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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/33UF/LRM/2014/0017**
Property	:	18–26 Angel Court, Cromer Road, North Walsham, Norfolk NR28 0UN
Applicant	:	18–26 Angel Court RTM Company Ltd
Representative	:	Mrs Margarita Madjirska-Mossop, solicitor
Respondent	:	Proxima GR Properties Ltd
Representative	:	Eileen Fingleton, Estates & Management Ltd
Type of Application	:	for a determination that on the relevant date the RTM Company was entitled to acquire the Right to Manage [CLRA 2002, s.84(3)]
Tribunal Members	:	G K Sinclair & D S Brown FRICS
Date and venue of Hearing	:	Tuesday 7th April 2015 at The Keswick Hotel, Walcott Road, Bacton, Norfolk
Date of decision	:	13th April 2015
Date of this certificate	:	21st April 2015

CERTIFICATE OF CORRECTION
Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 50

I hereby certify that, due to an accidental error, the decision handed down on the 13th April 2015 in respect of 18–26 Angel Court, Cromer Road, North Walsham, Norfolk NR28 0UN and which was signed by me was inaccurate in the following particulars, namely that the case reference contained an incorrect year indicator, viz 2015 instead of 2014. The correct case reference is CAM/33UF/LRM/2014/0017, as stated at the head of this certificate. The post code was also incorrectly recorded as NR12 0LS.

Dated 21st April 2015

Graham Sinclair

Graham Sinclair
Tribunal Judge

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DECISION

Summary

1. Angel Court is a residential development comprising two blocks of long leasehold flats on the corner of Aylsham Road and Cromer Road near the centre of North Walsham. Just to the north, and accessed from Cromer Road, is a communal car park used by residents of both blocks and by several bungalows constructed at around the same time. The two blocks, separated by a gated passageway leading out to Cromer Road, have slightly different leases. Occupation of flats in Block A is restricted to "qualified persons", meaning those aged 55 or over, while Block B is for general occupation.

2. However, in both the Block A and B leases the definition of the Development, Common Parts, Management Services, and Service Charge in Schedule 5 are all the same. Tenants of each block can therefore use all of the common parts, and in this case that includes the laundry and a store located on the ground floor of Block B by the vehicular entrance. More particularly in this case, regardless of who actually uses these common facilities and how the landlord apportions costs in the respective service charges for each block, it is not lawful to prevent tenants of Block B from using them.

3. The laundry and office do not therefore constitute parts of Block A within the structure of Block B, preventing a vertical division of a part of the building. As Block B is a separate building the objection raised under section 72(4) does not therefore apply, and the tribunal is satisfied that on the relevant date the RTM company was entitled to acquire the right to manage.

4. The tribunal also agrees with the applicant that, this erroneous thinking having been pointed out to the respondent at an early stage, it was quite wrong of it to persist with its opposition to the tenants of Block B acquiring the right to manage just in order to show to third parties that "might" express concern on behalf of the elderly tenants of Block A that the landlord was doing everything to protect their interests. This formed part of the respondent's oral submissions on costs but had not previously been mentioned. Under rule 13 the tribunal awards the applicant its costs, in the slightly reduced sum of £2 520 (inclusive of VAT).

The question for determination

5. By a claim notice dated 11th September 2014 the applicant RTM company claimed the right to manage, on and from 23rd January 2015, the premises known as 18–26 Angel Court, which paragraph 2 of the claim notice states :

> "consist of a self-contained building or part of a building with or without appurtenant property, they contain nine flats held by qualifying tenants, 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, and any non-residential part does not exceed 25 per cent of the internal floor area."

The qualifying tenants listed as also being members of the company are those of every flat save number 19.

6. As raised in the counter-notice served in this case, the tribunal is asked to decide whether the applicant RTM company was not entitled to acquire the right to manage because :

> "in breach of section 72(4)(a) & (b) it is not clear that the qualifying conditions have been met. Angel Court is made up of 2 blocks A (1–17, a 3-storey block) and B (18–26, a 2-storey block and 2 blocks of bungalows). Angel Court B is not a self-contained building as the laundry room and store room in Block B is (sic) for the exclusive use of Block A. There is no area in Block A where a laundry room could go."

Material statutory provisions

7. This application is brought under section 84, which concerns counter-notices. Subsections (1)–(3) provide as follows :

(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.

8. Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), then it does not acquire the right to manage the premises unless 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 (which is not this case) the person by whom the counter-notice was given agrees in writing that the company was so entitled.

9. The counter-notice in this case questions whether the qualifying conditions have been met, by reference not to procedural aspects but to whether the premises comply with the relevant criteria in section 72(4). Section 72 provides that :

(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) A part of a building is a self-contained part of the 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.

(4) 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.

(5) Relevant services are services provided by means of pipes, cables or other fixed installations.

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

10. The right to manage extends to property "appurtenant" to a building or part of a building. "Appurtenant property" in relation to a building or a part of a building or a flat means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the building or part or flat (s 112(1)). It is not restricted to property appurtenant to the self-contained building but includes appurtenances belonging to or usually enjoyed with the building such as a communal garden.[1]

Inspection and hearing

11. Accompanied by parties' representatives the tribunal inspected the premises at 10:00 on the morning of the hearing. The tribunal noted that a flat in block B extended over the vehicular entrance from Cromer Road leading to the car park. The laundry was inspected. Access to it is via an external door on the car park side only. The location of the development office, apparently staffed for only four hours on three weekdays, a locked store room (accessed from under the covered entrance), the pedestrian passageway between blocks A and B which is gated at the street end, communal garden and drying area were also noted. The party walked through the ground floor corridors of Block B, noting the staircase and meters recording communal and laundry electricity consumption.

12. The hearing was short and to the point, beginning at 11:35 and concluding at 12:15. A significant proportion of that was taken up with the RTM company's application for costs.

13. The applicant submitted that there was only one substantive issue – viz whether Block B is a self-contained block within the meaning of s.72(1)(a) & 72(2). There could be no argument that s.72(1) was other than satisfied. Block B is a self-contained building because it is structurally detached. The respondent does not dispute this fact; it merely asserts that there are further considerations that apply to what is meant by "structurally detached". However, submitted Mrs Mossop, s.72(2) does not allow for any further qualifications of the definition.

[1] *Gala Unity Ltd v Ariadne Road RTM Co Ltd* [2012] EWCA Civ 1372, [2012] 3 EGLR 9

14. She relied on the Upper Tribunal case concerning No.1 Deansgate in Manchester[2] and the First-tier Tribunal's decision about 84–91Windmill Gate, in Sunbury-on-Thames[3]. In the latter, at paragraph 13, the tribunal began by considering :

> ...whether s.72(1) and (2), which deal with buildings that are structurally detached, and s.72(3) and (4) which deal with part of a building, are mutually exclusive.

The tribunal's preliminary conclusion was that the former clearly refer to buildings which are physically detached and not physically attached to another building whereas the latter refer only to "a part of a building", in other words one which is physically attached to and is part of another building.

15. The tribunal in that case later invited the parties to make further submissions in writing on a decision by the Upper Tribunal concerning a joint water supply to two properties known as St Stephens Mansions and St James Mansions, Mount Stuart Square, Cardiff[4] which had been made subsequent to the initial hearing. Having received further submissions from the applicant addressing the point the tribunal agreed with the applicants that as the block in question (block H) was not structurally attached to another building sections 72(3) & (4) did not apply and it went on to find that, while it understood that there may well be practical problems and considerations resulting from the award of the right to manage to one block on an estate where there are communal facilities, the wording of section 72 contains no power for the tribunal to adjudicate on each and every item of communal services where there is a dispute.

16. For the applicant Mrs Mossop also relied on the Court of Appeal's decision in *Gala Unity Ltd v Ariadne Road RTM Company Ltd*[5], especially at paragraphs 6, and 13–16.

17. On behalf of the respondent Ms Fingleton explained that Angel Court is a mixed use development, with one part aimed at the retired and the other in general use. She sought to argue that the laundry in Block B was for the use of Block A tenants (and on the inspection had mentioned that the store room was equally exclusive). In the annual service charge budget provision was made for the laundry in the Block A budget but not that for Block B. She took no issue with shared use of other spaces, parking, etc. The landlord's concerns had been practical.

18. It was pointed out to her by the tribunal that nothing in either the Block A or Block B leases provided for the exclusive use by one group of tenants of any of the non-residential parts. Common parts were common to both blocks, and each tenant was entitled to make use of them without let or hindrance. Granting a right to manage did not affect the exercise of such leasehold rights, but restricting use of part to one class of tenant is potentially actionable as a breach of covenant.

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2 *No.1 Deansgate (Residential) Ltd v No.1 Deansgate RTM Company Ltd* [2013] UKUT 580 (LC)

3 *84–91 Windmill Gate RTM Ltd v HML Hawkesworth Ltd* [CHI/43UH/LRM/2014/0020]

4 *St Stephens Mansions RTM Company Ltd v Fairhold NW Ltd & anor* and *Fairhold NW Ltd & anor v St James Mansions RTM Company Ltd* [2014] UKUT 541(LC) (Martin Rodger QC)

5 See above

19. It was only during submissions on costs that Ms Fingleton mentioned that the site manager is the main point of contact for CareLine. The master control is in her office in Block B. The manager is there 4 hours a day, 3 days a week. Because this is a mixed use development she said that the landlord does have to take various interests into account.

Discussion and findings

20. The tribunal considers that Block B is structurally detached and is a self-contained building within the meaning of section 72(1)(a) & (2). It would be otherwise only if:
    a. The laundry and store room were for the exclusive use (and therefore part) of Block A, and
    b. No vertical division of Block B from such parts is possible.[6]

21. As the right to use common parts including the laundry and store room is granted to all tenants on the development (Blocks A and B) such facilities cannot be regarded as forming part of Block A. Neither can the manager's office, currently used to serve both blocks. It is a non-residential part but falls well below the 25% threshold. The vehicular entrance passing under the northern part of Block B is also appurtenant property.

22. Following the observations of Sullivan LJ in paragraph 13 of his judgment in the *Gala Unity* case the tribunal agrees that, as this is a self-contained building, section 72(3)–(5) (which are concerned with whether a part of a building is a self-contained part) have no application. Further, the tribunal disagrees with the suggestion implicit in the counter-notice that the laundry can be classed as a "relevant service" as defined in subsection (5).

23. The counter-notice is therefore wrong and the RTM company was on the relevant date entitled to acquire the right to manage. As this matter has had to be determined by this tribunal the right to manage will not therefore be acquired by the applicant RTM company until the determination becomes final. Pursuant to section 84(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.

Subsection (8) makes further provision concerning the disposal of any appeal.

Costs

24. The tribunal understands that the landlord may consider itself obliged to show to its elderly occupants, and outside bodies championing their rights, that it is doing all in its power to protect its tenants' interests. That should not, however, come at the expense of another party legitimately seeking to exercise its own rights. The counter-notice in this case was misconceived; a fact that should have

[6] Deviations from the vertical that are *de minimis* can probably be ignored but no qualification of materiality can be implied or imported by reference to the provisions of the Leasehold Reform Act 1967 : see *Holding and Management (Solitaire) Ltd v 1-16 Finland Street RTM Co Ltd* [2008] 2 EG 152 (LT).

been realised at the outset had greater care been taken to read the relevant leases. While split management might be administratively more complex that is not a factor which the tribunal can regard as relevant when exercising this jurisdiction. The rights of tenants in Block A to continue to use the laundry and store room (in common with those from Block B wishing to do so) were never at risk.

25. In these circumstances the tribunal agrees with the applicant that the landlord has acted unreasonably in the conduct of its defence to the application and that it should pay the applicant's costs, summarily assessed by the tribunal in the sum of £2 520 (inclusive of VAT). This is slightly lower than those claimed by the applicant as the inspection and hearing occupied less time than anticipated by Mrs Mossop.

Dated 13th April 2015

Graham Sinclair

Graham Sinclair
Tribunal Judge