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

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| **Case Reference** | **:** | **LON/00BK/LRM/2023/0022** |
| **Property** | **:** | **14 Park Crescent and 8 Park Crescent Mews East, London W1B 1PG** |
| **Applicant** | **:** | **14 Park Crescent RTM Co Ltd** |
| **Respondents** | **:** | **(1) 14 Park Crescent Ltd**<br>**(2) PC Investments Ltd**<br>**(3) The Crown Estate** |
| **Representative** | **:** | **Northover Litigation (1st and 2nd Respondents)** |
| **Type of Application** | **:** | **Right to Manage** |
| **Tribunal** | **:** | **Judge Nicol**<br>**Mr I B Holdsworth MSc FRICS**<br>**Mr ON Miller** |
| **Date and Venue of Hearing** | **:** | **15th and 16th July 2024**<br>**10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | **:** | **18th July 2024** |

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**DECISION**

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**The Tribunal has determined that the Applicant is entitled to exercise the Right to Manage**.

Relevant legislation is set out in an Appendix to this decision.

**The Tribunal's reasons**

1. By claim notice dated 2nd June 2023, the Applicant sought to exercise the right to manage ("RTM") the premises in which its members are lessees, namely 14 Park Crescent and 8 Park Crescent Mews East, in accordance with the Commonhold and Leasehold Reform Act 2002 ("the Act").

2. The Third Respondent is the freeholder, not only of the premises but also much of the surrounding property in the area. The Second Respondent has a head lease which includes the premises. The First Respondent holds a sub-lease of part of the property held by the Second Respondent which includes the premises but also some adjacent property. Each of the Respondents served a counter-notice:

   (a) The First and Second Respondents on 6th July 2023, disputing the RTM; and
   (b) The Third Respondent on 7th July 2023, accepting the RTM.

3. On 23rd July 2021 the Applicant applied for a determination of their entitlement to exercise the Right to Manage. Judge Holdsworth issued directions on 11th August 2023 but they were superseded by directions made by Judge Percival on 21st September 2023 following a case management hearing. The final hearing was listed for 14th and 15th March 2024 but this was vacated by amended directions made by Judge Hawkes on 9th February 2024 to allow for the parties' experts to meet and discuss the case, following which they produced a Joint Statement summarising their areas of agreement and disagreement.

4. The Tribunal inspected the subject property on the morning of 15th July 2024 and commenced the hearing in the afternoon, continuing for the morning of 16th July 2024. The attendees were:

   - Mr Robert Bowker, counsel for the Applicant
   - Mr Simon Serota, solicitor
   - Mr Philip Mizon
   - Mr Tony Hayes, expert witness
   - Justin Bates KC, counsel for the First and Second Respondents
   - Ms Janice Northover, solicitor
   - Mr Andrew Ilsley, expert witness
   - Mr Alastair Jewell, lay witness

5. The Third Respondent did not attend and was not represented. References to "the Respondents" below are to the First and Second Respondents only.

6. The papers before the Tribunal consisted of:

   - A main bundle of 282 pages;
   - A supplementary bundle of 268 pages containing land registration details and relevant leases;
   - A hard copy of the photos and floor plans;
   - A skeleton argument from each of Mr Bowker and Mr Bates; and
   - A joint bundle of authorities.

7. Mr Bowker also demonstrated some of his points using Lego bricks.

8. There are two principal issues. The RTM provisions only apply to premises which, amongst other criteria, consist of a self-contained

building or part of a building. The subject premises are clearly properly described as part of a building but the parties dispute whether it satisfies two of the criteria for being self-contained:

(a) Under section 72(3)(a) of the Act, a part of a building is a self-contained part of the building if it constitutes a vertical division of the building. The parties dispute whether the premises can be so vertically divided. This is the Vertical Division Issue.

(b) Under section 72(3)(b), a part of a building is a self-contained part of the building if the structure of the building is such that it could be redeveloped independently of the rest of the building. The parties dispute whether it is possible to redevelop the premises independently of the adjacent parts of the building. This is the Redevelopment Issue.

9. The premises for which the Applicant wishes to take over the management are part of a terrace close to Regent's Park. The terrace was severely damaged by bombing during the Second World War and was re-developed in the 1960s. The impressive colonnaded façade was reconstructed but the buildings behind were common for that era, being built on top of whatever remained of the original buildings.

10. The premises were later used as part of the county court at Central London for many years. When the court re-located, the premises were part of a redevelopment which also encompassed neighbouring parts of the building. The premises now consist of 6 apartments within 14 Park Crescent and 3 in 8 Park Crescent Mews East, the two being connected by stairs and corridors running through the basement.

11. On the inspection, Mr Bates pointed to peculiarities in the construction at the edges of the premises where they connected to the neighbouring parts of the building on either side, both at the front and the back. Mr Ilsley expanded on these points in his evidence to the Tribunal during the hearing. The matters were:

a) Between the front doors to numbers 12 and 14 Park Crescent, there was an expansion joint which ran the full height of the building. It does not align with the mid-point of the party wall between the two properties. Therefore, if a line were to be drawn out from that mid-point, part of the façade which otherwise extends across the whole of 14 Park Crescent would be left with 12 Park Crescent.

b) On the other side, there is a similar issue with an expansion joint not aligning with the mid-point of the party wall with the neighbouring property, 98 Portland Place.

c) To the rear elevation, again the expansion joints to both sides do not align with the mid-point of the party walls with 12 Park Crescent to one side and 98 Portland Place on the other. Mr Bates further alleged that this was supported by the existence of bricks the same colour as those on the rear elevation of the premises extending in the uppermost corner past the expansion joint into the darker coloured brick forming the rear elevation of 12 Park Crescent.

d) At the bottom of the rear elevation, there are two balcony structures, one above the other, which form part of 98 Portland Place but appear to extend slightly onto the rear elevation of the premises. If a line were drawn out straight from the mid-point of the party wall, a small part of each balcony would appear to fall on the same side as the premises.
e) In order to observe the rear elevation, the Tribunal went down a short set of concrete steps at the side of 8 Park Crescent Mews East into a car park. Although the car park abuts 8 Park Crescent Mews East, it is agreed that it is not part of the premises subject to the RTM application. Mr Bates pointed out that, if a line were extended down the side of 8 Park Crescent Mews East, the last step and part of the adjacent rear wall would be left on the "wrong" side of the line.
f) Although of course the Tribunal was unable to see them on inspection, the foundations were shared across the building and a vertical division would leave parts of the same foundations outside the premises.

12. Mr Bates referred the Tribunal to the leading case on the subject of vertical division, *Re Holding and Management (Solitaire) Ltd* [2008] L&TR 16. In that case, there was a car park which extended from the subject premises to below the neighbouring property. There was obviously no full vertical division. The First Tier Tribunal tried to get round this by importing a requirement of materiality. George Bartlett QC, the President of the Lands Tribunal, rejected that approach and stated in his judgment:

> The requirement that, to be a self-contained part of a building, a part of a building must constitute "a vertical division of the building" is unqualified. Deviations from the vertical that are *de minimis* could no doubt be ignored for this purpose.

13. Mr Bates argued that the parts of the façade on the front elevation and the brickwork on the rear elevation and of the foundations which were left on the "wrong" side of the line meant that there was no vertical division. However, as Mr Bowker demonstrated with his Lego bricks, there is nothing objectionable about running the dividing line through a shared part of the building, as Mr Bates himself did when looking at the party walls. It is notable that this is the approach to shared structures adopted by the legislation relating to party walls. The parts of the façade, brickwork and foundations he referred to as being outside the premises are not parts of the premises but parts of the neighbouring properties. There is no "wrong" side of the line.

14. The arguments about the balconies and the step into the car park were not part of the Respondent's case until the Tribunal inspection. As Mr Bates pointed out, the qualification criteria being considered in this matter relate to the Tribunal's jurisdiction and the Tribunal must look at whether any particular feature of the building results in the Tribunal's jurisdiction being excluded, even if the parties didn't raise it. However, the fact is that the Applicant had no fair opportunity to get their expert to comment or to prepare for these points in the normal way.

15. In relation to the balconies, Mr Bates asserted that the line from the mid-point of the party wall should be projected out, beyond the boundary of the premises formed by the rear elevation, resulting in the end of each balcony being left on the "wrong" side again. The Tribunal queried with him why the line would project out beyond the boundary of the premises. He insisted that there had to be a straight line which could not "zig-zag" around the corner of the premises.

16. However, there is nothing in the legislation to support this approach. There is more than one vertical division, namely to the front, the rear and each side. The rear vertical division formed by the rear elevation leaves the balconies outside the scope of the premises. There is no justification for extending a line out beyond the boundary of the premises or that it must never deviate from the straight. The fact that the terrace curves around a crescent-shaped road should be sufficient to establish the latter.

17. This approach may also be applied to the step into the car park and the neighbouring wall. There is no requirement for a single straight line measured from some nearby part of the premises. A vertical division which runs around the step and the wall leaves nothing hanging on the "wrong" side above or below.

18. Therefore, the Tribunal is satisfied that the premises constitute a vertical division of the building.

19. The Redevelopment Issue did not concern whether it was feasible to redevelop the premises separately from neighbouring parts of the building. Mr Ilsley conceded that it could be done from a practical and technical point of view. It would appear that this happened to an extent as Mr Jewell confirmed in his evidence that the neighbouring parts of the building were completed and occupied while the premises were still being redeveloped during the last redevelopment of the building. However, both Mr Ilsley and Mr Bates asserted that such redevelopment could not be done "independently".

20. Mr Ilsley described in detail the difficulties and complexity which would be involved if the premises were to be redeveloped. In particular, he was concerned that the foundations would have to be cut away and later "re-connected" to the foundations of the neighbouring part of the building.

21. Mr Bates asserted that this complexity made the difference. He argued that whether a redevelopment was independent was a matter of fact and degree and the unusual complexity in this instance meant that any redevelopment could not be done "independently".

22. The Tribunal was unable to see why the complexity or degree of involvement with the neighbouring part of the building would change whether a redevelopment was being carried out any more or less independently. Any contiguous properties, such as in a terrace or semi-detached, may only be redeveloped with due consideration and co-

operation with any neighbouring parts of the building. This would normally include providing support, at least temporarily during the works. If the word were considered in its wider sense, no such redevelopment could ever be regarded as being done "independently".

23. However, "independently" does not mean, as the Respondents appeared to suggest at times, that the relevant premises have to be capable of redevelopment without any reference whatsoever to other parts of the building. No terraced or semi-detached property could satisfy such a requirement.

24. In the opinion of the Tribunal, the parties have over-complicated the interpretation of a simple provision in the Act. The ordinary meaning of the words "redeveloped independently" is simply that one part of the building is redeveloped while the other part is not. So long as the re-developer returns to the neighbour the same property as they had before, with the same structure and connections, then that neighbouring part has not been "re-developed". As soon as Mr Ilsley said it was feasible to undertake the redevelopment of the premises without making a material change to the neighbouring property, the question was answered.

25. Therefore, the Tribunal is satisfied that the structure of the premises is such that it could be redeveloped independently of the rest of the building.

26. Mr Bowker questioned whether Mr Ilsley could be regarded as sufficiently independent as an expert but the Tribunal had no reason to consider that issue. Although the Tribunal has effectively held that his opinion was wrong, that was due to his understanding of the relevant legal framework. The Tribunal found him to be a genuine and honest witness who, like Mr Hayes, was able to provide useful information and explanations to the Tribunal.

**Name:** Judge Nicol **Date:** 18th July 2024

## Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## Appendix of relevant legislation

## Commonhold and Leasehold Reform Act 2002

### Section 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.

**SCHEDULE 6**

**PREMISES EXCLUDED FROM RIGHT TO MANAGE**

**1 Buildings with substantial non-residential parts**

(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.