



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

Case reference : CAM/00KA/LRM/2023/0013

Property : Napier House, 17-21 Napier Road,
Luton, LU1 1DU

Applicant : Napier House (LU1) RTM Company
Limited

Representative : RTMF Services Limited

Respondent : Assethold Limited

Representative : Scott Cohen Solicitors

Type of application : Application for permission to appeal

Tribunal member(s) : Judge Katie Gray
Judge David Wyatt

Date of decision : 21 January 2025

DECISION GRANTING PERMISSION TO APPEAL

DECISION OF THE TRIBUNAL

1. The tribunal has considered the respondent's application for permission to appeal dated 8 January 2025 and determines that:
 - (a) it will not review its decision;
 - (b) it refuses permission to appeal on ground 1; but
 - (c) it grants permission to appeal on ground 2.
2. Any application for permission to appeal on any ground for which the tribunal has refused permission must be made to the Upper Tribunal (Lands Chamber) no later than 14 days after the date that the tribunal sent notice of this refusal to the party applying for permission.

3. You must provide a notice of appeal to the Upper Tribunal (Lands Chamber) so that it is received within one month after the date that the First-tier Tribunal sent notice of this grant of permission to the party applying for permission.
4. Where possible, you should submit any such application and/or your notice of appeal on-line using the Upper Tribunal's on-line document filing system, called CE-File. This will enable the Upper Tribunal to deal with it more efficiently and will enable you to follow the progress of your appeal and submit any additional documents quickly and easily. Information about how to register to use CE-File can be found by going to this web address: <https://www.judiciary.uk/wp-content/uploads/2023/09/20230927-PD-UT-Lands-Chamber-CE-File.pdf>
5. Alternatively, you can submit any such application and/or your notice of appeal by email to: Lands@justice.gov.uk.
6. The Upper Tribunal can also be contacted by post or by telephone at: Upper Tribunal (Lands Chamber), 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (Tel: 020 7612 9710).

REASONS FOR THE DECISION

7. The substantive decision was sent to the parties on 12 December 2024. The application for permission to appeal does not contain numbered grounds of appeal. However, it is apparent from the document entitled "grounds of appeal" that the respondent asks the tribunal to review its decision and/or seeks permission to appeal on two grounds, namely:
 - (a) Ground 1 - that the decision in 159-167 Prince of Wales Road RTM Co Ltd v Assethold Limited [2024] EWCA Civ 1544 (Prince of Wales Road), handed down after the tribunal's determination, establishes that the landlord entitled to service of a claim notice under section 79(6) of the Commonhold and Leasehold Reform Act 2002 ("the Act") is the legal landlord not the equitable landlord. This ground of appeal goes to issue "(b)" identified at paragraph 10 of the tribunal's decision of 10 December 2024.
 - (b) Ground 2 – that the decision of the Upper Tribunal in Avon Freeholds Ltd v Cresta Court E RTM Co Ltd [2024] UKUT 335 (LC) (Cresta Court E) was wrongly decided and permission to appeal to the Court of Appeal has been granted. As this tribunal was bound by the decision in Cresta Court E it should grant permission to appeal pending the outcome of the proceedings in the Court of Appeal. This ground of appeal goes to issue "(a)" identified at paragraph 10 of the tribunal's decision of 10 December 2024.

8. The test for whether to grant permission to appeal is whether there is a realistic prospect of success. For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the tribunal records below its comments on the grounds of appeal, adopting where appropriate the paragraph numbering of the original application for permission. References in square brackets are to those paragraphs in the main body of the original tribunal decision.

Ground 1

9. The respondent's case on this ground is advanced in paragraphs 1 – 5 of the grounds of appeal. The respondent relies on the recent decision in Prince of Wales Road in which the Court of Appeal held, in the context of a claim to recover legal costs, that an equitable owner could not be a "landlord" for the purposes of s.79(6) and s.88 of the Act.
10. The respondent asserts that the claim notice should have been served on Via Project 3 Limited. Service of the notice on the equitable landlord was not sufficient. The respondent asserts that Via Project 3 Limited was excluded from the proceedings.
11. As noted above, the decision in Prince of Wales Road was handed down after we made our decision. Moreover, the respondent's submissions do not engage with the substance of the tribunal's decision at [23] – [24]. The tribunal held, following A1 Properties (Sunderland) Ltd v Tudor Studios RTM Company Ltd [2024] UKSC 27, that the failure to give a claim notice to Via Project 3 Limited rendered the transfer of the right to manage voidable at the instance of Via Project 3 Limited, not the respondent. There was no suggestion that Via Project 3 Limited wished to raise any objection to the acquisition of the right to manage and nor did it ask to be joined to the application. It was not excluded from the proceedings as the respondent asserts. Even apart from the lack of objection from Via Project 3 Limited, there is no indication of any prejudice. The respondent was given a claim notice, gave a counter notice and disputed entitlement vigorously. As a result, the validity of the right to manage scheme has been tested through the tribunal as envisaged in A1.
12. In the tribunal's judgment, nothing in the recent decision in Prince of Wales Road undermines its conclusions at [23] – [24] of the decision.
13. For these reasons, the tribunal does not consider that ground 1 has a realistic prospect of success and accordingly declines to review its decision and further declines to grant permission to appeal on this ground.

Ground 2

14. The respondent's case on this ground is advanced in paragraphs 6 – 11 of the grounds of appeal. Its case is that the decision in Cresta Court E was wrongly decided because section 79(2) of the Act specifies a consequence which precludes the approach in A1 and that permission to

appeal the decision to the Court of Appeal has been granted. If the appeal is successful on the grounds advanced in the Court of Appeal, the respondent asserts that it would follow that no notice of claim to acquire the right to manage could have been served by the applicant.

15. We do not review our decision because we are bound by the current decision in Cresta Court E, so we cannot be satisfied that this ground is likely to be successful.
16. We recognise that it appears the effect of giving permission to appeal will be to delay acquisition of the right to manage under section 90 of the Act, and the observations made in Cresta Court E as noted at [19]. However, the tribunal notes that, when granting permission to appeal to the Court of Appeal in Cresta Court E, the Upper Tribunal commented that it had “*no hesitation in granting permission to appeal*”. In those circumstances, the tribunal considers that the appeal on ground 2 has a realistic prospect of success and grants permission to appeal on this ground only.

Name: Judge Katie Gray

Date: 21 January 2025