



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/43UL/LRM/2014/0017

Property : Mulberry House, 74-76 Shortheath Road,
Farnham, Surrey. GU9 8SQ

Applicant : Mulberry House Management RTM Company
Limited

Representative : Mr T Rivers of Bells Solicitors

First Respondent : Sherewood Homes Limited

Second Respondent: Mrs G Scott

Representative : Mr David Webber

Type of Application: Application under Chapter 1 Commonhold and
Leasehold Reform Act 2002 relating to (No Fault)
Right to Manage

Tribunal Members : Judge P J Barber
Mr P D Turner-Powell FRICS Surveyor Member

Date and venue of Hearing : 10th February 2015
Court 2, Aldershot County Court, 84-86 Victoria Road,
Aldershot, Hampshire GU11 1SS

Date of Decision : 17th February 2015

DECISION

Decision

1. The Tribunal determines in accordance with the provisions of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that on the relevant date, Mulberry House Management RTM Company Limited (“the RTM Company”) was not entitled to acquire the Right to Manage the premises at and known as Mulberry House, 74-76 Shortheath Road, Farnham, Surrey GU9 8SQ (“the Premises”).

Reasons

BACKGROUND

2. The application is for a determination that on the relevant date the RTM Company was entitled to acquire the Right to Manage pursuant to Section 84(3) of the 2002 Act. By certificate of incorporation on change of name dated 15th May 2014, the Applicant / RTM Company was incorporated at Companies House under Company Number 8785075; the RTM Company issued a claim notice on 18th June 2014, and served it upon the First Respondent and the Second Respondent. In the claim notice, the Applicant described the property in respect of which the claim was made as “Mulberry House, 74/76 Shortheath Road, Farnham, Surrey GU9 8SQ. By Counter-Notice dated 7th July 2014, the First Respondent disputed the claim, alleging that the Applicant had failed to establish compliance with Provision (Section) 72 of the 2002 Act. The First Respondent asserted in such Counter-Notice that the Premises did not qualify on 18th June 2014 and that in consequence, the RTM Company was not entitled to acquire the right to manage the Premises. By letter dated 9th October 2014, the Second Respondent stated to the Tribunal that she is the freeholder of Number 76 Shortheath Road and entirely responsible for her home and garden at that address, and as such submitted that No. 76 Shortheath Road should not be included within the Right to Manage as claimed by the Applicant.
3. By letter received in the Tribunal offices on 14th October 2014, Mr David Webber of Sherewood Homes Limited submitted that the Premises were not ones to which Chapter 1 of the 2002 Act applies and that the claim notice was defective in that regard.
4. By letter dated 4th February 2015, Mr David Webber of the First Respondent sought leave from the Tribunal to allow late admission of certain evidence in the form of correspondence from Trinder Architectural Limited in regard to the structure of the Premises and the services which supply those Premises.

THE LAW

5. Section 72 provides that :

72(1) 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*

72(2) A building is a self-contained building if it is structurally detached.

72(3) A part of a building is a self-contained part of the 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

72(4) This subsection applies in relation to a part of a building if the relevant services provided for 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.

Sections 84(1) & 84(2) of the 2002 Act provides that :

84 Counter Notices

(1) 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)

(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,

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

INSPECTION

6. The Tribunal inspected the Premises in the morning of the day on which the hearing took place, in the presence of Mr O`Farrell of Flat 8, and Mr Webber of Sherwood Homes Limited and also the Second Respondent, Mrs Scott. The building comprises a single structure, with a stepped design; it features brick elevations under a pitched tiled roof. The Premises consist of two storeys with a town house located on each side of the structure and nine flats in between, including a penthouse flat at roof level with dormer and velux style windows. The Premises are approached from the road by two separate entrances with brick pillars on either side, and a front boundary wall in between such entrances. The entrances lead to two separate tarmac surfaced parking areas and there was also a bin & cycle storage structure at the front, separating those two parking areas. The two town houses, known respectively as Numbers 74 & 76 Shortheath Road, have their own separately fenced rear gardens and there is a communal garden in between those two gardens, serving the flats. Certain of the flats also have their own separated allocated gardens. The Tribunal also made a brief inspection inside Number 76 in the presence of Mr Webber and Mrs Scott, but Mr O`Farrell was not admitted to such inspection. The Tribunal also inspected the ground floor communal entrance hall of the flats; the hall leads to a communal rear door giving access to the communal garden area and also a lift. The Tribunal noted that the grounds and interior ground floor entrance hall were all maintained to a good and tidy standard.

HEARING AND REPRESENTATIONS

7. Mr Rivers of Bells Solicitors represented the Applicant, accompanied by Mr O`Farrell. Mr Webber represented the First Respondent and was accompanied by Mrs Scott, the Second Respondent. The Tribunal invited views from Mr Rivers on a preliminary point, namely as to whether or not the late evidence tendered by Mr Webber (see paragraph 4 above) should be admitted. Mr Rivers said he had received copies and had no objections and accordingly the Tribunal determined that the late evidence may be admitted.
8. Mr Rivers submitted on behalf of the Applicant that 74-76 Shortheath Road had been developed as one structure to include the 9 flats and 2 town houses and that the leases were all in common form. Mr Rivers said that the landlord had never maintained the Premises since they were built in 2009 and that the whole efficacy of, what he described as, the letting scheme for the Premises, was destroyed when the First Respondent sold the freehold of the town house at Number 76 Shortheath Road, to the Second Respondent, Mrs Scott. Mr Rivers accepted that there was nothing which prevented a transfer of part of the freehold, but that the Land Registry should not have allowed the lease of No. 76 to be merged with the freehold at the time. Mr Rivers submitted that there is only one roof structure over the whole of the Premises and that splitting responsibility for it and other aspects of the building as between the common form leases on the one hand, and differing freehold obligations affecting No. 76 on the other hand, had created practical management difficulty.
9. Mr Rivers accepted that the essential issue was whether or not the Premises are ones to which the right to manage is applicable and in that regard the provisions of Section 72 and Schedule 6 of the 2002 Act must be considered. Mr Rivers submitted that the Premises in effect are a single self-contained building being

structurally detached, and falling, he said, within the ambit of Section 72(2). However, in regard to the possibility that the Second Respondent's town house at No. 76 should be regarded as a self-contained part of the Premises, Mr Rivers referred to Section 72(3); he said he accepted that No. 76 constitutes a vertical division under Section 72(3)(a) and that relevant services are already provided to it under Sections 72(3)(c) and 74(a), although he felt they were not entirely independently provided since they cross under other common parts of the grounds. The Tribunal was advised by Mr Webber that No. 76 has separate metered supplies for all utility services. Mr Rivers accepted that in regard to whether No. 76 could be regarded as a self-contained part of a building, the matter would turn only on consideration of the provisions of Section 72(3)(b); he accepted that the essential question arising was as to whether the structure is such that it could be redeveloped independently of the rest of the building.

10. Mr Rivers submitted that there are practical difficulties arising with the split tenures of the flats and the town house at No. 74, as compared to the freehold town house at No. 76; he said that the other lessees cannot enforce the service charge provisions in the freehold transfer deed of No. 76. Mr O'Farrell said in evidence that for a short while, the First Respondent had employed a managing agent but that this arrangement faltered after about 18 months, resulting in the lessees setting up their own informal residents' association to do necessary work.
11. Mr Webber sought to introduce a large scale layout plan of part of the Premises and a short adjournment was allowed to enable the parties to discuss such plan. Mr Rivers agreed admission of the plan. Mr Webber said that the plan showed that the building incorporates a cavity wall between No. 76 and the rest of the building and that such wall extends vertically within the roof space. Mr Webber submitted that the existence of such a cavity wall would make it not impossible to redevelop No. 76 independently from the rest of the building and that this would have to happen in the event, for example, of fire or other damage occurring to No. 76. Mr Webber said that No. 76 is separately insured and that in the event of damage or destruction it could be re-built or redeveloped, just in the same way as a single house forming part of a terrace of houses. Mr Webber said it was his view that houses are expressly excluded from the right to manage; however Mr Rivers disagreed, adding that it was a matter of statutory construction. Mr Webber said that No. 76 could be redeveloped and that whilst it might be inconvenient for the other lessees in the building if that were to happen, it nevertheless could be done. Mr Webber further submitted that Schedule 6 Paragraph 2 of the 2002 Act excludes the right to manage where different persons own the freehold of different parts of premises within Section 72(1) – if any of those parts is a self-contained part of a building.
12. Mr Webber added that he was happy for the flat owners to continue informal maintenance through their residents association and that he had offered to accept such arrangement in his statement. Mrs Scott said that she substantially relied on the submissions already made by Mr Webber and added that she is happy to contribute whatever is required though her freehold covenants in respect of the areas, such as the shared entrance drive.
13. Mr Webber said that he did not wish to repeat himself by making any detailed closing statement. In his closing, Mr Rivers referred to the practical difficulties arising from No. 76 not making service charge contributions in exactly the same way as other lessees of the Premises. Mr Rivers considered that unless the leases

are all modified, a practical problem will remain for the future. Mr Rivers further submitted that it was necessary to apply common sense and whilst No. 76 could theoretically be redeveloped independently, it would be excessively and disproportionately costly to do so.

CONSIDERATION

14. We, the Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of both parties.
15. In regard to the Respondent's allegations that the claim notice failed to comply with the requirements of Section 72, the Tribunal has considered carefully the nature of the building in the light of the evidence of both parties. The question for determination is whether the premises consist of a single self-contained building under section 72(1)(a) of the 2002 Act, or whether in reality, the Premises actually consist of more than one separate self-contained parts. The claim notice was served in respect of 74-76 Shortheath Road; it was apparent from the inspection and the evidence that No. 76 constitutes a vertical division and that it has separately metered services. The Tribunal is of the view that the services are therefore sufficiently independently provided to No. 76, as compared with those provided for the rest of the lessees pursuant to Section 72(4)(a). The essence of the dispute was agreed by the parties to be whether No. 76 is a self-contained part of the Premises, such that it could be redeveloped independently. The Tribunal notes that the freehold interest in No. 76 had been sold to Mrs Scott in 2013 and that the lease of No. 76 had been merged by the Land Registry in that freehold. On the evidence before it, the Tribunal accepts that whilst it may be expensive and somewhat impractical, it would nevertheless be possible to redevelop No. 76 independently and that this would in any event be necessary in the event for example of No. 76 being destroyed or significantly damaged by fire.
16. Accordingly the Tribunal determines that No. 76 is a self-contained part of the Premises which were described in the claim notice and that since the claim relates not to a single self-contained building, but to more than one self-contained part, it is therefore defective. The Tribunal further considers that the claim is excluded from the right to manage as a result of Schedule 6 Paragraph 2 of the 2002 Act, on the basis that No. 76, being a self-contained part included within the claim, is in different freehold ownership to the remaining premises which are the subject of the claim notice. Consequently the Tribunal determines that the Applicant is not entitled to acquire the right to manage those premises to which the claim notice relates, namely 74-76 Shortheath Road.
17. We made our decisions accordingly.

Judge P J Barber

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.