



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

Case Reference : **MAN/00BY/LRM/2015/0005**

Property : **Masons Building, 28, Exchange Street East,
Liverpool L2 3PH**

Applicant : **Masons Building Right to Manage Company Limited**

Respondent : **(1) Carl Melia
(2) Tuscola (104) Limited represented by SLC solicitors**

Type of Application : **Commonhold and Leasehold Reform Act 2002, Section
84: Right to manage**

Tribunal Members : **Mr J R Rimmer
Mr J Rostron**

Date of Decision : **11th January 2016**

Decision

Order: The Tribunal upholds the claim notice and dismisses the Respondent's objections thereto.

A. Application and background

- 1 The Applicant is a management company established for the purpose of managing the 10 flats numbered 1-10 within Masons Buildings in Exchange Street East which is situated in the commercial district of Liverpool City centre. The Second Respondent is the current landlord of the building, Tortola (104) Limited, apparently being a company registered in the British Virgin Islands, and represented in England and Wales by Grangeford Asset Management Limited: Mr Melia is the leaseholder of the two lowest floors of the building.
- 2 Masons Building is likely to date from the Victorian Era and was no doubt a property used for predominately business purposes until economic and commercial changes in the City brought about significant change of use. Until recently the basement and lower ground floors were used as a venue for evening and night-time entertainment, with the exception of a small letting agency at the front of the building on the lower ground floor. The upper floors, of which there are five, were each redeveloped with 2 flats on each floor. Access to the building is through a large doorway on the right of the building, when seen from the front, giving access to hallways and the staircase to those upper floors. The letting agency is accessed from a different door from the pavement but access can also be gained towards the main door, as can access to the remainder of the lower ground floor and to the basement.
- 3 The First Respondent has recently redeveloped the remainder of the lower ground floor into two flats. The premises has access to the street at the rear and receives light from that source whilst the flat to the front is lit from a large atrium extending for the whole height of the building from that floor. The basement would appear to have no direct source of natural light and its use after the current development work, which is continuing, is no doubt limited.
- 4 Against the background of that brief outline, a Claim Notice seeking the right to manage the property under the "no fault" provisions of the Commonhold and Leasehold Reform Act 2002 and Dated 19th May 2015 was served on behalf of the Applicant in these proceedings upon the Respondents. Its receipt, on behalf of the Second Respondent, is effectively acknowledged by a letter of 24th June 2015 from SLC, Solicitors serving a counter notice on behalf of the Second Respondents. The process then being set in motion for the matter to be contested between the parties and ultimately, as proved necessary, before this Tribunal.
- 5 The relevant legislation, and its application by the Tribunal to the circumstances of this application, are set out below, but in summary the principle of the "no fault" right to manage provisions is that once an application is made seeking the right to manage it is then for the Respondent to show why, within the parameters of the legislation, that right should not, or cannot, be exercised.

6 In its statement of case the Second Respondent put forward one ground for objecting to the application, but thereafter added to it a further objection in the letter from its solicitor dated 15th October 2-15.

- (1) That the area of the residential parts of the building, as opposed to non-residential, is less than 75% of the total area.
- (2) That at the time of sending out the notices inviting participation in the right to manage scheme no notice had been sent to the leaseholder of the two lowest floors, one of which was being converted for intended residential use.

No issue appears to have been taken with the introduction of the second ground, other than it was opposed by the Applicant and the Tribunal viewed it appropriate as a matter to be given due consideration, given the changes taking place within the building.

The Law

7 The law relating to the “no fault” right to manage might usefully be set out at this point as its application is crucial to the determination that is required to be made by the Tribunal. It is contained in sections 71-112 Commonhold and Leasehold Reform Act 2002, together with Schedules 6 to 8. Those provisions are reproduced here only insofar as the Tribunal considers them relevant to the consideration of this application.

8 Section 72 provides for the right to manage premises if-

- (a) They consist of a self-contained building or part of a building...
- (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

Thereafter the section defines a building as being self-contained if it is structurally detached and 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) Relevant services by way of pipes, cables and other fixed installations are provided independently to the rest of the building or could be so provided without causing significant disruption to the occupiers of the rest of the building.

- 9 Schedule 6, Paragraphs 1(1 and 2) is relevant to these proceedings in the light of the second objection to the application as it provides:
- (1) This Chapter 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.
- 10 Sections 75-77 set out the criteria for being a qualifying tenant for the purposes of the exercise of the right to manage, being an appropriate leaseholder, holding a long lease of a flat that satisfies the criteria set out in Sections 76-77.
- 11 Section 78 sets out very lengthy provisions for the service of notices inviting participation in the right to manage process:
- (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 intention to participate”) must
 - (a) State that the RTM company intends to acquire the right to manage the premises
 - (b) State the names and 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 such notices of invitation to participate as may be prescribed 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
 - (5-6) (provides further requirements as to what that statement should contain and what right the recipient has to inspect or receive a copy)
 - (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.
- 12 Sections 79 onwards deal with the requirements of a notice of claim to acquire the right to manage and within Section 79 (at sub-section 5) is the requirement, for a development which is the size of Masons Buildings, that there must be qualifying tenants for at least one half of the total number of flats in the premises as members of the Right to Manage Company. It appears on the face of the Applicant's Notice of Claim that this is the case and no issue upon that point has been taken by the First Respondent. By virtue of Section 80(4) where a claim notice is given it continues in force from the relevant date until it is withdrawn, or deemed to be withdrawn under the provisions of the Act or cease to have effect in accordance with any other provisions of the Act. (the relevant date is the date upon which a notice is first given).

Inspection

- 13 The Tribunal inspected the premises at some length on 16th October 2015, prior to the hearing held the same day at the Liverpool Civil Justice Centre. Much of what was observed is referred to in paragraph 2, above. The building is of stone construction and in a reasonable condition. The upper ground floor onwards is served by a lift, around which the staircase circulates to the upper floors. Access for the Tribunal to the lower ground floor confirmed that the conversion into two flats is now complete and both are occupied, the rear flat having its own entrance to the rear roadway. There are no grounds or parking areas.

Hearing

- 14 The hearing was attended by Mr Andrew Orme on behalf of the Applicant company, accompanied by the Applicant's solicitor Mr Girvan and two of the leaseholder members of the company, Mr Mahadevan, an original leaseholder still holding Flat 6, and Mr Kennedy, the assignee of the lease to Flat 7. The Second Respondent was represented by Mr Simons and Mrs Corner of Regent Property Management, currently engaged to manage the building. Also present was the First Respondent, Mr Melia. He had not provided any written response to the Notice of Claim but was attending in support of the application. At the commencement of the hearing the Tribunal indicated that its perception of the right to manage regime was such that the issues for it to consider were only those the Second Respondent had raised within the statement of its case and subsequent correspondence, save where the inquisitorial duty upon the Tribunal required it to consider, as an enquiring tribunal, that an application meets all other necessary criteria for a valid claim to be made, whilst not raising issues that have not concerned the parties where it is not necessary to do so. On that basis the Tribunal is satisfied that if, and only if, the grounds of objection put forward by the Respondent are not made out, either collectively or separately, the claim will otherwise be valid and satisfies the general qualifying criteria required by Section 71 onwards.
- 15 The Tribunal therefore considered at some considerable length, the issue raised by the Second Respondent that by reason of the lower ground floor, now being considered by the Applicant to be residential, there was an obligation to serve a notice of invitation to participate upon the leaseholder of that part of the building and having not done so the application must fail.
- 16 Very limited paperwork was submitted on behalf of the Applicant in support of its case and particularly no correspondence relating to service of that notice, nor any copy of the notice itself. It is clear from the letter from the Second Respondent's solicitors that such a notice exists, so much is apparent from the second paragraph of their letter of 15th October.
- 17 It was however necessary to hear at length from 3 witnesses, on oath, they being Mr Orme, Mr Mahadevan and Mr Melia, to establish whether such notices inviting participation were sent and received. After lengthy enquiry from the Tribunal members and cross-examination where appropriate on behalf of the Second Respondent, the Tribunal was satisfied that the notices were served on all relevant parties in addition to the First Respondent. It was greatly assisted by the clear and cogent evidence of both Mr Mahadevan and Mr Melia. Mr Melia, in particular, appeared to have a clear picture of events and able to assist the tribunal at length with a timeline of events without necessarily being able to precise with some dates. The tribunal has some sympathy with the position of the Second Respondent in relation to a situation that could have been easily resolved if Mr Orme had produced a satisfactory paper trail at the hearing.

- 18 The Tribunal then proceeded to consider the second issue, though the first in time to be raised by the Second Respondent: the matter of the proportion of the floor area of Masons Building given over on the one hand to residential and the other non-residential use. Unfortunately, in the absence of any detailed scale drawings and measurements it was not possible to ascertain with any precision whether the residential area exceeded or fell short of the 75% required by the provisions of Schedule 6 Paragraph 1(1) of the Act. Accordingly the matter was adjourned and further directions given by the Tribunal.
- 19 Thereafter 2 sets of plans were provided on behalf of the Applicant in Response to the directions and the matter set down for further hearing on 11th January 2016. Mr Orme and Mr Kennedy attended on behalf of the Applicant. Mr Sinclair of Counsel appeared for the Second Respondent.
- 20 Neither the Tribunal, nor the Applicant, having apparently heard from the Second Respondent in the interim in Response to the Applicants plans, Mr Sinclair was instructed to put forward two arguments to the Tribunal: firstly that the plans submitted were to a scale of 1:150, not 1:100 as directed by the Tribunal, and secondly that they were not new, or original, plans but of some age, reflecting the intended redevelopment of the accommodation in the basement and lower ground floor of the building.
- 21 The Tribunal feels bound to say that it was not impressed by these arguments as a proper consideration of the plans show they are drawn to a 1:100 scale (notwithstanding the fact they have in one place been marked, presumably for some specific purpose as being to a scale of 1:150). Furthermore, the directions did not seek new plans, merely a sufficient plan to the appropriate scale. The plan submitted is entirely satisfactory for the purpose for which it has been requested. It was clear to the Tribunal that Mr Sinclair found himself in a difficult position, with no other plan and no other measurements to counter those propounded on behalf of the Applicant.
- 22 From the plan that has been submitted and the measurements noted thereon the Applicant has assessed the proportion of the non-residential internal floor area of the building as being 17.5%, or thereabouts, of the total internal floor area. The Tribunal notes that the measurements for the basement may not be entirely clear, but even on a most favourable interpretation for the Second Respondent the non-residential areas will not approach anywhere near 25% of the total; indeed, the Applicant has not included any of the common parts of the building within the calculations.
- 23 For the reasons set out above the Tribunal is not satisfied that the Second Respondent has established either of the objections it has raised to the Application and the claim notice is therefore upheld.