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

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| **Case Reference** | : | **LON/00AW/LRM/2024/0608** |
| **Property** | : | **25 Russell Road, London, W14 8HU** |
| **Applicant** | : | **25 Russell Road RTM Company Ltd** |
| **Representative** | : | **Tessa James, Director** |
| **Respondent** | : | **MCD3 Ltd** |
| **Representative** | : | **WJD Barker MA AKC Sustainable Property Management t/a Bamptons** |
| **Type of Application** | : | **Determination of Acquisition of Right to Manage Section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("2002 Act")** |
| **Tribunal Member(s)** | : | **Judge Tildesley OBE**<br>**Mr R Waterhouse FRICS** |
| **Date and venue of the Hearing** | : | **On the Papers without a hearing** |
| **Date of Decision** | : | **25 April 2025** |

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DECISION

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**Summary of Decision**

**The Tribunal determines that the Applicant was on the 19 July 2024 entitled to acquire the right to manage 25 Russell Road, London W14 8HU. The date of acquisition will be three months after this determination becomes final (section 90(4) of the 2002 Act.**

**Senior President of Tribunals Practice Direction: Reasons for Decisions 4 June 2024**

1. This Practice Direction states basic and important principles on the giving of written reasons for decisions in the First-tier Tribunal. It is of general application throughout the First-tier Tribunal. It relates to the whole range of substantive and procedural decision-making in the Tribunal, by both judges and non-legal members. Accordingly, it must always be read and applied having regard to the particular nature of the decision in question and the particular circumstances in which that decision is made (paragraph 1).

2. Where reasons are given, they must always be adequate, clear, appropriately concise, and focused upon the principal controversial issues on which the outcome of the case has turned. To be adequate, the reasons for a judicial decision must explain to the parties why they have won and lost. The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. They must always enable an appellate body to understand why the decision was reached, so that it is able to assess whether the decision involved the making of an error on a point of law. These fundamental principles apply to the tribunals as well as to the courts (paragraph 5).

3. Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resources of the Tribunal, but to the significance and complexity of the issues that have to be decided. Reasons need refer only to the main issues and evidence in dispute, and explain how those issues essential to the Tribunal's conclusion have been resolved (paragraph 6).

4. Stating reasons at any greater length than is necessary in the particular case is not in the interests of justice. To do so is an inefficient use of judicial time, does not assist either the parties or an appellate court or tribunal, and is therefore inconsistent with the overriding objective. Providing concise reasons is to be encouraged. Adequate reasons for a substantive decision may often be short. In

some cases a few succinct paragraphs will suffice. For a procedural decision the reasons required will usually be shorter (Paragraph 7).

## Application

5. On 30 October 2024 the Applicant applied under section 84(3) of the 2002 Act for a decision that, on the relevant date, the Applicant RTM company was entitled to acquire the right to manage 25 Russell Road, London W14 8HU ("the premises").

6. By a claim notice dated 17 July 2024, the Applicant gave notice that it intends to acquire the right to manage the premises on 25 December 2024.

7. By a counternotice dated 30 August 2024, given on behalf of the Respondent freeholder by Sustainable Property Management Ltd t/a Bamptons, the Respondent disputed the claim alleging that the Applicant did not have the correct articles of association and was not accordingly a valid RTM company.

8. On 3 December 2024 the Tribunal directed that the Application would be decided on the papers in the week commencing 21 April 2025 unless a party requested a hearing by 24 March 2025. On 14 February 2025 further directions were issued extending the time for the Respondent to send its statement of case. No party requested a hearing.

9. On 17 April 2025 a Deputy Regional Judge reviewed the file and decided that it was suitable to proceed on the papers.

10. On 23 April 2025 the Tribunal considered the hearing bundle with a view to the publication of its determination.

## Consideration

11. The Tribunal restricts its consideration to the disputed issues as identified by the Respondent in its statement of case.

## Jurisdiction

12. The Respondent contended that the Application to the Tribunal was not made within the time limit of two months as specified by section 84(4) of the 2002 Act.

13. The Respondent observed that the Applicant's email to the Tribunal to which the Application was attached was timed at 1805 hours on 30 October 2024. The Respondent stated that its Counter Notice was given to the Applicant on 30 August 2024, and that the Applicant had two months after 30 August 2024 in which to make the Application to the Tribunal, that was, by 30 October 2024.

14. The Respondent stated that under Rule 15 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), that any act must be done on or before 1700 hours on that day. The Respondent added that in any event the Tribunal's working hours were such that it was closed by 1805 hours on 30 October 2024.

15. The Respondent, therefore, submitted in the alternative that application was not made in time under the 2013 Rules or it could not have been received by the Tribunal at 1805 hours on 30 October 2024 because the Tribunal office was by then closed.

16. The Applicant acknowledged the importance of adhering to the procedural timetable. The Applicant stated that a filing received at 1805 hours on the relevant date where the 2013 Rules stipulate a 1700 hours deadline on that date was a procedural irregularity. The Applicant requested the Tribunal to exercise its case management powers under Rule 6(3) of the 2013 Rules to allow the case to proceed because the Respondent had suffered no relevant prejudice by the Applicant's failure to make the Application before the 1700 hours deadline.

17. Section 88(4) of the 2002 Act provides that

> "an Application *to the Appropriate Tribunal* under subsection 3 must be made no later than the end of the period of two months beginning with the day on which the counter-notice was given".

18. The Tribunal observes that the time limit in which to make application is imposed by Statute and that the 2002 Act makes no provision for extending the time limit. This means that the Tribunal has no power to extend the time limit. The Tribunal's case management powers under rule 6(3) of the 2013 Rules have no application to statutory time limits. Equally rule 15 only relates to acts required by the 2013 Rules, a practice direction or a direction to be done on or by a particular day. Rule 15 is not relevant to the interpretation of a statutory time limit. Thus failure to comply with the period of two months as laid down by section 88(4) of the 2002 Act would result in the Claim for the Right to Manage being deemed withdrawn (section 87(1) of the 2002 Act).

19. The question, therefore, is whether the Application to the Tribunal was made no later than the end of the period of two months beginning with the day on which the counter-notice was given. The parties accepted that the Counter Notice was sent by email to the Applicant on 30 August 2024 and that the Application was sent by email to the Tribunal on 30 October 2024.

20. The starting date for the computation of the period of two months is the 30 August 2024. Section 5 of the Interpretation Act 1978

provides that in an Act of Parliament the word "month" means "calendar month" unless the contrary intention appears. When the relevant period is a month or a period of months the general rule (known as the corresponding date rule)[1] is that the period ends upon the corresponding date in the appropriate subsequent month, namely, the day of that month that bears the same number as the day of the earlier month on which notice was given. Further the 2002 Act reckons the time period in months, so that the actual time in hours and minutes of service is irrelevant. Thus under the corresponding date rule the time will expire at midnight on the corresponding date in the subsequent month.

21. In this case the application of the Interpretation Act 1978 and the corresponding date rule to the time limit of "no later than the end of the period of two months" meant that the Applicant had until 12 midnight on 30 October 2024 to make an application to the Tribunal.

22. Before concluding the issue of jurisdiction it is necessary for the Tribunal to deal with an ancillary issue implied by the Respondent's objection. The Respondent states that the Tribunal office would have been closed by the time the Application had been sent to the Tribunal, and that the Tribunal would not have received the Application until the following day, 31 October 2024.

23. The answer to the Respondent's objection is found in the proper construction of "when the Application is made". In *Sean Jeven v Iris Athansiadi and Sam Ingverson* [2024] UKUT 358 (LC) Martin Rodger KC, Deputy Chamber President summarised the various authorities on when an application is made and concluded that starting proceedings is a unilateral act by the Applicant which does not depend upon someone else (whether the postal service or the Tribunal).

24. The Applicant was required under rule 26 of the 2013 Rules and section 88(4) of the 2002 Act to send or deliver to the Tribunal a copy of the Application and the documents specified in the relevant Practice Direction, namely, a copy of the memorandum and articles of association of the RTM company, a copy of the claim notice and a copy of the counter notice by 12 midnight on 30 October 2024.

25. The Respondent sole challenge to the completeness of the documents sent to the Tribunal was that the Applicant had not completed panel 5 of the Application form which concerned "Track Preferences". The Tribunal does not consider this omission material to the validity of the Application. The Applicant's reason for not completing panel 5 was that it had opted for a

[1] See the House of Lords Decision in *Dodds v Walker* [1981] 1 WLR 1027 (1981) for the explanation of the corresponding date rule.

determination on the papers and did not consider the question of Track Preferences relevant to its choice of determination.

26. The Tribunals finds that the Applicant sent to the Tribunal by email an application with the required information together with copies of the certificate of incorporation, articles of association which included a memorandum of association, the claim notice and the counter notice at 1805 hours on 30 October 2024 which was before the deadline of 12 midnight on 30 October 2024.

27. **The Tribunal, therefore, decides that the Applicant made the Application for a determination of the acquisition of the right to manage no later than the end of the period of two months beginning with the day on which the counter-notice was served.**

28. **The Tribunal has jurisdiction to determine the Application.**

**The Company is not an RTM Company**

29. The Respondent alleged that the Applicant was not a RTM company because the company's articles of association did not comply with (1) section 3(2) of the Mental Health Discrimination Act 2013; (2) The Companies and Limited Liability Partnerships (Filing Requirements) Regulations 2016 (S.I. 2016/599), reg 1 Sch.3 para. 8(a); and (3) The Companies and Limited Liability Partnerships (Filing Requirements) Regulations 2016 (S.I. 2016/599), reg 1 Sch.3 para. 8(b).

30. The Respondent contended that because of the above failures the Applicant did not comply with section 74(2) of the 2002 Act and The RTM Companies (Model Articles) (England) Regulations 2009 and therefore the Applicant was unable to serve a claim notice pursuant to section 79(3) of the 2002 Act.

31. The Applicant stated that it responded to the counternotice by a letter dated 8 October 2024 which the Applicant said provided a detailed explanation as to why the Respondent's comments regarding the Applicant's entitlement failed to establish a lack of entitlement. The Applicant indicated that the letter would be included in the hearing bundle. The Tribunal was unable to locate the Applicant's letter of 8 October 2024. The Tribunal requested the Applicant to supply it with a copy of the letter as a matter of urgency. The Applicant replied to the request by stating that the letter had not been included because it was marked "without prejudice". On receipt of this information the Tribunal decided to proceed on the basis of the parties' cases as set out in the hearing bundle. In this regard the Applicant asserted that it is (and was at the relevant time) properly constituted and was formed with

Articles which, by virtue of SI 2009 No.2767 regulation 2(2) regarding The RTM Companies (Model Articles) Regulation 2009, are deemed to have effect on an RTM Company regardless whether they are adopted by the company.

32. The Supreme Court in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Company Limited* [2024] UKSC 27, 2024 WL 03833336 at paragraph 25 adopted the overall objective of the proposals in "Commonhold and Leasehold Reform, Draft Bill and Consultation Paper" (CM 4843) as a general statement of the purpose of the 2002 Act dealing with the Right to Manage:

> ""The main objective is to grant residential long leaseholders of flats the right to take over the management of their building collectively without having either to prove fault on the part of the landlord or to pay any compensation. The procedures should be as simple as possible to reduce the potential for challenge by an obstructive landlord. The allocation of responsibilities should be clearcut, and the body through which the leaseholders take on management responsibility should enjoy all necessary powers to properly discharge its functions. At the same time, the legitimate interest of the landlord in the property should be properly recognised and safeguarded."

33. At paragraph 47 the Supreme Court recorded the implementation of the 2002 Act in practice by reference to the judgment of Lewison LJ in *Elim Court* [2018] QB 571:

> "As Lewison LJ observed (para 1) "[i]t is a melancholy fact that whenever Parliament lays down a detailed procedure for exercising a statutory right, people get the procedure wrong". Although the intention had been to make the procedures as simple as possible, he noted (para 8) that the scope for dispute had not been eliminated and quoted Martin Rodger QC, Deputy President, in *Triplerose Ltd v Mill House RTM Co Ltd* [2016] L&TR 23, para 25: "Small and apparently insignificant defects in notices, or failures of strict compliance, are relied on again and again by landlords seeking to stave off claims to acquire the right to manage and to avoid the resulting losses of control and of other benefits".

34. In this case the Respondent asserts without explanation that the articles of the Applicant's RTM company were defective in several respects which resulted in the Applicant not being an RTM company capable of making a claim under the provisions of the 2002 Act.

35. The decision of Martin Rodger KC, Deputy Chamber President in *Fairhold Mercury Ltd v HQ (Block 1) Action Management Co Ltd*, [2013] UKUT 487 (LC) is instructive to the facts of this case.

36. By way of background in the *Fairhold* case the Respondent's articles failed to include the letters "RTM" in its name which fell

foul of the prescribed articles of association found in the schedule to the 2009 Regulations. This failure required Martin Rodger KC to address whether defects in the articles are pertinent to the question of what is a RTM company. At [19] Martin Rodger KC said:

> "In my judgment Mr Bates' contentions cannot be accepted for a number of reasons. First, while the proposition is unexceptional that a statute must be construed as a whole, giving appropriate weight to each of its provisions in order to read it coherently, regulations made under a statute are not an orthodox or permissible aid to construction. The 2009 Regulations, made six years after the commencement of the 2002 Act in substitution for earlier regulations, were not part of the material forming the background or context of the terms of the Act itself and cannot be taken into account as an aide to its interpretation. Regulations cannot impose additional conditions to be satisfied for a company to be an RTM company unless the 2002 Act so provides, which it does not. It follows that, whatever must be in its articles of association, a company will be an RTM company if it satisfies the requirements of section 73(2) and is not excluded by any of the provisions of sections 73(3)-(5).

37. The Tribunal concludes from the above judgment that the issue about whether the Applicant is a RTM company is decided by reference to the requirements of section 73(2) of the 2002 Act and not by its articles of association.

38. Section 73 of the 2002 Act provides as follows:

> (1) This section specifies what is a RTM company.
> (2) A company is a RTM company in relation to premises if –
> (a) it is a private company limited by guarantee, and
> (b) its articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.
> (3) But a company is not an RTM company if it is a commonhold association (within the meaning of Part I).
> (4) And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.
> (5) If the freehold of any premises is transferred to a company which is a RTM company in relation to the premises, or any premises containing or contained in the premises, it ceases to be a RTM company when the transfer is executed.

39. Turning to the facts of this case, the Tribunal finds the following:

a) The Certificate of Incorporation (Company Number 1557350) for 25 Russell Road RTM Company Limited states that the Registrar of Companies for England and Wales certifies that 25 Russel Road RTM company

limited is this day (12 June 2024) incorporated under the Companies Act as a private company, that the company is limited by guarantee, and the situation of its registered office is in England and Wales.

b) Paragraph 4 of The Articles of Association for 25 Russell Road RTM Company Limited states that "The Objects for which the company is established are to acquire and exercise in accordance with the 2002 Act the right to manage "the Premises". Under paragraph 1 of the Articles, "the Premises" is defined as "the premises known as the building or part of a building known as 25 Russell Road, London W14 8HU.

40. The Tribunal is satisfied on the facts found that the Applicant met the requirements of a RTM company in relation to 25 Russell Road, London W14 8HU as set out section 73(2) of the 2002 Act. There was no evidence to suggest that the exclusionary provisions of subsections (3), (4) and (5) of section 73 applied to the Applicant.

41. **The Tribunal, therefore, decides that the Applicant is a RTM Company and was entitled as at 19 July 2024 to give Notice of Claim to acquire the right to manage 25 Russell Road, London W14 8HU.**

42. The Respondent raised no other objections to the Applicant's claim to acquire the right to manage 25 Russell Road, London W14 8HU.

**Decision**

43. **The Tribunal determines that the Applicant was on the 19 July 2024 entitled to acquire the right to manage 25 Russell Road, London W14 8HU. The date of acquisition will be three months after this determination becomes final (section 90(4) of the 2002 Act.**

## RIGHTS OF APPEAL

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.