find that the Applicants are entitled to acquire the right to manage the building as defined in the Land Registry papers under title number EGL388868. Therefore, in accordance with section 90(4), within three months after this determination becomes final the Applicant will acquire the right to manage these premises.

43. According to section 84(7):
"(7) A determination on an application under subsection (3) becomes final—
(a) if not appealed against, at the end of the period for bringing an appeal, or
(b) if appealed against, at the time when the appeal (or any further appeal) is disposed of."

Andrew Dutton

Judge: _____
A A Dutton

Date: 25 January 2024

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.