



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

Case Reference : **MAN/00CG/LRM/2022/0001**

Property : **KELHAM WORKS, 72, RUSSELL STREET,
SHEFFIELD S3 8RW**

Applicants : **KELHAM WORKS RTM COMPANY LIMITED**

Respondent : **GUNES ATA**

Type of Application : **For a determination as to right to manage pursuant to Commonhold and Leasehold Reform Act 2002, part 2, chapter 1.**

Tribunal Members : **A M Davies, LLB
J Jacobs, MRICS**

Date of Decision : **21 September 2022**

DECISION

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DECISION

1. The Applicant's right to manage Kelham Works is confirmed.
2. The Respondent shall pay the Applicant £100 representing the application fee.
3. The Respondent may make written representations to the Tribunal, no later than 18 October 2022 why a costs order should not be made against him under rule 13 (1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

REASONS

History

1. The Respondent company was formed on 16 May 2021 with a view to acquiring the right to manage Kelham Works, Russell Street, Sheffield (the Property). The Property is owned by the Respondent. The Applicant served on the Respondent a Claim Notice dated 7 October 2021 claiming the right to manage the Property pursuant to section 79 of the Commonhold and Leasehold Reform Act 2002 (the Act).
2. The Respondent served a Counter-notice dated 10 November 2021, alleging that the Applicant was not entitled to acquire a right to manage "by reason of Schedule 6(1)" of the Act. In subsequent correspondence the Respondent's solicitors confirmed that in the Respondent's view Kelham Works fell within the exclusion set out at paragraph 1 of Schedule 6 to the Act, which reads:

(1) [The right to manage] does not apply to premises falling within section 72 (1) if the internal floor area
(a) of any non-residential part, or
(b) (where there is more than one such part) of those parts taken together, exceeds 25 per cent of the internal floor area of the premises (taken as a whole).

(2) A part of premises is a non-residential part if it is neither –
(a) occupied or intended to be occupied, for residential purposes, nor
(b) comprised in any common parts of the premises.....

(4) For the purpose of determining the internal floor area of a building or of any part of a building, the floor or floors of the building or part shall be taken to extend (without interruption) throughout the whole of the interior of the building or part, except that the area of any common parts of the building or part shall be disregarded.
3. The Applicant ordered a survey report intended to demonstrate that the Property, when professionally measured, does not fall within this exclusion. The report was prepared by Mr Hugh Broadbent of Chartex Surveys Limited, and is dated 6 January 2022.

The Application

4. On 5 January 2022 the Applicant applied to this Tribunal for a determination under section 84(3) as to whether it was entitled to acquire the right to manage the Property.
5. The application was determined without an inspection of the Property or a hearing, but solely on the basis of documents submitted by the parties. In addition to the application and Mr Broadbent's report the Tribunal has seen a typical lease of an apartment in the Property, the Respondent's Statement of Case dated 14 July 2022, and the Applicant's reply dated 21 July 2022.
6. In his Statement of Case the Respondent stated that he intended to obtain a survey report on the Property to demonstrate that it fell within the exclusion cited above. However no further documents were supplied by the Respondent prior to the Tribunal's determination.

Measurements

7. Mr Broadbent has used as a basis for his calculation the total internal area of the Property as given in its current Energy Performance Certificate: namely 2017 sq m.
8. He has calculated the area of those retained parts which provide services to the tenants but to which they do not necessarily have access (cleaning cupboards, services cupboards, smoke and heat risers, and boiler room) at 72.45 sq m ("retained area"). Whether or not these areas are properly defined as "non-residential" parts of the building, adding their area to the area of the commercial unit does not result in a non-residential area exceeding 25% of the whole internal floor area of the premises after deducting the area of the common parts (whether or not the retained area is included in the common parts).
9. The interior common parts to which the lease gives the tenants access are bike store, bin store, laundry, gym, hallway, stairs, lift and landings/corridors. The area of these is calculated by Mr Broadbent as 324.07 sq m. The commercial unit on the ground floor of the Property is measured at 261.30 sq m.
10. The measurements shown on the plans submitted by the Respondent with his Statement of Case are slightly different, in that the internal measurement of the Property is greater. The reason is that these measurements properly ignore internal walls and comply with the requirement "(without interruption)" in paragraph 1(4) of Schedule 6.
11. In either case, it is clear that the commercial unit, at 261.30 sq m, measures less than 25% of the area of the internal floor area of the premises taken as a whole (which is not less than 2017 sq m) after deducting the area of the common parts (which is not more than 396.51 sq m).

Costs

12. The Respondent has not sought to justify his counter-notice, and nor has he withdrawn it following receipt of Mr Broadbent's report. He must be taken to have been familiar with the measurements of his own building. His counter-notice appears to have had no justification. This is not a case where an argument has been put forward and failed. No argument has been put forward.
13. Consequently the Respondent has been ordered to repay to the Applicant the application fee of £100.
14. The Tribunal notes that in pre-issue correspondence the Applicant's solicitors warned the Respondent that costs might be sought against him, although in the event no such application has been received. The Tribunal therefore invites the Respondent to make representations, no later than 18 October 2022 why a costs order should not be made against him under rule 13 (1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

AM Davies
Tribunal Judge
21 September 2022