FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/12UD/LRM/2023/0005**
Property	**:**	**5 & 6 North End Wisbech Cambridgeshire PE13 1PE**
Applicant	**:**	**Harbour and Yacht's View RTM Company Limited**
Representative	**:**	**Philip Bazin, The Leasehold Advice Centre**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Scott Cohen Solicitors Limited**
Type of application	**:**	**Application in relation to the denial of the right to manage**
Tribunal	**:**	**Judge David Wyatt**
Date of decision	**:**	**2 May 2024**

DECISION

Decision

The Tribunal:

(1) bars the Respondent from taking further part in these proceedings;

(2) summarily determines that the Applicant was on the relevant date entitled to acquire the right to manage the Property; and

(3) orders the Respondent to pay £100 to the Applicant to reimburse the tribunal application fee paid by them.

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Reasons

Application

1. On 9 May 2023, the Applicant RTM company applied to the tribunal under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the "**Act**") for a determination that, on the relevant date, it was entitled to acquire the right to manage the Property.

Background

2. By a claim notice dated 19 February 2023, the Applicant gave notice to the Respondent freeholder that it intended to acquire the right to manage the Property, which is a residential building accommodating nine flats.

3. On 14 March 2023, the Respondent's representatives requested current Land Registry official copy entries for the leasehold titles of each of the qualifying tenants, a copy of the register of members, copies of correspondence serving the claim form, copies of the notices of intention to participate and letters sending them, the articles of association and copies of any applications for membership. In their application to the tribunal, the Applicant said these documents were provided by e-mail on 23 March 2023.

4. By a counter notice dated 3 April 2023, the claim was disputed. The respondent alleged that on 1 March 2023 the Applicant was not entitled to acquire the right to manage the Property because:

    a) by reason of section 72(1) of the Act: "*…these are not premises to which the section applies…*" (their accompanying letter contends that the premises are not a self-contained building or part of a building); and

    b) by reason of section 80(3) of the Act: "*…the claim notice did not correctly provide the information required by that section…*" (their accompanying letter contended there was no evidence that Susan Field, qualifying leaseholder of Flat F, had applied to be a member of the Applicant).

Procedural history

5. On 10 November 2023, I gave case management directions for steps to be taken by the parties to prepare for an inspection and a hearing, which was later listed for 12 March 2024. The Respondent was directed to produce a statement of case with full details of the grounds for opposing the right to manage, including precisely why it was said the premises are not a self-contained building or part of a building and why it was said Susan Field was not a member (given her name on the register of members and the Applicant's assertion that it had already provided evidence of her application for membership), followed by all evidence/documents relied upon by 15 December 2023.

6. The first statement of case produced by the Respondent was unclear. It referred only to potential issues under section 72(1), of (in effect) whether the Property is composed of multiple buildings and/or consists of a self-contained building or part of a building. At the same time, the Respondent applied for permission to rely on expert evidence. The Respondent also requested a stay of the final determination in this matter pending the conclusion of their appeal against the decision of the Upper Tribunal in Assethold Limited v Eveline Road RTM Company Ltd [2023] UKUT 26 (LC).

7. On 26 January 2024, I gave further directions. These noted that the Respondent's statement of case made no mention of the allegation in the counter notice about section 80(3), so the Respondent was taken to have abandoned that allegation and to be relying only on the allegation relating to section 72(1). I proposed further directions and gave a period for representations. I indicated that the tribunal was not minded to grant a stay without the consent of the Applicant unless by 29 January 2024 the Respondent confirmed that, if the Court of Appeal dismissed the appeal against the decision of the Upper Tribunal in Eveline Road, the Respondent would admit the claim in this case.

8. On 1 February 2024, the Respondent wrote to the Applicant. They explained that, since it was their case that the premises comprise multiple buildings and alternatively multiple self-contained parts, it was their position that the case should not automatically be dismissed following the decision of the Court of Appeal in Eveline Road. On 12 February 2024, I gave further directions in line with those proposed earlier. These vacated the hearing and set out steps to be taken to prepare for a final hearing, gave permission for expert evidence on the remaining issue(s) about the premises and required the Respondent to produce a replacement statement of case setting out their case clearly and precisely, together with all evidence/documents relied upon in a bundle.

9. On 23 February 2024, the Respondent's representatives produced the Respondent's bundle. They explained that they now had expert evidence which confirmed the Property: "*…comprises multiple self-contained parts of buildings but does not establish multiple buildings.*" They said that accordingly, if it remained an option, the Respondent was: "*now in a position to concede on this matter in the event that final determination of [Eveline Road] is found against Assethold Limited on the point.*" Their replacement statement of case confirmed the Respondent's ground of opposition was that the premises comprise two self-contained parts of buildings, so are not: "*a self-contained building or part of a building*" (s.72(1)). The Respondent relied on wording used in Triplerose Limited v Ninety Broomfield Road RTM Company Limited [2015] EWCA Civ 282 at [62] which reads: "*…in my view it is not open to an RTM company to acquire the right to manage more than one self-contained building or part of a building.*"

10. On 28 February 2024, following notification from the Applicant that the Court of Appeal had at the hearing dismissed the appeal in Eveline Road,

the tribunal proposed to by agreement determine under section 84(3) that the Applicant was on the relevant date entitled to the right to manage and order reimbursement of the £100 application fee. The tribunal directed the Respondent to reply by return with their reasons if they disagreed. On 29 February 2024, the Respondent's representatives asked the tribunal to allow time for the decision to be published and the question of appeal to be considered before they responded.

11. On 4 March 2024, the Applicant circulated a copy of the Court of Appeal decision in Assethold Limited v Eveline Road RTM Company Ltd [2024] EWCA Civ 187. This confirmed the conclusion at [89] in the Upper Tribunal decision: "*In summary, I do not think that there is anything in the scheme of the RTM provisions in the 2002 Act which supports the argument that an RTM claim cannot be made in respect of a self-contained part of a building which itself contains a self-contained part or self-contained parts of the same building. Nor do I think that [Triplerose] provides support for this argument*." It added, at [47]: "*Not only is there nothing in the 2002 Act which positively supports Assethold's argument, there are, as I have said, strong and clear indicators that point the other way*."

12. On 21 March 2024, I gave further directions, noting that the time for any application for permission to appeal to the Supreme Court would expire shortly. The directions required the Respondent to by 2 April 2024 send confirmation that they agreed the approach proposed on 28 February 2024 or evidence that they had applied to the Supreme Court for permission to appeal against the decision in Eveline Road, with any explanation of any reasons for their conduct in writing as they did on 23 February 2024 but then not conceding the claim.

13. On 25 April 2024, the tribunal wrote to the parties, noting that it did not appear to have received a response. The Applicant invited the tribunal to determine the matter in favour of the Applicant. On 26 April 2024, the tribunal sent a final direction requiring the Respondent to comply with the directions given on 21 March 2024 by return, warning that if they failed to do so the tribunal could determine entitlement to the right to manage summarily on paper under Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**") and/or list the matter for hearing. I understand there has still been no response.

Determination

14. The Respondent has failed to comply with the directions noted above. They have also failed to co-operate with the tribunal such that it would not be fair and just for the tribunal to allow them further time. That would unnecessarily delay acquisition of the right to manage. The only remaining ground of opposition appears unarguable following the decision of the Court of Appeal in Eveline Road, particularly when (despite the directions) the Respondent has given no indication that it has applied for permission to appeal against that decision and the time for

doing so has expired. For the same reasons, I also consider there is no reasonable prospect of the Respondent's case succeeding.

15. Accordingly, under Rules 9(3)(a) and/or (b) and/or (e) and (7) I bar the Respondent from taking further part in these proceedings and under Rule 9(8) I summarily determine the matter against the Respondent. The Property consists of a self-contained building or part of a building for the purposes of Section 72(1), whether or not it can be divided into two self-contained parts. The Applicant was on the relevant date entitled to acquire the right to manage the Property.

Costs

16. Under Rule 13, the tribunal has discretion to order reimbursement of tribunal fees. Since the Respondent has failed to comply with the directions and/or to co-operate with the tribunal, I order it to pay £100 to the Applicant to reimburse the tribunal application fee paid by them.

Name: Judge David Wyatt **Date:** 2 May 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).