



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

Case reference : **CAM/00MG/LRM/2025/0003**
HMCTS Code : **V:CVP REMOTE**

Property : **Vizion, Avebury Boulevard, Milton Keynes, Buckinghamshire MK9 2FN**

Applicant : **Vizion RTM Company Limited**

Representative : **Ann Savell**

Respondent : **Avon Ground Rents Limited**

Representative : **Scott Cohen Solicitors Limited**

Type of application : **Application in relation to the denial of the Right to Manage**

Tribunal member(s) : **Regional Judge Wayte
Regional Surveyor Hardman**

Date : **15 December 2025**

DECISION

The application is dismissed as the property was excluded from the Right to Manage on the relevant date due to the non-residential parts exceeding 25% of the internal floor area (the limit in force at the time).

The application

1. This was an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination that, on the

relevant date, the applicant Right to Manage (RTM) company was entitled to acquire the RTM premises known as Vizion, Avebury Boulevard, Milton Keynes, Buckinghamshire MK9 2FN (“the property”). The property consists of 381 flats with commercial premises on the ground floor and underground parking.

2. By a claim notice dated 20 December 2024, the applicant gave notice to the respondent that it intended to acquire the right to manage the property on 23 April 2025.
3. By counter-notice dated 22 January 2025, the respondent disputed the claim. Six objections were raised under the Act:
 - (i) the property was excepted by reason of Schedule 6;
 - (ii) the property did not comply with the definition of premises in section 72(1);
 - (iii) a notice of invitation to participate was not given to each person required by section 78(1);
 - (iv) a notice of intention to participate was not given to each person required by section 79(2);
 - (v) the RTM Company did not comply with section 79(5); and finally,
 - (vi) the claim notice specified a date earlier than one month after the relevant date for response by counter-notice in breach of section 84.
4. The application was made on 3 February 2025 and directions were issued on 31 July 2025. In view of the objections as to the property, they provided for a two day hearing, with an inspection to take place on the first morning. That hearing was subsequently listed for 1-2 December 2025. Permission was also given for each party to rely on an expert in respect of the property and its qualification for the RTM, having regard to Schedule 6 and section 72 of the Act.
5. The respondent’s expert, Simon Levy, subsequently accepted that the property did comply with section 72(1) of the Act and that objection was therefore withdrawn in the respondent’s Statement of Case dated 18 September 2025.
6. The objection in respect of Schedule 6, buildings with substantial non-residential parts, was complicated by the increase in the limit from 25% to 50% introduced on 3 March 2025 by section 49 of the Leasehold and Freehold Reform Act 2024 (“the 2024 Act”). The respondent initially reserved their position on the effect of that change but on 29 October 2025 made an application for that objection to be dealt with as a preliminary issue on the papers. Regional Judge Wayte, being under the impression that the percentage of commercial use had been agreed

at 42.75%, decided to cancel the inspection and reduce the hearing to one day by video conference so that all objections could be considered.

7. It subsequently transpired that there was still a dispute as to the actual percentage of commercial use but it appeared to the tribunal that could be resolved without reinstating the inspection. The hearing therefore went ahead on 1 December 2025 by CVP. Ann Savell represented the applicant, supported by various other members of the company and David Jarvis of Homeground, who had assisted the applicant with preparation of their case. The respondent was represented by Simon Allison KC.
8. In addition to the argument and evidence provided at the hearing, the tribunal has taken into account the documents provided in the hearing bundle, Mr Allison's skeleton argument dated 27 November 2025 and relevant authorities. For ease of reference, the respondent's objections will be considered in turn.

Property excluded from the RTM

9. Paragraph 1 of Schedule 6 to the Act contains provisions in respect of buildings with substantial non-residential parts. At the date of issue of the application, paragraph 1(1) provided that: "*This Chapter does not apply to premises falling within section 72(1) if the internal floor area of any non-residential part ...exceeds 25 per cent of the internal floor area of the premises.*" As stated above, that limit was increased to 50 per cent on 3 March 2025 by section 49 of the Leasehold and Freehold Reform Act 2024 ("the 2024 Act").
10. When the applicant had issued their application, they were under the impression that the percentage of commercial use was under 25%, relying on service charge information provided by the respondent's managing agents (the service charge contributions are apparently calculated according to a similar measurement). After carrying out their own measurements, they submitted that the correct percentage was 42.75%. Until shortly before the hearing, the respondent's expert stated the percentage was 55.95%. The significant difference was mainly due to the inclusion or otherwise of the residents' car park. The respondent's expert excluded it from the measurements for residential use on the basis that the spaces were not demised to individual leaseholders. The applicant disputed that, providing evidence that the spaces were allocated to individual flats and therefore met the criteria in paragraph 1(2) for inclusion in the percentage of residential use.
11. If the applicant was able to establish that the percentage of commercial use was below 50%, they needed to be able to rely on the change to the limit introduced on 3 March 2025.
12. In Mr Allison's skeleton argument, served on the applicant on Thursday 27 November 2025, he stated that the respondent was prepared to concede that solely for the purpose of this application - which concerns the claim notice served on 24 December 2024 - the percentage of non-

residential use was 42.75%, as the applicant asserts. The respondent's expert was therefore stood down by them for the hearing.

13. At the hearing, Mr Allison submitted that the question for the tribunal under section 84(3) of the Act was whether the applicant was on the relevant date entitled to acquire the RTM. The relevant date is defined in section 79(1) as the date on which the notice of claim is given. Although the precise date was also in dispute, that date was between 20 and 24 December 2024. During those dates the limit was 25% and therefore the property was excepted from the RTM by virtue of Schedule 6 and section 72(6) of the Act.
14. Mrs Savell sought to rely on the Supreme Court decision in *A1 Properties (Sunderland) Limited v Tudor Studios RTM Company Limited* [2024] UKSC 27. She submitted that the question was whether the relevant party had the opportunity to object. At the time of service of the claim notice, both parties were apparently under the impression that the commercial use was below 25%. The respondent only changed its position in July 2025, after the change in the limit and therefore the tribunal ought to be able to deal with the issue on the evidence. The applicant also relied on their statement of case dated 29 August 2025 which argued that the relevant date should be the date of the determination.
15. On the inclusion of the residents' car park, Mrs Savell pointed to the evidence in the bundle that the parking spaces were allocated to the individual flats: the sample lease in the bundle clearly included the numbered parking space in the demise, mention of a parking space was also included in several of the headline leasehold interests listed in the copy of the register and the service charge information which had originally led the applicant to believe that the percentage of commercial use was below 25% also confirmed the demise of the spaces.
16. The tribunal had asked the respondent to confirm which of the leases, if any, excluded the parking space but Mr Allison confirmed that this work had not been done, in order to save (their) costs. He pointed out that the measurement of the car park should have excluded the common parts in any event (Schedule 6 paragraph 1(2)(b)).

The tribunal's decision and reasons

17. While the tribunal has some sympathy with the applicant in relation to this issue, the respondent's argument is clearly correct. The tribunal's jurisdiction is as set out in section 84(3) and the relevant date is clearly defined in section 79(1). *A1 v Tudor* was about non-compliance with a statutory requirement, in that case the failure of the RTM to serve a Claim Notice on an intermediate landlord. This issue concerns the jurisdiction of the tribunal as defined in the Act, which cannot be rewritten by the tribunal. The relevant date is clearly the date of service of the claim notice, between 20-24 December 2024, when the statutory limit was 25%.

18. Mrs Savell did not seek to argue that the increase to 50% should be backdated to that date but for the avoidance of doubt the tribunal also agrees with Mr Allison that there is nothing in section 49 of the 2024 Act to that effect. In those circumstances, the property was excepted from the RTM on the relevant date and the claim must fail.
19. Although it is academic and based only on the applicant's evidence, the tribunal is of the view that the respondent's expert was incorrect to state the parking spaces were not demised to the flats. Obviously, it was reasonable to expect the respondent to be familiar with its own title and it is unfortunate that it declined to assist the tribunal with its inquiry about other leases. That said, the tribunal agrees with Mr Allison that the common parts of the residents' garage (only the spaces are demised) should be excluded from the measurements for residential use. Any common parts in relation to the commercial parking area should similarly be excluded from their measurements.
20. Although it follows that a determination of the remaining objections is also academic, the tribunal will give its view on the arguments taken on the day.

Service of the claim notice

21. Although this was the final objection, it makes sense to deal with this issue next, as the respondent considered it to be a further "knock out blow" to the applicant's case.
22. It was not contested that the claim notice was sent to the respondent by "signed for" first class post on 20 December 2024. It was also not contested that the claim notice was collected by the respondent from the local delivery office on 24 December 2024. The potential problem for the applicant was that the date given in the claim notice for the counter notice was 23 January 2025.
23. The respondent relied on section 80(6) of the Act which provides that the claim notice must specify a date not earlier than one month after the relevant date, by which a counter notice may be given. The relevant date was 24 December 2024 and therefore Mr Allison argued that the claim notice needed to specify a date not earlier than 25 January 2025 in order to comply with the Act.
24. The applicant appeared to argue initially that the date the claim notice was given was the day it was posted to the respondent, although this argument changed at the hearing to pointing out that in order to collect the notice from the delivery office on 24 December 2024, the post office must have put a card through the door of the office on 23 December 2024 (or earlier). This was in an attempt to justify the argument that the rules as to service by first-class post indicate that service can be deemed to have taken place two days after posting, i.e. 22 December 2024. In any event, there was no prejudice to the respondent as they provided their counter notice on 22 January 2025.

The tribunal's decision and reasons

25. For the avoidance of doubt, it is clear that a notice is given when it is served, not sent and the appropriate rules are to be found in section 7 of the Interpretation Act 1978: "*Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.*"
26. As Mr Allison pointed out in his skeleton, the Upper Tribunal has held that "*the ordinary course of post*" for first class post means the second working day after posting, which would have been 24 December 2024 as the claim notice was posted on a Friday. In any event, the actual evidence shows that the claim notice was in fact served on 24 December 2024 when it was collected from the delivery office. That means that the applicant failed to comply with section 80(6) of the Act.
27. Prior to *A1 v Tudor*, this error would also have been fatal to the applicant's claim. It seems to the tribunal that now, this sort of error may not result in the claim failing, as in order to consider the application a counter notice must always have been served and therefore there cannot be any prejudice to the respondent through short notice. That said, there is no Upper Tribunal authority on the point and it is a serious mistake not to leave a few extra days in the claim notice to be sure. We would also observe that signed-for post is not necessarily sensible as a landlord may choose simply not to collect it, with the effect that the claim notice would never be served at all.

Service of the NIPs on qualifying tenants

28. The respondent had also alleged that the applicant had failed to serve Notices of Invitation to Participate ("NIPs") on all of the qualifying tenants (the leaseholders), a fairly daunting task for a development of some 381 flats. This is a strict requirement as confirmed recently by the Court of Appeal in *Avon Freeholds Ltd v Crest Court E RTM Company Ltd* [2025] EWCA Civ 1016. Again, just one mistake will result in a claim failing.
29. By the time of the hearing, the argument depended on whether copies had been delivered to all of the flats by either Mrs Savell or Mr Baretta by the deadline of 10 December (14 days prior to the giving of the claim notice as required by section 79(2) of the Act). Unfortunately, as Mr Allison pointed out, Mr Baretta's witness statement stated that he had served his notices during the period of 1 March to 20 December 2024.
30. The applicant had posted NIPs to the addresses stated in the copies of the register and gave evidence that they also delivered copies to the flats where there was no response. As Mr Allison pointed out, that may not

have been sufficient as the Act requires the qualifying tenant to provide a different address for service to the RTM, as opposed to the company simply taking that information from the register. Evidence of service at each flat by the due date was therefore vital.

31. At the hearing, Mr Baretta gave evidence that he was out of the country from 10 December 2024 as he went to Poland for the Christmas holidays. He agreed to send a copy of his ticket by way of evidence, which was actually dated 14 December 2024.

The tribunal's decision and reasons

32. If the air ticket had corroborated Mr Baretta's evidence, the tribunal would have been inclined to find for the applicant on the point taken by the respondent but the date of the flight was after 10 December 2024.
33. In his email enclosing a copy of the ticket Mr Baretta stated that 20 December was a typographical error and he meant to put 1 December, the date given by Mrs Savell in her witness statement. By that time it was too late to provide additional evidence (other than the ticket) which again shows the importance of getting all details correct up front.
34. In the circumstances, the tribunal considers that the applicant would also have failed this crucial test on the evidence it provided for the hearing.

Membership of the RTM Company

35. The final objection by the respondent was that the tribunal could not be satisfied that on the relevant date the RTM Company membership included not less than half the number of flats. Mr Allison's skeleton argument stated that it was common ground there were 381 flats and thus the RTM Company needed 191 members as at 24 December 2024.
36. The respondent's statement of case set out its reasons for asserting that the RTM Company only had 187 members on that date. It asserted that 3 flats had withdrawn from the company beforehand, only one of two joint tenants was recorded as a member of the company – which failed to meet the definition of qualifying tenant in section 75(7) of the Act – and that the wrong name was used for two of the flats. The applicant had failed to include their company register in their evidence and therefore their claim also failed on this ground as this requirement must be a fundamental part of the RTM scheme.
37. The applicant had previously provided the respondent with a list of members which was apparently compiled by Mr Jarvis. In the hearing, Mrs Savell explained that the company register was a living register and she provided a copy over the lunch break which she asserted showed that at least 5 of the 11 questioned members were in fact properly registered. She also stated that there were in fact 218 members as at 24 December 2024, way over the 50% limit.

38. In response to that evidence, Mr Allison pointed out that the date of membership on the register was actually the date of the application to join the company, which may not meet the requirements of the Companies Act 2006.

The tribunal's decision and reasons

39. Mrs Savell had stated that she did not consider a copy of the register was required until she had seen Mr Allison's skeleton argument. Given the objections in the respondent's statement of case and the apparent mistakes in the information previously provided to them, it was the most obvious evidence in reply but may have led to further objections as identified above.
40. The tribunal agrees with Mr Allison that this requirement must go to the heart of the RTM scheme and therefore any breach should be treated strictly. That said, the tribunal would have found that the evidence was sufficient to establish compliance with this section, on a balance of probabilities and in response to the respondent's argument on the day, having allowed the register to be put into evidence. This was mainly because four of the flats were jointly owned by Mrs Savell and her husband and the register also showed the correct identity of the leaseholder for a fifth property.
41. As has been previously observed, this "no fault" process is fiendishly difficult and full of bear traps, even where a great deal of trouble has been taken to try and comply with the Act. It is particularly complex where the property consists of a large number of flats and commercial premises and the landlord is determined to find any reason to defeat the application. *A1 v Tudor* will not assist with every non-compliance and if the applicant wishes to try again they should consider obtaining legal advice from an expert in this complex jurisdiction for reassurance that everything is in place before service of a new claim notice.

Name: Judge Wayte

Date: 15 December 2025

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).