



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

Case Reference : **MAN/OOCJ/LRM/2023/0001**

Property : **Burgess House, St. James's Boulevard,
Newcastle upon Tyne NE1 4BW**

Applicant : **Burgess House RTM Company Limited**

Representative : **Jobsons Solicitors**

Respondents : **Burgess House Management (NE)
Limited (1)
Fortis UK Holdings Limited (2)**

Representative : **In person (1)
JB Leitch Limited (2)**

Type of Application : **Determination pursuant to Section
84(3) Commonhold and Leasehold
Reform Act 2002 - Right to Manage**

Tribunal Members : **Judge L Brown
Tribunal Member Mr J Fraser**

Date of Hearing : **17 April 2024**

Date of Decision : **12 August 2024**

DECISION

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Decision

1. Burgess House RTM Limited acquired the Right to Manage the Property with effect from the date specified in the claim notice, 21 April 2023.

Background

2. This is an application by Burgess House RTM Limited, dated 12 January 2023, for the Tribunal to determine whether it has the Right to Manage the premises known as Burgess House, St. James's Boulevard, Newcastle-upon-Tyne NE1 4BW, pursuant to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").
3. The Property comprises self-contained flats and communal areas. Further details are provided below.
4. By a Notice of Claim dated 11 December 2022 the Applicant gave notice to the Respondents of a claim to acquire the right to manage the Property as at 21 April 2023 pursuant to Section 79 2002 Act.
5. A Counter Notice dated 10 January 2023 was served on the Applicant by the Second Respondent denying the claim. In its Statement of Case dated 1 November 2023 the Applicant summarised the objections as:

The Applicant must evidence that they have the requisite number of Qualifying Members in accordance with The Act to serve The Claim Notice.

The Applicant must evidence that they have complied with the relevant Statutory provisions in relation to Notice requirements pursuant to Sections 78 and 79 of The 2002 Act. The Respondents seek disclosure of all relevant documents to confirm compliance.

The Premises is not a Qualifying Premises within the meaning of section 72, of the 2002 Act because inter alia the basement in the premises extends beyond the building and into 'The second Freehold'.

6. The Tribunal made directions on 27 September 2023.

Inspection and hearing

7. The Tribunal inspected the exterior and main common areas of the Property on 17 April 2024, accompanied by Counsel for the Applicant and Second Respondent and Ms G Latham, Director of Xenia Estates Limited, managing agent, and other managers and operatives involved in management of the Property.
8. Following the inspection, on the same day, a hearing took place at North Shields County Court, Earl Grey Way, North Shields NE29 6AR. The Applicant was represented by Ms F Todd, Counsel. The Second Respondent was represented by

Mr J Castle, Counsel. Ms Latham was present. The First Respondent was not represented.

9. The Tribunal is grateful to both Counsel for their detailed Skeleton Arguments. It is further recorded that the inspection assisted both the parties and the Tribunal regarding identification of the boundaries affected by the Claim Notice and the implication for some of the Second Respondent's submissions, which its Counsel helpfully acknowledged at the hearing.
10. It was agreed by both Counsel that the Tribunal could rely upon the analysis of the various leases affecting the Property as set out in the Second Respondent's Skeleton Argument and that document is the source of the title information about the Property following.

The Law

11. The 2002 Act is the relevant statute in respect of this application.
12. Section 71 provides:
 - (1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM Company).
 - (2) The rights are to be acquired and exercised subject to and in accordance with this Chapter and are referred to in this Chapter as the right to manage.
13. Section 72 provides:
 - (3) 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.
 - (4) A building is a self-contained building if it is structurally detached.
 - (5) A part of a building is a self-contained part of a 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.

- (6) This subsection applies in relation to part of a building if the relevant services provided for the 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.
 - (7) Relevant services are services provided by means of pipes, cables or other fixed installations.
 - (8) Schedule 6 (premises excepted from this Chapter) has effect.
14. Section 78 provides:
- (1) 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.
15. Section 79 provides:
- (9) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which the notice of claim is given.
 - (10) The claim notice may not be given unless each person required to be given notice of invitation to participate has been given such a notice 14 days before.
 - (11) The claim notice must be given by a RTM company that complies with subsection (4) or (5).
 - (12) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
 - (13) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
 - (14) The claim notice must be given to each person who on the relevant date is-
 - (a) Landlord under the lease of the whole or any part of the premises,

- (b) Party to such a lease otherwise than as a landlord or tenant,
 - (c) A manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c 31) (referred to in this Part as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.
- (15) Subsection (6) does not required the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means the claim notice is not required to be given to anyone at all, section 85 applies.
- (16) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (17) Where a manager has been appointed under Part 2 of the 1987 Act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to thetribunal or court by which he was appointed.
16. Section 80 provides:
- (18) The claim notice must comply with the following requirements.
 - (19) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
 - (20) It must state the full name of each person who is both-
 - (a) The qualifying tenant of a flat contained in the premises, and
 - (b) A member of the RTM company, and the address of his flat.
 - (21) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including- (a) The date on which it was entered into,
 - (b) The term for which it was granted, and
 - (c) The date of the commencement of the term.
 - (22) It must state the name and registered office of the RTM company.
 - (23) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.
 - (24) It must specify a date, at least three months after that date specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.
 - (25) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.

(26) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

17. Section 84 provides:

(27) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).

(28) 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.

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(29) Where the RTM company has been given one or more counter-notices, and as is mentioned in subsection 2(b), the company may apply to [the appropriate tribunal] for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(30) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counternotice (or where there is more than one, the last of the counter-notices) was given.

(31) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection 2(b), the RTM company does not acquire the right to manage unless-

(a) On an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or

(b) The person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing the company was so entitled.

(32) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(33) 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.
- (34) An appeal is disposed of –
- (a) If it is determined and the period for bringing any further appeal has ended, or
 - (b) If it is abandoned or otherwise ceases to have effect.

Title information regarding the Property

18. The Property is built across two different freehold titles, and is subject to various intermediate leasehold interests:
- 18.1. The first plot is 93-105 St James Boulevard, Newcastle Upon Tyne NE1 4BW registered with HM Land Registry under Title No. TY396034 (“**Plot 1**”). Plot 1 is owned by Tuscola (FC109) Limited;
 - 18.2. The second plot is Land lying to the north-west of Scotswood Road, Newcastle Upon Tyne registered with HM Land Registry under Title No. P177765 (“**Plot 2**”). Plot 2 is also owned by Tuscola (FC109) Limited;
 - 18.3. Plots 1 and 2 are subject to a headlease of the Property, with a term of 252 years from 1 January 2014, registered with HM Land Registry Title No. TY546679 (“**the Headlease**”). The Headlease is owned by Tuscola (109) Limited;
 - 18.4. The Headlease is subject to a sub-headlease of the Property, with a term of 250 years from 29 September 2014, registered with HM Land Registry Title No. TY537043 (“**the Sub-Headlease**”). The Sub-Headlease is owned by the Second Respondent; and
 - 18.5. The Headlease is also subject to a sublease of parking spaces, with a term from 1 January 2017 to 31 December 2166, registered with HM Land Registry Title No. TY573871 (“**the Parking Sublease**”). The Parking Sublease is owned by Comminvest (101) Limited.

Submissions

19. The Tribunal had before it the documents as listed in the indices to the hearing bundles. In addition, we received case summaries and detailed skeleton arguments from Counsel for the principal parties and the parties are referred to them, outlining the history of matters and key points drawn to the Tribunal’s attention. We also received copies of case law authorities and considered them during the hearing and in our subsequent deliberations. In consequence it is not intended to record here all of the parties’ arguments, but only persuasive evidence found by the Tribunal relevant to its determination; if our summaries do not reflect every point presented, that does not mean we have ignored them.

20. Notwithstanding the content of the Counter-Notice and Second Respondent's Skeleton Argument document, following the inspection of the Property the objections pursued were narrowed at the hearing, as follows.
21. Counsel for the Second Respondent expressed concern that the Applicant had not presented witnesses at the hearing, preventing cross-examination of them on the issue of service of the section 78 Notice inviting participation, and the section 79 Claim Notice, in particular. Both Counsel agreed that determining the service point was a question of the Tribunal attributing weight to the evidence available to it. The form and validity of those notices was not at issue.
22. It was submitted for the Second Respondent that the Applicant must prove service of each notice – (i) as to the section 78 Notice, upon each qualifying tenant who was not a member of the Applicant right to manage company (i.e 21 of 108), who had not agreed to join the Applicant at the date of the section 78 Notice; (ii) as to the section 79 Notice, on all 108 qualifying tenants. It was submitted (and not disputed) that a failure of service of the former notice prevented the subsequent notice having effect.
23. Regarding the Notice inviting participation, the Applicant replied upon statements, including statements of truth, of Brad Willett and Ali Mohamed, each dated 3 November 2023, in support of their having served the notices inviting participation on all the qualifying tenants on 23 November 2022.
24. Regarding the Claim Notice the Applicant relied upon statements, including statements of truth, of Jacob McCarthy and Ahmed Elmi, each dated 3 November 2023 in support of their having served claim notices on all the qualifying tenants on 15 December 2022. The Applicant submitted that no adverse inference should be drawn from the non-attendance of the statement-makers.
25. The second basis of challenge by the Second Respondent was that the Property does not qualify for the right to manage because it is built across two different freehold titles – here known as Plots 1 and 2 - and that utilities held on site are shared between them. Therefore, neither plot is a self-contained building withing the meaning of section 72(2)(a) of the 2002 Act.
26. The parties and Tribunal identified during the inspection of the Property that it comprises one whole building, with an extension to an upper level. There is one shared plant facility within Plot 1 and a hot water boiler room next door.
27. The Respondent's principal position was that “*....the utilities for Plot 2 are hosted within Plot 1. If the right to manage is granted to A, A will become able to save costs by cutting utilities to Plot 2. This would result in breaches by superior landlords of any leases of parts of Plot 2 that rely on utilities hosted on Plot 1. This demonstrates that the Property is not suitable for management by A.*” Five lamp posts within the car park were specifically identified as requiring power supply in accordance with a sub-lease.

28. The Applicant submitted that the Property as a whole is structurally detached and the fact that it is comprised in two freehold titles is of no effect, nor do potential management issues alter the basic fact that the Property satisfies the criteria of section 72(1).

Determination

29. The Tribunal found no reason to doubt the accuracy of the statements referred to in paragraphs 23 and 24, filed on behalf of the Applicant. We found on a balance of probabilities that they demonstrated the section 78 and section 79 notices have been served on all relevant persons, by letterbox service. We found no persuasive evidence that alternative steps should have been taken to effect appropriate service on the relevant intended recipients. We found that the statements of truth incorporated into each statement were prima facie good evidence of the statement makers and notwithstanding the Second Respondent's assertions that the requirements for service of the respective notices had been fulfilled. There were no other challenges regarding the content of the notices and we found no reason to doubt that there had been compliance with section 80 of the 2002 Act.
30. On the question of separation of freeholds comprising the Property and whether there was any issue over it being structurally detached so as to be a self-contained building, the Tribunal found the Applicant's arguments decisive. We gave little weight to the desktop exercise set out in the report dated 9 March 2023 from GDA Surveys, which the Second Respondent had submitted, but which it accepted at the hearing was not persuasive to its case, as remaining after the Tribunal's inspection. Nor was any issue pursued concerning the effect of any part of the basement potentially being under the carpark.
31. The Tribunal was satisfied from its inspection and examination of the title documents (see paragraph 18) that the Property is the building, known as Burgess House. It does not include the carpark to the rear. The Applicant seeks the right to manage Burgess House. Separation of freehold titles here is of no consequence. The building is self-contained, as we saw on inspection.
32. The Tribunal found that the provision of services has no effect in this matter, in particular because this is not an application regarding a self-contained part of a building. The Application concerns the whole of the building, Burgess House. The law set out in section 72 defines a relevant premises and as Burgess House is a whole building, unattached to other premises, we determined the Second Respondent's basis of challenge should be rejected.
33. In consequence of our findings the Tribunal therefore determined that the Applicant has fulfilled the necessary requirements of the 2002 Act in order to succeed in its Application that it has the right to manage the Property.
34. There was no application for the Tribunal to consider concerning fees or costs in this matter.

L Brown, Tribunal Judge