



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

Case Reference : CHI/45UC/LRM/2016/0007

Property : 1-2 Alexandra Terrace, Clarence Road, Bognor Regis
PO21 1LA

Applicant : 1-2 Alexandra Terrace RTM Company Limited

Representative : Urban Owners Ltd

Respondent : Sinclair Gardens Investments (Kensington) Ltd

Representative : WH Matthews & Co

Type of Application : Entitlement to acquire the Right to Manage

Tribunal Members : Judge A Johns QC

Date of Decision : 28 October 2016

PAPER DETERMINATION

1. This is an application by 1-2 Alexandra Terrace RTM Company Ltd (“the RTM Company”) for a determination under s.84(3) of the Commonhold and Leasehold Reform Act 2002 that it is entitled to acquire the right to manage property known as 1-2 Alexandra Terrace, Clarence Road, Bognor Regis PO21 1LA.
2. The respondent landlord, Sinclair Gardens Investments (Kensington) Ltd (“the Landlord”), contends that the RTM Company is not so entitled by reason of an alleged defect in the notice inviting participation.
3. The notice inviting participation is dated 15 April 2016 (“the Notice”). The defect alleged is this: that in stating that the RTM Company’s articles of association “*may be inspected at Northchurch Business Centre, 84 Queen Street, Sheffield S1 2DW between Monday to Sunday, 0900 – 1730*” the Notice failed to specify as the times when the articles may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given as required by s.78(5)(b) of the 2002 Act.
4. Section 78 of the 2002 Act provides in full as follows:

“78 Notice inviting participation

(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.*

(2) A notice given under this section (referred to in this Chapter as a “notice of invitation to participate”) must—

- (a) state that the RTM company intends to acquire the right to manage the premises,*
- (b) state the names of the members of the RTM company,*
- (c) invite the recipients of the notice to become members of the company, and*
- (d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.*

(3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

(4) A notice of invitation to participate must either—

- (a) be accompanied by a copy of the [articles of association] of the RTM company, or*
- (b) include a statement about inspection and copying of the [articles of association] of the RTM company.*

(5) A statement under subsection (4)(b) must—

- (a) specify a place (in England or Wales) at which the [articles of association] may be inspected,*
- (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or*

both) within the seven days beginning with the day following that on which the notice is given,

(c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the [articles of association] may be ordered, and
(d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.

(6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

(7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.”

5. As the Notice was not accompanied by the articles of association, s.78(4)(b) therefore required that it include a statement about inspecting and copying the articles. The requirements for that statement are then set out in s.78(5) and include by virtue of s.78(5)(b) that the statement must specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given.
6. The case for the Landlord is that the statement in the Notice, set out at paragraph 3 above, does not meet that requirement. It does not give specific dates so that a recipient would have to guess at what was intended. The consequence of that failure is that the Notice is invalid as there must be strict compliance with the statutory requirements for a notice inviting participation to be valid. While s.78(7) saves a notice from invalidity where there is an inaccuracy in the required particulars, the present case is not one of inaccuracy.
7. The case for the RTM Company is that the Notice does meet the statutory requirement. A recipient would not be confused, particularly having regard to “Note 2” forming part of the Notice which is in these terms: “*The specified times must be periods of at least 2 hours on each of at least 3 days (including a Saturday or Sunday or both) within the 7 days beginning with the day following that on which the notice is given*”. The RTM Company does not rely on s.78(7) to contend that any failure was a mere inaccuracy.
8. It is important to have in mind the authorities on the validity of notices in this context of the right to manage. The Tribunal takes the following from the decisions of the Upper Tribunal (Lands Chamber) in *Triplerose Ltd v Mill House RTM Co Ltd* [2016] UKUT 0080 (LC) and *Elim Court Ltd v Avon Freeholds Ltd* [2014] UKUT 397 (LC):
 - 8.1 The statute does indeed require that a notice must comply with s.78(5)(b).
 - 8.2 A notice which fails to specify a Saturday or Sunday amongst the days on which inspection is available, being the example provided by *Elim Court*, does not comply with that requirement and such failure is not a mere inaccuracy in the particulars.

- 8.3 Acquisition of the right to manage is a procedure which confers a property or similar right on a person and so compliance with the strict requirements of the statutory scheme is essential and substantial compliance is simply not good enough.
- 8.4 While claims are often met by highly technical points of no practical significance, tribunals should be slow to relax the need for full compliance. The statutory procedures are not difficult to comply with and can easily be repeated if not properly implemented.
9. The Tribunal therefore agrees with the Landlord that there must be strict compliance with the requirement of s.78(5)(b) in order for the Notice to be valid. And the Tribunal should be ready to find a notice invalid unless it is satisfied that there has been strict compliance.
10. But in the judgment of the Tribunal, the Notice does comply with the requirement in s.78(5)(b) of the 2002 Act.
11. That requirement expresses a minimum, namely that the times specified must be *at least* 2 hours and on *at least* 3 days including a Saturday or Sunday or both.
12. By stating that the articles may be inspected between Monday to Sunday, 0900 – 1730, the Notice specified that inspection was available on *any* day and for 8 ½ hours each day. In doing so, it simply went far beyond the minimum. This is not a case like *Elim Court* where the notice failed to meet the required minimum.
13. Further, there is no indication at all that such inspection times are not applicable in the 7 days following the Notice. On the contrary, the presence of Note 2 in the Notice would underline to the reasonable reader that the specified times of inspection, being any day and for 8 ½ hours a day, would certainly apply for the 7 days beginning with the day after the giving of the Notice.
14. The recipient of the Notice would not have to guess, as the Landlord suggests, as to when he could inspect. Rather, the Notice makes clear to him that he can inspect on any day and at any time between 0900 – 1730, certainly within the 7 days following the Notice.
15. It follows that the Notice is valid and the Tribunal accordingly determines that the RTM Company is entitled to acquire the right to manage the property known as 1-2 Alexandra Terrace, Clarence Road, Bognor Regis PO21 1LA.
16. 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.
17. 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.

18. 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.
19. 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.

Judge A Johns QC

Dated 28 October 2016