



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

Case Reference : **BIR/00CW/LRM/2014/0005-8**

Property : **1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21 Loxdale Sidings, Bilston, West Midlands WV14 0TN**
2, 4, 6, 8, 10, 12, 14, 16, 18, 20 Bay Avenue, Bilston, West Midlands, WV 14 0TT
14, 16, 18, 20, 22, 24 Loxdale Sidings, Bilston, West Midlands, WV14 0TR
2, 4, 6, 8 Southmead Way, Walsall, West Midlands WS2 8JD

Applicant : **Loxdale Sidings and Southmead Way (RTM) Limited**

Respondent : **Sarum Properties Limited**

Type of Application : **Application for a determination that on the relevant date the Right to Manage Company was entitled to acquire the Right to Manage the Property under the Commonhold and Leasehold Reform Act 2002**

Tribunal Members : **Judge C Goodall LLB**
Mr S Berg FRICS

Date and venue of Hearing : **18 February 2015 at the First-tier Tribunal Hearing Suite, Priory Court, 33 Bull St, Birmingham B4 6AF**

Date of Decision : **12 MAR 2015**

DECISION

Background

1. Between them, Ms Andrea Green ("Mrs Green"), her son Mr Dominic Green ("Mr Green"), their associate Mr Wayne Jones ("Mr Jones"), and a Mr Anthony Sankara own nineteen flats spread between four buildings in the West Midlands. For reasons that are not relevant to this decision, they have pursued the acquisition of the right to manage those four buildings under the provisions of the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. In order to acquire that right, a company was formed called Loxdale Sidings and Southmead Way (RTM) Limited ("the Applicant"). Mrs Green was appointed company secretary, Mr Jones and Mr Green were appointed directors, and the original subscribing member was Mr Anthony Sankara.
3. Two claim notices were served, one in May 2014 ("the First Claim Notice"), and the second in June 2014 ("the Second Claim Notice"). Both sought the right to manage all four buildings in a single notice. Both were served upon Sarum Properties Ltd ("Sarum"), the freehold owner of all four buildings.
4. Sarum served a counter notice in response to each claim notice. Each counter notice alleged that the Applicant was not entitled to acquire the right to manage. The consequence of serving a counter notice is that under section 84(5) of the Act the company does not acquire the right to manage until it is finally determined that the right has been acquired (unless the person giving the counter notice agrees), and under section 84(3), the company is given the right to apply to this Tribunal for a determination that the right to manage has been acquired. The Applicant made such an application. The purpose of this case is therefore to determine whether the Applicant has acquired the right to manage the buildings referred to in the Claim Notices.
5. The Tribunal gave directions for the determination of the case on 9 October 2014. The Applicant and the Respondent provided written statements and documentation. That evidence was considered, along with oral evidence and submissions at the hearing of the case which took place on 18 February 2015 at the Tribunal Hearing Centre in Birmingham. One witness for the Respondent, a Miss Sharon Hunter gave evidence for the Respondent. The Applicant's case was put by both Mr Jones and Miss Green, working together. The Respondent's case was presented by Ms Tamara Folkesson.

The properties over which the Applicant is seeking the right to manage

6. As has already been stated, there are four buildings with which this case is concerned. Three of them are at Bilston on a residential estate constructed by J S Bloor (Tamworth) Ltd in about 2005/6. The fourth is at Walsall, approximately seven miles away from Bilston, on another residential estate

also constructed at about the same time by J S Bloor (Tamworth) Ltd. Each are self contained separate buildings. The addresses are:

- a. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21 Loxdale Sidings, Bilston WV14 0TN (“Loxdale Sidings odd numbers block”),
 - b. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20 Bay Avenue, Bilston, WV 14 0TT (“Bay Avenue even numbers block”)
 - c. 14, 16, 18, 20, 22, 24 Loxdale Sidings, Bilston, WV14 0TR (“Loxdale Sidings even numbers block”)
 - d. 2, 4, 6, 8 Southmead Way, Walsall, West Midlands WS2 8JD (“Southmead Way block”)
7. Together, the four buildings referred to above are called the “Premises” in this decision.
8. The leases of the Premises are made between J S Bloor (Tamworth) Ltd, the lessee, and a management company. In the leases of the Loxdale Sidings odd numbers block, the Bay Avenue even numbers block, and the Loxdale Sidings even numbers block, the management company is Loxdale Sidings (Bilston) Management Ltd. In the case of the Southmead Way block, the management company is Hospital Street (Walsall) Management Limited (also incorrectly described in the leases as Hospital Street, Walsall Management Limited).

Key events

9. These are the key events and their dates in this case:

Date	Event
10 March 2014	Formation of the Applicant company
2 May 2014	Notice of Invitation to Participate sent to other flat owners
2 May 2014	First Claim Notice sent
19 May 2014	Counter Notice to First Claim Notice
25 June 2014	Second Claim Notice sent
21 July 2014	Counter Notice to Second Claim Notice
31 August 2014	Application to the Tribunal for a determination of acquisition of the right to manage

The scheme of the Act

10. The provisions of the Act that are relevant to this case are set out below:

72 Premises to which Chapter applies

- (1) This Chapter applies to premises if—

(a) they consist of a self-contained building or part of a building, with or without appurtenant property,

(b) they contain two or more flats held by qualifying tenants, and

(c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

(2) A building is a self-contained building if it is structurally detached.

(3) – (5) ...

(6) Schedule 6 (premises excepted from this Chapter) has effect.

73 RTM companies

(1) This section specifies what is a RTM company.

(2) A company is a RTM company in relation to premises if—

(a) it is a private company limited by guarantee, and

(b) its [articles of association state] that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.

(3) – (5) ...

74 RTM companies: membership and regulations

(1) The persons who are entitled to be members of a company which is a RTM company in relation to premises are—

(a) qualifying tenants of flats contained in the premises, and

(b) from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.

(2) The appropriate national authority shall make regulations about the content and form of the [articles of association] of RTM companies.

(3) – (7) ...

75 Qualifying tenants

(1) This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.

(2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.

(3) - (7) ...

...

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] 1 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.

79 Notice of claim to acquire right

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

(2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.

(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

(6) The claim notice must be given to each person who on the relevant date is—

- (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the [...] tribunal or court by which he was appointed.

80 Contents of claim notice

- (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 this Chapter applies.
- (3) It must state the full name of each person who is both—
 - (a) the qualifying tenant of a flat contained in the premises, and
 - (b) a member of the RTM company,and the address of his flat.
- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
 - (a) the date on which it was entered into,
 - (b) the term for which it was granted, and
 - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.

(6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

(7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.

(8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.

(9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

81 Claim notice: supplementary

(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

(2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a "sufficient number" is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.

(3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—

(a) the premises, or

(b) any premises containing or contained in the premises,

may be given so long as the earlier claim notice continues in force.

(4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—

(a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or

(b) ceased to have effect by reason of any other provision of this Chapter.

...

84 Counter-notices

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing a statement either—

(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to [the appropriate tribunal] for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or

(b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

(6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(7) A determination on an application under subsection (3) becomes final—

(a) if not appealed against, at the end of the period for bringing an appeal, or

(b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(8) An appeal is disposed of—

(a) if it is determined and the period for bringing any further appeal has ended, or

(b) if it is abandoned or otherwise ceases to have effect.

...

86 Withdrawal of claim notice

(1) A RTM company which has given a claim notice in relation to any premises may, at any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice to that effect (referred to in this Chapter as a “notice of withdrawal”).

(2) A notice of withdrawal must be given to each person who is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant,

(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, or

(d) the qualifying tenant of a flat contained in the premises.

11. Under section 74(2) of the Act set out above, regulations have been made concerning the form of Articles of Association which a right to manage company must have, which are the RTM Companies (Model Articles) (England) Regulations 2009 (“the 2009 Regulations”). These specify the form of articles by setting out the wording of the articles in a Schedule to the 2009 Regulations.

12. This is clearly detailed and complex legislation, but the broad scheme requires:

- a. That the premises over which a right to manage is obtained qualify under section 72
- b. That the right to manage company complies with sections 73 and 74
- c. That all qualifying tenants are given an invitation to participate in the right to manage company in the form required, and with the time limits set out in section 78
- d. That the notice of claim under which the right to manage is acquired complies with the requirements of sections 79, 80, and 81.

The Respondent's objections to the acquisition of the right to manage the Premises

13. The Respondent has identified thirteen grounds which it says result in the Applicant not being entitled to acquire the right to manage. Each of the grounds will be considered in turn, and the Tribunal will then consider whether these grounds (or any of them) prevent the right to manage being acquired.

(i) Contrary to section 79(2) of the Act, no notice of invitation to participate was served at least 14 days before the date of the First Claim Notice

14. In the counter notice to the First Claim Notice, the Respondent alleged that the Applicant was not entitled to the right to manage because the First Claim Notice was not given at least 14 days after the Notice of Invitation to Participate was given to those entitled to receive it, as is clearly required by section 79(2) of the Act.

15. The Applicant accepted this. It served the First Claim Notice on the same day as the Notice of Invitation to Participate. That is the reason, it says, the Second Claim Notice was served. This ground is established.

(ii) Contrary to section 79(6) of the Act, the First Claim Notice was not given to Loxdale Sidings (Bilston) Management Ltd

16. The requirement is to serve the claim notice upon each person who is a party to the lease otherwise than as landlord or tenant. That requires that the claim notice, in this case, be served on Loxdale Sidings (Bilston) Management Ltd, a party to all the leases of the three blocks at Bilston. It was also required to be served on Hospital Street (Walsall) Management Limited in relations to the Southmead Way block.

17. No copies of either the First Claim Notice or the Second Claim Notice addressed to either of the management companies were provided to the Tribunal. Mrs Green accepted that neither notice was sent to Loxdale Sidings (Bilston) Management Ltd. Rather it was sent to the managing agents appointed by the company, who said they would accept service of

the notice. She says she did send the notices to Hospital Street (Walsall) Management Limited, but accepted they had not been addressed to that company.

18. In the view of the Tribunal, it is not enough to send a copy of a notice addressed to someone else in order to serve the notice upon the management companies. The Tribunal determines that this ground is made out, and in addition that no notice was served upon Hospital Street (Walsall) Management Limited.

(iii) Contrary to section 80(6) of the Act, the First Claim Notice did not specify a date, not earlier than one month after the relevant date, by which each person who was given the notice may respond to it by giving a counter notice

19. Section 80(6) requires that a date be given by which each person who was given the notice may respond. In the form of notice used by the Applicant, this has to be inserted into paragraph 5 of the notice. There is a margin note explaining, which states "Specify date not earlier than one month after the date on which the claim notice is given".

20. The First Claim Notice does not have such a date inserted into paragraph 5, or anywhere else on the form. Mrs Green accepted that this was an error. The Tribunal finds that this ground is made out.

(iv) Contrary to section 72(6) and Schedule 6 of the Act, the non-residential internal floor area of the buildings exceeds 25%, and the premises do not therefore qualify for the right to manage

21. The right to manage does not apply to premises where non-residential use exceeds 25% of the internal floor area of the buildings. The Respondent's case is that a number of flats in this case were being used for the purpose of a business of short term lets. This point is considered in more detail in a separate decision of this Tribunal under reference BIR/00CW/LBC/2014/0007 - 0016 (incl) and BIR/00CU/LBC/2014/0006, 0017 & 0018. In that case, the Tribunal did find that a number of the flats were used for a business involving their marketing for short term stays by visitors to the area such as commercial travellers holiday makers or similar, requiring hotel type accommodation.

22. The Tribunal takes the view that Schedule 6 of the Act excludes premises where in excess of 25% of the floor area is designed for non-residential use. For premises to be non-residential, they have to be neither occupied, nor intended to be occupied for residential use. So premises comprising half shop use and half flats would not qualify for the right to manage. But here, the premises are designed and intended for 100% use as residential flats. The business use by the flat lessees in this case did not change the nature of the premises; it only changed the nature of the occupant. The business was that of offering the flats to people for their occupation as residences

for a short period of time. The Tribunal finds that all the buildings in this case are premises designed and used for residential use (even as part of a business) so that this ground is not made out.

(v) Under section 72 of the Act, the right to manage cannot extend to separate buildings in different towns

23. Contrary views on whether the right to manage can apply to more than one self contained building have existed since the 2002 Act was passed. The question has been settled, in the view of the Tribunal, by the decision in the Upper Tribunal in the case of *Ninety Broomfield Road RTM Company Ltd Appellant v Triplerose Ltd [2013] UKUT 0606 (LC)*.

24. In paragraph 93 of this decision, Judge McGrath says:

93. Accordingly, therefore I consider that section 73(4) does not, of itself, prevent a single RTM company from exercising the right over a number of premises falling within the definition of section 72.

25. However, paragraph 94 is also important. This says:

94. On the second and third questions posed, I consider that each set of premises must fulfil all of the section 72 conditions. Therefore in addition to being self-contained, they must also contain two or more flats held by qualifying tenants and the total number of flats held by such tenants must be not less than two-thirds of the total number of flats contained in the premises. Initially I had taken the view that it was necessary for an RTM company to serve a separate notice in respect of each set of premises. However, on reflection, I consider that Mr Woolf is correct and a single notice will suffice in respect of a number of properties. If a single notice is served, then its content must be sufficiently clear to establish eligibility in respect of each set of premises and must comply with section 80. For that reason, the RTM company may prefer to serve separate notices simply for the sake of clarity.

26. The *Ninety Broomfield Road* case did not require a decision on how to deal with separate blocks in different towns. Comment was made in the case though on this point in paragraph 89, which says:

89. Logically, the consequence of an RTM company being able to exercise the right in respect of multiple premises is that a company could take over the management of wide-spread properties. However, the legislation has now been in force for 10 years and I was not informed that this had yet occurred notwithstanding that it is clear (if only from the number of LVT decisions where the right to manage multiple properties was accepted) that over the years RTMs have been established on this basis. I consider that the contentions on behalf of all

of the RTM companies in this case that such an outcome is "fanciful" is correct.

27. On the basis of these extracts from *Ninety Broomfield Road*, the Tribunals determines that this ground of objection to the acquisition of the right to manage on this ground is not made out. The Tribunal notes the requirements relating to service of a single notice in paragraph 94 of *Ninety Broomfield Road*, and in this case, lack of clarity in the claim notices has caused the Applicant considerable difficulty in endeavouring to rebut the challenges to its claim notices, which may of themselves result in the right to manage not being acquired. But this ground itself is not made out.

(vi) Contrary to section 72(3)(b), the Applicant is not a properly incorporated RTM company as its articles do not specify the premises, do not state the objects of the company as required by the section, and the form of the articles do not comply with regulations

28. Mr Jones explained that he, Miss Green, Mr Green and Mr Anthony Sankara ("the Promoters") agreed together to form a right to manage company to seek the right to manage the Premises. They instructed a company agent to form the company, who created and registered the Applicant company on 10 March 2014. Articles of association were adopted, but these articles were not in the form required by the 2009 Regulations, and they did not state that the objects of the Applicant were the acquisition and exercise of the right to manage any specific premises.

29. The Promoters were told by their company agent that they required Articles of Association in a special format, and the company agent supplied the text of some proposed articles after the formation of the company. That text was supplied to the Tribunal. It contains a definition of premises, which is all or any of the following:

2, 4, 6, 8, 10, 12, 14, 16, 18, and 20 Bay Avenue, Bilston, West Midlands WV 14 0TT,

1, 3, 5, 7, 9, 11, 13, 15, 17, 19, and 21 Loxdale Sidings, Bilston, West Midlands WV14 0TN ,

14, 16, 18, 20, 22, and 24 Loxdale Sidings, Bilston, West Midlands WV14 0TR,

2, 4, 6, and 8 Southmead Way, Walsall, West Midlands WS2 8JD;

30. The objects, which are set out in clause 4 of that document are "to acquire the right to manage the Premises". The wording of the document complies with the 2009 Regulations.

31. Mr Jones and Ms Green were asked whether this new document had been adopted as the new articles of the Applicant and registered at Companies House, as a company search carried out by the Respondent had revealed

that the registered Articles of Association were still the original articles, rather than being in the new form.

32. Mr Jones accepted that the registered articles were still the original articles which did not contain any clause indicating that its objects were the acquisition and exercise of the right to manage any premises, nor set out the premises, nor follow the format of the articles specified in the 2009 Regulations. The new text which had been drafted for the Applicant had been sent to lessees of other flats in the buildings they were seeking to manage, and to the Respondent, but these had not been supplied to Companies House, nor was there any evidence that they had been adopted as the new articles of the Applicant in a general meeting. Ms Green said she thought she had filled in a single page form supplied to her by the company agents and sent it to Companies House, but that form was not provided, nor could she recall what it said.

33. The Tribunal finds that the Applicant was not an RTM company as defined in the Act as it did not comply with sections 73(2) and 74(2) of the Act.

(vii) Contrary to sections 78(1) and 79(2) of the Act, Notice of Invitation to Participate was not served on each person who was a qualifying tenant but not a member of the Applicant

34. In its statement of case, the Respondent said there was no evidence of service upon the owners of flats 15 & 18 Loxdale Sidings, and 14, 16, 18, and 20 Bay Avenue. Comment was also made that "there is a great deal of confusion as to what was served and when".

35. At the hearing, Mrs Green had a number of plastic files relating to service of documentation generally on other lessees. Very little of the contents of those files had found their way into the Applicant's documentation supplied to the Tribunal. The Tribunal invited Mrs Green to organise the paperwork over the luncheon adjournment so that there was more clarity available to the Tribunal about who had been served with what and when. Despite her best efforts, Mrs Green was not able to make matters much clearer after being given this opportunity, and the evidence on service of the Invitation to Participate remains confusing.

36. Bearing in mind the other determinations made by the Tribunal in this decision, there is little to be gained in reaching a final decision on this point. The Tribunal has decided not to make a determination on this ground.

(viii) Contrary to section 79(8) of the Act, a copy of the Second Claim Notice was not given to each qualifying tenant

37. In a written witness statement given to the Tribunal, Mr James Beech, who the Applicant accepted was a qualifying tenant, denies receiving a copy of the Second Claim Notice, as is required by section 79(8). Miss Sharon

Hunter (also a qualifying tenant) gave evidence to the same effect to the Tribunal.

38. The Tribunal accepts this evidence and determines that this ground is made out.

(ix) Contrary to sections 78(2) and article 3 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010, the Notice of invitation to participate did not state who the landlord was and did not annex the company's articles of association and the members are not suitably qualified or experienced to manage the buildings

39. Curiously, the Notice of Invitation to Participate was in this case given to the Respondent (the landlord), although this is not required. It attached the document claimed to be the articles of association, though they had not in fact been adopted as the articles (see above). It also gave details of the qualifications and experience of the members of the Applicant. The process does not require the members to be suitably qualified or experienced; the notice simply has to state what the qualifications and experience is. But the Notice did not state the name of the landlord or any parties to the lease otherwise than as landlord or tenant. The Applicant accepted this error. The Tribunal finds that this ground is made out in respect of that error.

(x) Contrary to section 79(5) of the Act, the membership of the Applicant did not include a number of qualifying tenants which is not less than half of the total number of flats so contained. The members listed include lessees of flats which have been repossessed and / or lessees who have not agreed to become members of the Applicant

40. Dealing first with the suggestion in this ground that lessees of repossessed flats cannot be qualifying tenants or members of the RTM company, the Tribunal has to reject that suggestion. When considering section 75 of the Act, a tenant is a qualifying tenant if he is a tenant of the flat under a long lease. When a flat is repossessed, the tenant does not cease to be the tenant; the repossession simply allows a mortgagee to exercise a power of sale as a result of the contractual or statutory provisions under which mortgagees operate. Repossession does not transfer the tenant's legal interest. The Tribunal therefore considers that the tenants of repossessed flats are still qualifying tenants.

41. However, it still needs to be established that the crucial test required under section 79(5) is met. This requires that the members of the RTM company must comprise at least half of the qualifying tenants in the premises over which the right to manage is sought. The Applicant did not produce its register of members at the hearing, despite it being flagged by the Respondent that it should be brought. Mrs Green said she had a file with details of members, but the Tribunal had to rely upon Mrs Green's oral evidence of membership of the Applicant.

42. In that evidence, Mrs Green said the members of the Applicant were herself, Mr Green, Mr Jones, and Mr Sankara. She accepted that there were no other members, despite listing other lessees as members on both the First and Second Claim Notices. The documentary evidence is not entirely satisfactory to confirm even this, as no application for membership from Mrs Green or Mr Green was produced. However, even on that basis, Mrs Green accepted that the application for a right to manage the Bay Avenue even numbers block had to fail as less than half of the flat owners in that block were members of the Applicant.

43. The Tribunal finds that in relation to the Bay Avenue even numbers block the membership of the Applicant did not include a number of qualifying tenants which is not less than half of the total number of flats so contained as the members listed include lessees who have not agreed to become members of the Applicant. In the light of the substantial number of other defects found by the Tribunal, no determination is made as to whether this error, were it the only error, would be fatal to the whole notice, or only to the acquisition of the right to manage the Bay Avenue even numbers block.

(xi) Contrary to section 80(2) of the Act, the Second Claim Notice did not correctly or clearly state the premises for which the right to manage was claimed

44. Both claim notices specified the premises over which the right to manage was sought as:

“2 – 20 Bay Ave, WV14 OTT, 14 – 24 Loxdale Sidings, WV14 OTR; 1 – 21 Loxdale Sidings, WV14 OTN; 2 – 8 Southmead Way, WS2”

45. In the view of the Tribunal, this format does not adequately “specify the premises” as is required in section 80(2). Clarity is important. Unless a recipient is very knowledgeable about the Loxdale and Bay Avenue estate, (and it seems to the Tribunal that there is no authority for imputing knowledge of this to the Respondent) this description is confusing. It gives no hint that each block referred to contains only the odd or even flat numbers in that block, which is crucial to being able to correctly identify the premises concerned. The Tribunal finds that this ground is made out.

(xii) Contrary to section 80(3) of the Act, the Second Claim Notice did not correctly state the full name of each person who is both a qualifying tenant and a member of the Applicant.

46. Both the First and the Second Claim Notices stated in Part 1 of the Schedule that Mr James Beech, Miss Sharon Hunter, and Mr Errol Winston Bruce were both qualifying tenants and members of the Applicant. At the hearing, Mrs Green conceded that none of them were members.

47. The Tribunal finds that this ground is made out. This is a particularly serious error, as members of the Applicant can be personally liable for the Respondents costs.

(xiii) Contrary to section 80(6), the Second Claim Notice did not specify a date, not earlier than one month after the relevant date, by which each person who was given the notice may respond to it by giving a counter notice

48. The Second Claim Notice gave a date by which the Respondent must serve a counter notice as Friday 26 July 2014. The Notice itself was dated 26 June 2014, but the evidence was that it was posted to the Respondent on 25 June 2014 by second class post.

49. Section 111 of the Act provides that any notice under the right to manage provisions of the Act must be in writing and may be sent by post. The obligation in the Act is to "give" a notice, and the date on which any notice is "given" is its date of receipt. Section 7 of the Interpretation Act 1978 provides that:

Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

50. Second class post is not treated as received in the ordinary course of post until two days after posting (at the earliest). If the date of posting is accepted as being 25 June, the earliest it can be treated as being received is 27 June, which is less than one month before 26 July.

51. The other problem with the date specified in the Second Claim Notice is that there is no such date as Friday 26 July 2014, the 26 July in 2014 being a Saturday.

52. The Tribunal finds that this ground is made out.

Other grounds

53. In *Fairhold (Yorkshire) Ltd v Trinity Wharf (SE16) RTM Company Limited [2013] UKUT 0502 (LC)* the President of the Upper Tribunal considered a right to manage case in which an applicant argued that the respondent could only raise at a determination of a right to manage those points that had been raised in a counter notice. The President rejected that proposition. He also added:

36. I would add that, in my view, a tribunal may consider the procedural integrity of the right to manage process, whether or not this has been raised by any of the parties active in the process. There is nothing in the statutory provisions to suggest that a tribunal may not act on its own initiative in that way, provided, of course, that its procedure is fair throughout and, therefore, that the parties are given a reasonable opportunity to present any relevant evidence or submissions.

54. At the hearing, the Tribunal brought section 81(3) of the Act to the attention of the parties. That section says that where premises have been specified in a claim notice, no subsequent claim notice may be given as long as the earlier claim notice continues in force. Subsection (4) says that a claim notice continues in force until it is withdrawn, deemed to be withdrawn, or otherwise ceases to have effect.

55. Mrs Green and Mr Jones were adamant at the hearing that the First Claim Notice had not been withdrawn, and indeed the Tribunal agrees that there was no evidence that the requirements of section 86 of the Act relating to withdrawal had been complied with. That being the case, it is arguable that the Second Claim Notice was never a valid notice in any event as the First Claim Notice was still in force.

56. However, in *Avon Freeholds Limited v Regent Court RTM Co Limited [2013] UKUT 0213 (LC)*, the Upper Tribunal accepted that a claim notice might be invalid for failure to comply with technical requirements. If it was, it would have no legal effect and would not need to be withdrawn prior to the service of an effective second claim notice.

57. The Tribunal does not propose to make a determination on this question, which is potentially complex and about which the parties did not have the opportunity for considered representations. It is raised for completeness. The issue is academic, as there are substantial grounds in any event for determining that both Claim Notices in this case were inadequate to confer a right to manage.

58. A second issue which the Tribunal wishes to raise for completeness is that in neither of the Claim Notices were details given of the leases of members of the RTM company who were also qualifying tenants, as is required by section 80(4) of the Act. The date of the lease, the date of its commencement, the term, and such other particulars of the leases as are necessary to identify it should have been given, but they were not. This issue has not been raised with the parties, and it does not form the basis for the Tribunal's determination.

Summary of errors and inaccuracies

59. The Tribunal has found:

- a. Contrary to section 79(2) of the Act, no notice of invitation to participate was served at least 14 days before the date of the First Claim Notice
- b. Contrary to section 79(6) of the Act, the First Claim Notice was not given to Loxdale Sidings (Bilston) Management Ltd or to Hospital Street (Walsall) Management Limited
- c. Contrary to section 80(6) of the Act, the First Claim Notice did not specify a date, not earlier than one month after the relevant date, by which each person who was given the notice may respond to it by giving a counter notice
- d. Contrary to section 72(3)(b), the Applicant is not a properly incorporated RTM company as its articles do not specify the premises, do not state the objects of the company as required by the section, and the form of the articles do not comply with regulations
- e. Contrary to section 79(8) of the Act, a copy of the Second Claim Notice was not given to each qualifying tenant
- f. Contrary to sections 78(3) and article 3 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010, the Notice of invitation to participate did not state who the landlord was
- g. Contrary to section 79(5) of the Act, in relation to the Bay Avenue even numbers block, the membership of the Applicant did not include a number of qualifying tenants which is not less than half of the total number of flats so contained as the members listed include lessees who have not agreed to become members of the Applicant
- h. Contrary to section 80(2) of the Act, the Second Claim Notice did not correctly or clearly state the premises for which the right to manage was claimed
- i. Contrary to section 80(3) of the Act, the Second Claim Notice did not correctly state the full name of each person who is both a qualifying tenant and a member of the Applicant
- j. Contrary to section 80(6), the Second Claim Notice did not specify a date, not earlier than one month after the relevant date, by which each person who was given the notice may respond to it by giving a counter notice

Consequences of the errors made by the Applicant

60. The acquisition of a right to manage requires an applicant to comply with the requirements of the Act. The main provisions have been identified

above. The Tribunal's findings above show that in substantial respects, the requirements of the Act have not been met.

61. Mr Jones and Mrs Green said at the hearing that they would cure the defects which they admitted. The Tribunal does not consider that any of the defects can now be cured by subsequent action.
62. The Tribunal was also urged that to determine in the light of the reference in sections 78(7) and 81(1) of the Act that inaccuracies in the notice of invitation to participate or the claim notice would not invalidate those notices, that the right to manage should still be granted. Mr Jones and Mrs Green expressed the hope that the Tribunal would not find that any errors were so serious that the right to manage would be denied.
63. Errors in complying with section 80 have been considered in the case of *Assethold Ltd v 15 Yonge Park RTM Company Ltd [2011] UKUT 379 (LC)* which was brought to the Tribunal's attention by the Respondent. That case establishes that a failure to provide the mandatory requirements set out in section 80 would clearly prevent the claim form from being valid. It is only inaccuracies such as a spelling mistake or a typing error that can save the notice. The Tribunal considers that its findings on compliance with section 80 under paragraphs 59(c), (h), (i) and (j) above are failures to comply with mandatory requirements and are fatal to the Claim Notices.
64. Similarly, in relation to paragraph 59(f) above, the error in the Notice of Invitation to Participate was that a mandatory requirement had not been complied with, rather than the error being an inaccuracy as defined in the *Assethold* case.
65. All of the other errors about which the Tribunal has made findings in paragraph 59 above are failures to comply with clear requirements contained in the Act. They are sufficiently serious individually, but taken together show a substantial failure on the part of the Applicant to meet the requirements of the Act which have to be met to acquire a right to manage.

Conclusion

66. The Applicant was not on the date of either the First Claim Notice or the Second Claim Notice entitled to acquire the right to manage the Premises.

Costs

67. The Respondent applied for an order that the Applicant pay its costs of these proceedings. The Tribunal declines to make its own costs order in this case. In its view, the costs position is sufficiently clear from the provisions of sections 88 and 89 of the Act.

Appeal

68. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)