



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

**Case Reference** : MAN/00FF/LRM/2023/0007

**Property** : 40 AND 40A MICKLEGATE, YORK YO1 6LF

**Applicant** : 40A MICKELGATE RTM COMPANY LIMITED

**Respondent** : FREEHOLD REVERSIONS 2 LIMITED

**Type of Application** : Commonhold and Leasehold Reform Act 2002  
(Right to Manage)

**Tribunal Members** : Judge Katherine Southby  
Tribunal Member Neil Swain

**Date and venue of  
Hearing** : Video hearing

**Date of  
determination** : 8 April 2024

**Date of Decision** : 19 April 2024

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**DECISION**

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## **DECISION**

- A. The Application is dismissed.** Under s.84(3) of the Act, the Tribunal determines that on the relevant date the Applicant company was not entitled to acquire the right to manage the premises specified in the claim notice.

## **REASONS**

### **Preliminary and background**

1. This decision relates to an application dated 6 July 2023 in which the Applicant asked the Tribunal to exercise its powers to grant the right of management to the Applicant under the provisions of s84(3) Commonhold and Leasehold Reform Act 2002 (the Act).
2. Directions were issued by the Tribunal on 14 November 2023.

### **Inspection**

3. The Tribunal carried out an inspection of the Property on 8 April 2024. Mr Turton attended on behalf of the Applicant together with Mr Birfield-Smith and Ms Wilson. Mr Simon attended on behalf of the Respondent.
4. The Tribunal found the Property to comprise a commercial unit on the ground floor, accessed through a central entrance doorway set behind an outer metal gate. Above the Commercial unit are three floors of residential units with two flats on each floor. The Residential units are accessed from an external staircase at the rear of the building. Two of the residential units have designated car parking spaces in the external car park to the rear of the building. The cellar was agreed by both parties to be common parts and not requiring of inspection or measurement by the Tribunal. There are no other outbuildings, stores or appurtenant property.
5. The Tribunal, being mindful of the issues raised in the application used the Inspection to take careful and detailed measurements of the entirety of the relevant areas of the Building, including the residential areas, the commercial areas and those external car park areas which were the subject of dispute. Such measurement was done with the consent of, and under the scrutiny of both parties, and with both parties being given the opportunity to direct the Tribunal to any particular aspects which they wished the Tribunal to consider in carrying out this task.

6. **The Law**  
**Commonhold and Leasehold Reform Act 2002**

*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.'*

*S79(5) In any other case the membership of the RTM company must on the relevant date include a number of qualifying 3 tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.*

*'s84(2) A counter -notice is a notice containing a statement either –*

- (a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice; or*
- (b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled.'*

*'S84(3) Where the RTM company has been given one or more counternotices containing a statement such as is mentioned in subsection 2(b) , the company may apply to a leasehold valuation tribunal (sic) for a determination that it was on the relevant date entitled to acquire the right to manage the premises'*

**Hearing**

- 7. The Hearing took place by Video Hearing. The parties confirmed that they were happy to proceed by way of a video hearing and confirmed that they could see and/or hear the proceedings. The hearing proceeded with only minor technical difficulties with Mr Simon's connection – the Tribunal pausing the hearing on each occasion to enable him to reconnect successfully. In reaching its decision the Tribunal considered both parties' submissions together with the statements and documentation prepared by both parties including the bundle of 152 pages. The Tribunal took account of all of the evidence presented to it even if we do not specifically refer to it.
- 8. The issue before the Tribunal was whether the Applicant had satisfied the provisions of s79(5) and s84(3) of the Act relating to the qualifying tenants participating in and becoming a member of an RTM company and whether the Application itself had been correctly made.
- 9. The submissions and documentation provided to the Tribunal concerning the claim notice, response and Application to the Tribunal were initially somewhat opaque. The Application form [page 3] was signed by J Turton on behalf of the Applicant RTM company (signature page omitted from the bundle but included within the papers submitted to the Tribunal).
- 10. It is accepted by both parties that the Claim Notice attached to the application is that at page 11 of the bundle. This Claim Notice is signed by Mr A Harland, dated 14 April 2023 and gives a date for counter notice of 18 May 2023 and a date of intended acquisition of the right to manage as 18 August 2023.

11. Mr Simon gave evidence to the Tribunal that this claim notice signed by Mr Harland had never been received by the Respondent and suggested that it had not been served upon the Respondent.
12. Mr Turton gave evidence that there had been confusion at the time as to the identity of the Freeholder which changed during the period that the RTM Company was issuing these claim notices. He stated that the Applicant had used a consultant for claim notice 1 but that the consultant had had a heart attack and they had proceeded unrepresented thereafter. Mr Turton stated there was also some concern and confusion whether the original notice had been received by the Respondent, due at least in part to difficulties with the postal service and that claim notice 1 had not been sent signed for. He said it was possible that both he and Mr Harland had served notices, and that as officers of the Company they were entitled to do so. He stated that the intention had not been to confuse but merely to ensure the information was properly received. He stated that until the Applicant received the Respondent's reply [page 52] they were uncertain whether service had been successfully achieved.
13. There are therefore in total four claim notices before the Tribunal for consideration, of which number 2 in the table below is attached to the Application to the Tribunal.

**Table 1**

	Date of Notice	Notice addressed to	Bundle page reference	Date Counter Notice due	Date of Right to Manage	Signed
1	27 March 2023	The Ground Rent Trust Limited	43	29 April 2023	28 July 2023	J Turton
2	14 April 2023	Freehold Reversions 2 Ltd	11	18 May 2023	18 August 2023	A Harland
3	14 April 2023	Freehold Reversions 2 Ltd	46	19 May 2023	19 August 2023	J Turton
4	28 April 2023	Freehold Reversions 2 Ltd	49	1 June 2023	1 September 2023	J Turton

14. The Tribunal was provided with correspondence at Page 52 of the bundle from Freehold Reversion 2 Limited dated 15 May 2023. Mr Simon states in his witness statement [page 39] that he was the author of this correspondence. This refers to three claim notices as having been received by the Respondent as follows:

**Table 2**

Date of receipt by Respondent	Date of Right to Manage	Date of Counter Notice
17 April 2023	18 August 2023	15 May 2023
18 April 2023	19 August 2023	15 May 2023
2 May 2023	1 September 2023	15 May 2023

15. It is clear from the above that the three notices stated to have been received by the Respondent are numbers 2,3 and 4 in table 1. These being the three notices addressed to the Respondent, and which have the correspondingly matching dates of right to manage. This is in conflict with Mr Simon's witness statement and oral evidence to the Tribunal which suggests that it was claim notices 1, 3 and 4 which were received by the Respondent. The Tribunal finds the contemporaneous correspondence of 15 May 2023 to be more persuasive than Mr Simon's subsequent recollections. In particular the Tribunal notes at page 54 that the Respondent's counter notice specifically refers to a claim notice signed by Mr Harland. We reject the oral assertions of Mr Simon and instead conclude that the claim notice number 2 signed by Mr Harland was served by the Applicant, received by the Respondent and responded to accordingly.
16. Mr Simon made representations to the Tribunal which broadly aligned with those in the correspondence at page 52 regarding subsequent notices 3 and 4 being invalid due to preceding notices not having been withdrawn. We agree that in the absence of withdrawal the earliest notice served is the one which remains effective.
17. Where the Tribunal parts company with Mr Simon is in his submissions that the Application before the Tribunal relates to a matter which is not one of the three notices served upon the Respondent. He suggests that because the notice of claim attached to the application form has not been served on the Respondent the Applicant's claim is fundamentally flawed, in a manner which is not capable of rectification and that the Tribunal should dismiss the matter and proceed no further, having, he suggests, no jurisdiction to consider the reasons why the Respondent resists the application for right to manage in their counter notices.
18. For the reasons set out above, the Tribunal disagrees with this analysis. It is clear from the Respondent's own correspondence that it is claim notice 2, being that signed by Mr Harland, which the Respondent received first, namely on 17 April 2023. That is the claim notice which is attached to the Tribunal Application form and which the Tribunal is asked to consider. The earlier claim notice numbered 1 in Table 1 was sent to a different recipient, who all parties now agree is not the Freeholder and therefore not the correct recipient. The Tribunal accepts the evidence of Mr Turton that the identity of the freeholder was at that time difficult to ascertain. Having made such an error it was perfectly reasonable for the Applicant to correct the error by correctly serving a claim notice on the correct freeholder, which they duly did. The subsequent notices 3 and 4 are irrelevant to the Tribunal's consideration as the previous notice number 2 was still in place having not been withdrawn. We

have disregarded them, as Mr Simon submits we should do, they are not the basis of the application to the Tribunal.

19. Mr Simon gave oral evidence to the Tribunal that notice number 1 dated 27 March 2023 was not addressed to the Freeholder at the time. Mr Simon gave oral evidence to the Tribunal in his capacity as solicitor for the Respondent that Ground Rent Trust Ltd was not the freeholder at the relevant period and was in administration at the time. We have no reason not to accept the evidence of Mr Simon on this point. We note in any event this claim notice was not attached to the Application form, and since it is erroneously addressed and not the claim notice upon which the application is based, it does not appear to be relevant to this application and the Tribunal has disregarded it. We note that Mr Simon in his correspondence on page 52 makes no reference to the Respondent having received this notice as at 15 May 2023. Had it been so received it seems to us to be likely that Mr Simon would have referred to it in that letter and would have made reference to the right to manage date of 28 July 2023, but he did not.
20. As a consequence of the conclusions of the Tribunal set out above, Mr Simon's application that this matter should be summarily dismissed for lack of jurisdiction is rejected. His argument that the Tribunal is being asked to determine a claim notice which has not been served is disproven by his own correspondence.
21. Having resolved the preliminary issue around service, the question for the Tribunal therefore is whether on the relevant date the Applicant RTM Company was entitled to acquire the Right to manage.
22. The Respondent had served a counter notice dated 15 May 2023 [page 54] alleging that the Applicant was not entitled to the right to manage the premises. Mr Simon confirmed to the Tribunal that there is no suggestion that the RTM company had insufficient members at the relevant date to satisfy the requirements of Act. The Respondent's resistance to the Applicant's claim is set out at page 35 (Mr Simon's witness statement) and page 53 (correspondence from the Respondent). Both documents allege that the non-residential part of the Premises exceeds 25% of the internal floor areas of the Premises. Mr Simon confirmed that this was the only basis upon which the Respondent disputed the Applicant's right if the Tribunal were not with him on his submissions dealt with above.
23. The Tribunal reminded itself of Section 72(6) gives effect to Schedule 6 of the 2002 Act ("Schedule 6")

Paragraph 1 of Schedule 6 says that the right to manage "*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)*

*Paragraph 4 of Schedule 6 states that “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*

24. The Respondent in their written and oral submissions relies upon their analysis of the plans of the building and Mr Simon states both in his witness statement and in submissions that he believes that the inclusion within the footprint of the commercial unit of the First, Second and Third floors of the Building means that the floor area of the commercial unit, is more than 25% of the aggregate floor area of all the demised parts of the Building.
25. Mr Turton, Ms Wilson and Mr Stocks gave evidence to the Tribunal that in their view the common parts of the building were smaller in the higher floors, and the hanging freehold over the archway on floors 1,2 and 3 did not correspond to the footprint of the Commercial Unit. Neither party had provided any professional measurement of the Building, and nor was it clear that the plans being relied upon by the Respondent were to scale. Both parties agreed that having the Tribunal measure the Building was an acceptable way of determining this matter.
26. Both parties agreed that the ‘porch/lobby’ entrance area of the Commercial Unit was to be included within the commercial area, as the red line on the plans provided included it although Mr Turton initially asserted that he thought there was an alternative plan which excluded this area. The Tribunal considered this for itself and concluded that the porch area was enclosed on all sides, including above, albeit that currently the street-facing side was metal barred gates, and we concluded that this element of the commercial unit was to be included as part of the ‘internal area’.
27. Mr Turton and Ms Wilson on behalf of the Applicant argued that the Tribunal should take the two designated car parking spaces into account as in their view these should be included by virtue of the wording of paragraph 1(3) of Schedule 6 which reads  
  
*“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.”*
28. The Tribunal is of the view that this sub clause cannot be taken in isolation as the Applicants are seeking to do. Rather it sits within the entirety of paragraph 1, which itself is referred to in Section 72 which describes the Premises to which the relevant Chapter of the Act applies. In our view the external car parking space is not in any event part of the ‘premises’ as define in s72 in any event as premises must consist of a self-contained building. In the view of the Tribunal the relevant measurement to be taken into account is as per paragraph 1(4) of Schedule 4, i.e. the internal floor area. The Tribunal would take account of a parking space were it for example an internal basement car

park, but in this case, being an external open air car park, we have disregarded it.

29. The Tribunal's measurements were as follows:

**Table 3**

	Area (sqm)
Flat 1	66.70
Flat 2	22.19
Flat 3	65.48
Flat 4	21.12
Flat 5	62.50
Flat 6	23.22
Parking Spaces	18.92
<b>Total exc parking</b>	261.21
<b>Total inc parking</b>	280.13
Commercial exc lobby	94.18
Commercial inc lobby	96.00

30. The Tribunal notes that even taking the Applicant's case at its highest, and including the car parking spaces and disregarding the porch area as per Option 2 below (neither of which the Tribunal finds are the correct approach for the reasons set out above), the Applicant's case fails as the percentage commercial areas is in excess of 25%, being 25.16%. The various permutations including or disregarding the parking or porch/lobby area are set out below in table 4. Taking the Tribunal's findings above that the porch/lobby should be included in the Commercial area, and the parking spaces disregarded (Option 3) the Commercial percentage is 26.87%.

**Table 4**

	Option 1	Option 2	Option 3	Option 4
Parking	N	Y	N	Y
Lobby	N	N	Y	Y
Residential	261.21	280.13	261.21	280.13
Commercial	94.18	94.18	96.00	96.00
<b>% Commercial</b>	<b>26.50</b>	<b>25.16</b>	<b>26.87</b>	<b>25.52</b>

31. The Applicant's application therefore fails because whilst it has demonstrated compliance with s79(5), it has not demonstrated compliance with s84(3) of the Act. The Respondent has successfully established that by reason of a specified

provision of this Chapter, (namely that the premises are excluded from the Right to Manage in accordance with Schedule 6 of the Act), the RTM company was on the relevant date not entitled to acquire the right to manage the premises specified in the claim notice.

### **Judge Katherine Southby as Chairman**

#### **Note: Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.