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

Case Reference : **MAN/00FF/LRM/2013/0011**

Property : **Shelley House, Monument Close, Off Acomb Road,
York YO24 4HT**

Applicant : **Shelley House (York) RTM Company Limited**

Respondents : **(1) Gala Unity Limited
(2) Trinity (Estates) Property Management
Limited**

Type of Application : **Application for a determination as to right to
manage, section 84(3) of the Commonhold and
Leasehold Reform Act 2002**

Tribunal Members : **A M Davies, LLB
A Ramshaw, MRICS
J Hall**

**Date and venue of
Hearing** : **14 October 2013 at York County Court**

Date of Decision : **14 October 2013**

DECISION

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1. With effect from 3 months after this determination becomes final, the Applicant shall have the right to manage the estate on which the Property is erected, including the access road, garden and car-parks but excluding Heritage House, the bin area and landscaped areas immediately adjacent to Heritage House, and the cycle shed/store exclusively used by Heritage House.

REASONS

1. The Applicant is an RTM Company incorporated in England and Wales on 3rd December 2012 with company registration number 8316513, and satisfies the requirements of section 73 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The objects of the Applicant include the acquisition and management of "the Premises", which are defined as "the building situated at 1 – 12 and 14 – 50 Shelley House, Monument Close, off Acomb Road, York". The First Respondent is the landlord entitled to receive ground rents from the premises, and the Second Respondent is a firm of managing agents, who are party to the leases of the flats in Shelley House
2. On 16 May 2013 the Applicant, by its agent Mr A Holtby of AHPM Services, served on the First and Second Respondents a claim notice under section 79 of the Act requiring that any counter-notice under section 84 of the Act was to be given not later than 19 June 2013.
3. The First Respondent has not objected to transfer of management to the Applicant. By a letter dated 14 June 2013 the Second Respondent sent a counter-notice to the Applicant, claiming that it was not entitled to acquire the right to manage the Property "by reason of non-compliance with sections 74, 75, 79 and 80 of the Act". Consequently, the Applicant lodged this application on 17 June 2013. The Tribunal inspected the Property and heard the parties on 14 October 2013.
4. The Property is built on a small estate consisting of (1) Shelley House, in which there are 49 flats, and (2) Heritage House which is occupied by Housing Association flats. Apart from these two main buildings, there are a cycle shed/store for each building, one bin store for each building and one which is used jointly, a private access road, parking spaces, and garden areas. Within the boundary of the estate are also two electricity sub-stations, which are managed by the electricity provider. The estate is subject to rights of access to a Second World War heritage site adjacent to it.
5. Since Shelley House was erected it has been managed by the Second Respondent, which also provides management services to the Housing Association at Heritage House. The Tribunal was told that the occupiers of Heritage House maintain the small garden areas immediately surrounding that building, and that the Second Respondent's management is limited to the Heritage House bin store and the common parts of the estate. It appears that each flat in Shelley House is allotted a parking space on the estate, apart from four flats each of whose owners has a garage on the ground floor of the building. The estate includes 5 parking areas for visitors to either of the buildings and parking spaces for occupiers of Heritage House.

6. At the hearing Mrs Taylor for the Second Respondent claimed that the claim notice was defective due to inaccuracies in the list of members of the Applicant: specifically, that Mr Collier had not consented to become a member of the Applicant, and that there was no evidence that Miss Knowles had consented. She said that the Second Respondent also sought clarification from the Applicant as to how management of the estate would work in practice, if it acquired the right to manage.
7. Mr Holtby for the Applicant accepted that Mr Collier had not been a member of the Applicant at the date of the claim notice, but said that without him 25 of 49 flat owners had been members, including Miss Knowles. The Applicant's documents produced to the Tribunal included 22 signed statements, dated between 9th December 2012 and 27 March 2013, from leaseholders stating that they wished to become members of the Applicant RTM Company, which had not at the time been incorporated. In addition there were 3 written agreements to the formation of the Applicant, including the agreement of Miss Knowles. All 25 consenting leaseholders were listed in the schedules to the Applicant's claim notice.
8. At the hearing Mr Holtby gave evidence that all 25 named leaseholders were members of the Applicant at the date of the claim notice, and that they had each received a pack of documents confirming and explaining their membership. In these circumstances, Mrs Taylor did not pursue the matter. Following the decision in *Assethold Limited v 14 Stansfield Road RTM Company Limited [2012] UKUT 262 (LC)* at paragraph 21, the Tribunal accepts Mr Holtby's evidence that not less than 50% of the flat owners were members of the RTM company on 16 May 2013, and consequently finds that the Applicant was qualified to serve a claim notice on that date.
9. In its statement of case the Second Respondent alleged that the claim notice was defective, in that it erroneously included, at part 2 of the Schedule to the claim notice, details of the lease of Mr Collier, who was not a member of the Applicant. He was not included in part 1 of the same Schedule, which listed the Applicant's members. The Tribunal finds that this accidental inclusion of Mr Collier's name was an inaccuracy which did not mislead the Second Respondent or invalidate the notice.
10. At the hearing the Second Respondent did not pursue its original objection that numerous qualifying tenants had not been served with the claim notice.
11. The Applicant claims and the Tribunal accepts that its description of the Property includes by implication those parts of the estate which are adjacent to Shelley House itself. Such parts are defined in the Act as "appurtenant property" over which the occupiers of Shelley House have "incorporeal rights" as described by George Bartlett QC in *Gala Unity Limited v Ariadne Road RTM Company Limited [2011] UKUT 425 (LC)*. The right to manage claimed by the Applicant therefore extends to the whole of the estate excepting only those parts which are in the exclusive possession of the occupiers of Heritage House.
12. Acquisition of the right to manage the Property, including the appurtenant property, will take effect three months from the date on which this determination becomes final. During that time it is expected that practical arrangements will be made between the Applicant, the Second Respondent, and the Housing Association for future management of the estate for the benefit of all its residents.