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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00KF/LRM/2017/0007**
Property	:	**1 Britannia Road,** **Westcliff-on-Sea,** **SSo 8BS**
Applicant **Represented by**	:	**1 Britannia Road RTM Co. Ltd.** **Mark Robertson, solicitor (Drysdales)**
Respondent **Represented by**	:	**Abacus Land 4 Ltd.** **Desmond Kilcoyne of counsel**
Date of Application	:	**5th October 2017**
Type of Application	:	**For an Order that the Applicant is entitled to acquire the right to manage the property (Section 84(3) Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"))**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Stephen Moll FRICS** **John Francis QPM**
Date and venue of Hearing	:	**15th January 2018 at the Court House, 80 Victoria Avenue, Southend-on-Sea SS2 6EU**

DECISION

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1. This Application fails and the Applicant therefore does not acquire the right to manage the property.

Reasons

Introduction

2. The Respondent accepts that the Applicant is a right to manage company ("RTM"). Such RTM gave the Respondent a Claim Notice on or about the 11th July 2017 seeking an automatic right to manage the property. A Counter-notice dated 23rd August 2017 is in the Tribunal bundle denying the right to acquire the right to manage on a single ground, namely that "*the property to which the claim is said to relate is not premises within*

the meaning of Section 72, in that this comprises multiple premises". That remains the sole ground for opposition.

3. The suggestion in the papers that the Applicant did not accept that the counter-notice had been properly served on time, and an application by the Applicant for costs because of alleged unreasonable behaviour under rule 13 of the Tribunal's procedural rules were both withdrawn at the hearing. Mr. Robertson and his client seem to have taken the realistic and sensible view that neither would succeed and no time should therefore be spent at the hearing on such matters.

The Law

4. As to the premises, section 72 of the 2002 Act defines the minimum requirements as being "*a self-contained building or part of a building, with or without appurtenant property*". Of particular relevance to the issues in this case, the section goes on to say "*a part of a building is a self-contained part of a 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*".

5. Subsection (4) says "*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*".

6. The section goes on to say that relevant services are provided by means of "*pipes, cables or other fixed installations*".

7. The Respondent relies upon the case of **Triplerose Ltd. v Ninety Broomfield Road RTM Co. Ltd** [2015] EWCA Civ 282 which includes 2 other appeals. That case simply decided, in essence, that an RTM could only manage one self contained building or part of a building. In that case the RTMs were wanting to manage more than one self contained building simply because all the buildings had been managed together as an estate in the past and it was believed by the RTMs that they had the power to do this. The Court of Appeal disagreed.

The Inspection

8. The members of the Tribunal inspected the property in the presence of The parties' representatives, Martin Nicholls from the Respondent's managing agents and various people who seemed to be long leaseholders of the property. It should be said at the outset that the long leaseholders at the inspection sought to draw to the Tribunal's attention examples of bad management. The Tribunal members attempted to reassure them that this was not really relevant to this particular application. However, in order to reassure them further, the Tribunal members did notice that the

state of the property was extremely poor and, in particular, an outside staircase at the rear appeared to be loose and in a dangerous condition.

9. The 'building' was a pair of semi-detached houses built on the early/mid 20th century of brick/block construction under a pitched roof which may have been slate but is now tiled. Very extensive conversion works have been undertaken over the years. Both 1 and 2 Britannia Road now consist of flats and it appears that there has been a substantial extension to the rear of both plus another extension to the side of number 1 (flats 12 and 14) and what was the rear garden is now a car park. The front part of the building has extensions into the roof with substantial dormer windows.

10. As far as the supply of services is concerned, the 'evidence' of the positioning of supplies was only indicated by the existence of meters in the hall way to number 2 for water and electricity and boxes possibly containing gas meters around the property. The supplies to flats 12 and 14 could have been independent. The owner of the freehold i.e. the Respondent, did not appear to have any idea about such matters.

11. The most important part of the inspection, in the Tribunal's view, was the hallway, which contained the entrances to many of the flats. When 1 and 2 Britannia Road were 2 semi detached residences it was clear that they each had an entrance door at the front, there was a vertical party wall and each part of the building was self contained. Although there was no direct evidence about this, it appeared to the Tribunal that the entrance door to number 1 had been blocked in when one or more of the conversions took place. People wanting to enter number 1 now have to go through the front door of number 2.

12. There is then access to 3 flats in number 1 Britannia Road and various of the flats in number 2 with a staircase serving both. The Tribunal was told that the long leaseholders of number 2 pay for the maintenance and upkeep of this hallway and staircase. The legal basis for this was not disclosed although it was said that the leaseholders of number 1 had an easement to use the entrance and stairs.

13. It appeared clear that this entrance hall and the staircase was within number 2 Britannia Road. The wall containing the entrance doors to the flats in number 1 appeared to be the original party wall between the original semi detached houses. Finally, it appeared that the party wall referred to ran the length of the building vertically from front to back with number 1 being to the right and number 2 being to the left when looking at the property from the road.

The Hearing

14. Those attending the hearing were Mark Robertson, solicitor for the Applicant, Desmond Kilcoyne, counsel for the Respondent and Mr. Nicholls from the managing agent. At the outset it was necessary to draw the advocates' attention to the fact that the surveyor member of the Tribunal was employed by SDL Surveying. The managing agents are SDL Bigwood which is a separate legal entity but under the SDL Group

umbrella. It was pointed out that the surveyor member had only realised this problem 2 days before the hearing at a weekend.

15. The Tribunal chair made it clear to Mr. Robertson that he should take instructions. The Tribunal would be happy to adjourn the case and have another surveyor appointed. It would also be happy to deal with the case there and then. After about 10 minutes, Mr. Robertson returned and said that his clients were happy to proceed with this hearing.

16. The advocates and the Tribunal were happy to deal with the hearing on the basis of legal submissions without any oral evidence. Although Mr. Robertson did open his case somewhat briefly, the substantial part of the hearing consisted of Mr. Kilcoyne's submissions and Mr. Robertson's replies.

Discussion

17. There are no technical matters to determine linked to the paperwork, service of notices etc. Therefore, the only matter to be determined is whether section 72 of the 2002 Act, as set out the counter notice, has been complied with. The building known as 1 and 2 Britannia Road together with all its various renovations and extensions is a self contained building.

18. As number 1 is the only part of the building being put forward by the Applicant as being the part of the building it wants to manage, it is, perhaps self explanatory that it is number 1 which is put forward as being the self contained part of the whole building. The next question is whether number 1 is in fact self contained and does it comply with the technical features set out in section 72.

19. Mr. Kilcoyne submitted that it does not. On the issue of a vertical division, he referred to the well known case of **Holding & Management (Solitaire) Ltd** [2008] L & TR 16 which was heard by the then President of the Lands Tribunal where a terrace of houses appeared to have vertical division on the face of it but below the surface there was a car park under 1 house which encroached by about 2% into the area covered by the claim notice. This was held to prevent vertical division.

20. Mr. Kilcoyne then pointed out that one of the minimum requirements is that the structure of the self contained part of the building in question "*could be redeveloped independently of the rest of the building*". He accepted that there was very little case law dealing with right to manage for residential property but there was some authority for the view in commercial lease renewals that the word 'redeveloped' does include destroying the old building and rebuilding from scratch. In these cases, no evidence was advanced about whether redevelopment would be viable without damaging number 2.

21. The next issue was whether the Tribunal should refuse to make an order if it found that other parts of the self contained part of the building in question could, themselves, be defined as self contained parts of a building. He referred to flats 12 and 14. Again there appeared to be no case law on

the subject. Mr. Kilcoyne just referred to some passages in **Triplerose Ltd v Ninety Broomfield Road RTM Co. Ltd.** plus two other appeals to the Court of Appeal under the neutral citation no. [2015] EWCA Civ 282

22. Neither advocate referred the Tribunal to any dictionary definition of 'self contained' which was a bit of a surprise bearing in mind that the decision in this case rather depends on what the Tribunal finds to be 'self contained' The definition of that adjective in the on-line Oxford Dictionary is "*(of a thing) complete, or having all that is needed, in itself.*"

Conclusions

23. Having taken all the submissions into account and considered all the case law in the bundle and that handed to the Tribunal on the day of the hearing, plus observations from its own inspection of the property, the Tribunal determines that 1 Britannia Road is not a self contained part of a building.

24. It should be said that the members of the Tribunal were reluctant to come to this determination because the property is in poor condition and neither the Respondent nor the managing agent give any indication that they were going to try to sort matters out.

25. The main problem is the entrance hall. It is entirely within number 2 Britannia Road and includes electricity meters and water meters for number 1. The Tribunal had no knowledge of exactly what rights to access were enjoyed by the long leaseholders of number 1. Their front doors appear to have been built into the party wall and access can only be obtained with someone else's permission. The long leaseholders know that the freehold to number 2 is owned by a person/company other than the Respondent.

26. The definition of 'self contained' would appear to indicate that the building or part of the building must be either complete or have all that is needed. If the only means of getting into or out of the self contained 'part' of the building by several long leaseholders from number 1 is via some unidentified easement across someone else's land, there is clearly a potential problem. There are no other entrances to at least 2 of those flats. In other words the part building is not self contained because it does not have all that is needed, in itself.

27. The other points raised by the Respondent were not particularly persuasive. The Tribunal did not find the arguments about vertical division helpful. What it observed was a straight wall from the front of the building to the rear. Whether a part of a building can be demolished as part of its redevelopment is not the subject of any case law in this sort of situation. Indeed, parts of buildings which are the subject of this sort of application, are very often semi detached with party walls. They can rarely be demolished without substantial support work and one does wonder whether the RTM provisions anticipated this.

28. The suggestion that if another part of the building can be a self contained part of a building, then the original application cannot proceed does not seem to this Tribunal to be realistic. All that an applicant has to do is satisfy section 72. It is not realistic to expect each Tribunal and each applicant to go round a building or part of a building and try to identify other self contain parts.

29. As far as services are concerned, the Tribunal could not ascertain exactly where all services entered the garden or the building known as 1 Britannia Road. The parties should have been able to do this. The only conclusion the Tribunal can draw is that if it is necessary to interfere with the provision of services, this would not involve significant interruption for the residents. Having said that, the relevant providers of services would need to be contacted to obtain a definitive answer, particularly regarding all the meters in the hallway.

30. As to the future, the members of the Applicant may want to consider an application to appoint a manager under section 21 of the **Landlord and Tenant Act 1987** if no progress can be made with regard to increasing the level of management.

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Bruce Edgington
Regional Judge
18th January 2018

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.