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

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| **Case Reference** | **: CHI/45UC/LRM/2015/0005** |
| **Property** | **: 1-2 Alexandra Terrace, Clarence Road, Bognor Regis, PO21 1LA** |
| **Applicant** | **: 1-2 Alexandra Terrace RTM Company Limited** |
| **Representative** | **: Urban Owners Limited** |
| **Respondents** | **: Sinclair Gardens Investments (Kensington) Limited** |
| **Representative** | **: W H Matthews & Co, Solicitors** |
| **Type of Application** | **: Objection to Right to Manage** |
| **Tribunal Members** | **: Judge D Agnew** |
| **Date and venue of Hearing** | **: 20th August 2015 Paper determination** |
| **Date of Decision** | **: 20th August 2015** |

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**DECISION AND REASONS**

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## Decision

1. The Tribunal determines that as at the relevant date, namely 1st August 2015, the Applicant was entitled to acquire the right to manage 1-2 Alexandra Terrace, Clarence Road, Bognor Regis, West Sussex PO21 1LA ("the Premises") under the Commonhold and Leasehold Reform Act 2002 ("the Act").

## Reasons

### Background

2. On 30th April 2015 the Applicant applied to the Tribunal for a determination under section 84(3) of the Act that on 1st August 2015 it was entitled to acquire the right to manage the Premises.

3. Directions were issued by the Tribunal on 20th May 2015 providing for statements of case to be submitted by the parties and for the case to be determined upon the basis of those written submissions rather than by an oral hearing, unless any party objected within 28 days. No party did object and statements of case were duly filed.

### The Respondent's case

4. The Respondent's objections to the Applicant being entitled to acquire the right to manage the Premises were set out in the counter-notice served under section 84 of the Act and amplified in the statement of case filed on behalf of the Respondent and dated 9th June 2015.

5. In a nutshell the Respondent's case is that the Applicant's Claim Notice was defective in two respects. First, in paragraph 2 of the Claim Notice where the grounds for stating that the premises are ones to which Chapter 1 of the Act applies, the Applicant failed to state that the premises were a building or part of a building: instead, the Applicants had simply stated that the premises were self contained. Secondly, in the same paragraph of the Claim Notice, the Applicants had failed to make any reference as to whether any appurtenant property was intended to be included under the right to manage.

6. The Respondent says that these defects are fatal to the validity of the notice and that they cannot be overlooked by virtue of section 81(1) of the Act which provides that a Claim Notice is not invalidated by any inaccuracy in any of the particulars required to be given under section 80(2)-(7).

7. In support of their case the Respondent cites the following cases:-
*Pineview Limited v 83 Crampton Street RTM Company Limited [2013] UKUT 0598 (LC)*
*Speedwell Estates v Dalziel [ 2001] EWCA Civ 1277*
*Moskovitz and ors v 75 Worple Road RTM Company Limited [2010] UKUT 393 (LC)*
*Assethold Limited v 15 Yonge Park RTM Company Limited [2011] UKUT 379 (LC)*

*Gala Unity Limited v Ariadne Road RTM Company Limited [2011] UKUT 425 (LC) and [2012] EWCA Civ 1372*
*Assethold Limited v 14 Stansfield Road RTM Company Limited [2012] UKUT 262 (LC) and*
*Kahloon v Isherwood [2011] EWCA Civ 602.*

## The Applicant's case

8. The Applicant's case was simply that it was not necessary to include in paragraph 2 of the Claim Notice the fact that the premises comprised a building or part of a building or make any reference to appurtenant property. They cited the Pinewood case (referred to in paragraph 7 above) as authority for their case. Paragraph 2 of the Claim Notice read as follows:-
"2. The Company claims that the premises are ones to which Chapter 1 of the 2002 Act applies on the grounds that the premises are self contained. The number of flats held by qualifying tenants is more than 2 and represents not less than 2/3rds of the flats. The participating tenants represent more than 50% of the total flats at the date of application. Less than 25% of the premises are non residential." The applicant says that this is sufficient to satisfy section 80 of the Act and that the Claim Notice is valid.

9. With regard to the third ground of objection, namely that there is no evidence that all relevant parties were served with the claim notice, the persons to be served were the landlord, other parties to the lease and any manager appointed by the Tribunal under the Landlord and Tenant Act 1987. The claim notice is addressed to the landlord and to both possible management companies for whom Estates and Management Limited act. There is no evidence that any manager has been appointed under the 1987 Act and no evidence that the landlord has not received service of the claim notice.

## The law

10. Section 80 of the Act states as follows:-
(1) The claim notice must comply with the following requirements.
(2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which the Act applies

## The determination

11. The Tribunal is satisfied that the Claim Notice in this case contained sufficient information to identify the grounds upon which it was claimed that the premises were premises to which Chapter 1 Part 2 of the Act applied. It is correct to say that it was not stated in paragraph 2 of the Claim Notice that the premises comprised either a building or part of a building and thus it is possible that 1-2 Alexandra Terrace is a vacant plot. However, in the Tribunal's view the paragraph has to be read as a whole. The rest of the paragraph referred to flats and flats can only be part of a building. So the premises at 1-2 Alexandra terrace must have comprised a building or part of a building. Furthermore, the Respondent evidently understood that the premises

comprised a building because in the Counter notice it says: "The grounds in this Claim Notice solely specify that it is a self contained building (emphasis added)." In fact the word "building" did not appear in paragraph 2 of the Claim Notice but the Respondent's response to the Notice in its Counter-notice indicates that the Respondent had understood paragraph 2 of the Claim Notice to refer to a building. Indeed, when the Counter-notice was served, there was no point taken about the absence of reference to a building or part of a building in the paragraph. This was a point that was only taken up in the Respondent's statement of case. The Applicant has made no point as to whether or not it is permissible for a Respondent to add to grounds not stated in the Counter-notice and so the Tribunal makes no determination on that point and has dealt with it as if it is permissible to add to grounds of opposition in this way but has found that there is no merit in the point.

12. The Tribunal accepts the Respondent's argument that, if it had found that the statutory provisions required the Applicant specifically to state that the premises were a building or part of a building and that this was not stated, that the omission would not be capable of being overlooked by virtue of section 80(1) of the Act as this would not have amounted simply to an "inaccuracy" in the particulars. However, as the Tribunal has not found that the statute requires the Applicant to specifically state that the premises comprise a building or part of a building when it is clear from the context of paragraph 2 that the premises do comprise a building or part of a building, section 81(1) is, in the Tribunal's view, irrelevant.

13. With regard to the Respondent's second objection namely that there is no reference to appurtenant property in paragraph 2 of the Claim Notice, the Tribunal has taken into account all the authorities cited by the parties in support of their cases. The Tribunal has gleaned the most assistance from the most recent of those cases, namely the Upper Tribunal decision in *Pineview Limited v 83 Crampton Street RTM Company Limited [2013] UKUT 0598 (LC)*. This was a case where one of the grounds of opposition to the right to manage was that the Claim Notice had failed to specify whether the premises to which it related did or did not include appurtenant property. Indeed, as in the instant case, no reference was made at all in paragraph 2 of the Claim Notice to appurtenant property. The Deputy President of the Upper Tribunal held that this did not invalidate the Claim Notice. He dealt with the point fully and in depth in paragraphs 55 to 72 of that decision. I can see no difference between the *Pinewood* case and the instant case as far as the "appurtenant property" issue is concerned. Pinewood is, of course, binding on this Tribunal.

14. Although the Respondent cites *Pinewood* in support of its case, it skates over the difficulty it has in that the decision in that case was contrary to what the Respondent contends in the instant case. At paragraph 3.5 of its statement of case it says that "The claim notice in *Crampton Street* [i.e.*Pinewood]* was equally silent as to Appurtenant property which does not appear to be consistent with the extracts from the determination set out in paragraph 3.3 hereof." Whether or not the conclusion in that case was or was not consistent with an earlier extract from the decision is immaterial. The fact of the matter is that it is binding authority on a point which is identical to that which this Tribunal is being asked to decide. As I can see no distinction between the

instant case and *Pinewood* on this point the Tribunal must follow Pinewood and determines that the absence of any reference to appurtenant property in paragraph 2 of the Claim Notice does not invalidate the claim and the Tribunal so finds.

Dated the 20th day of August 2015

Judge D. Agnew

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.