



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

Case Reference : **LON/00AR/LRM/2018/0025**

Properties : **201 and 203 Southend Arterial Road, Hornchurch RM11 2SF**

Applicant : **201-203 Southend Arterial Road
RTM Company Limited**

Representative : **Mike Stapleton & Company**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors Limited**

Type of Application : **84(3) Commonhold and Leasehold Reform Act 2002 – determination
whether the applicant has acquired
a right to manage the subject
premises**

Tribunal Member : **Judge John Hewitt**

Date and venue of determination : **7 January 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **10 January 2019**

DECISION

The issue before the tribunal and the decision of the tribunal

1. The issue before the tribunal was whether on the relevant date the applicant was entitled to acquire the right to manage the subject premises.
2. The decision of the tribunal is that the applicant was, on the relevant date, entitled to acquire the right to manage the subject premises.

That right will be become exercisable on the acquisition date provided for in s90 Commonhold and Leasehold Reform Act 2002 (the Act).

3. The reasons for this decision are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided for use at the determination.

Procedural background

4. By a claim notice dated 27 June 2018 [26] and given pursuant to s79 of the Act the applicant sought to acquire right to manage the premises '201-203 Southend Arterial Road, Hornchurch RM11 2 SF'.
5. By a counter-notice dated 7 August 2018 [30] and given pursuant to s84 of the Act the respondent alleged that the respondent was not entitled to acquire the right to manage for six generic reasons therein set out.
6. On 2 October 2018 the tribunal received an application [1] in which the applicant sought a determination that on the relevant date it was entitled to acquire the right to manage the subject premises.
7. Directions were issued on 5 October 2018 [7]. The parties were notified that the tribunal was of the view the application can be determined on the papers and without an oral hearing during the week commencing 7 January 2019. The parties were reminded that either of them may ask for an oral hearing within 30 days of receiving the directions, and that if such a request was made the hearing would take place at 1.30pm Wednesday 9 January 2019. The tribunal has not received a request for an oral hearing. Thus the application is determined on the papers.
8. In accordance with directions the tribunal has received:

Respondent's statement of case in answer dated 2 November 2018 [10];
and
Applicant's statement of case in reply dated 27 November 2018 [15]

together with the various documents appended to both statements of case.

The nub of the issue

9. The nub of the issue is that in various documents, including the applicants' articles of association and the claim notice 'the premises' was stated to be: '201-203 Southend Arterial Road ...'.

The respondent argues that the freehold title [13] records the registered land as being:

- (i) 201 Southend Arterial Road ...; and
- (ii) 203 Southend Arterial Road ...

and that the identity of the subject premises in the articles of association and the claim notice extends beyond 201 and 203 Southend Arterial Road ... and includes 202 Southend Arterial Road ... which is a freehold house, an entirely separate premises and a separate building situate on the opposite side of the Southend Arterial Road and which is quite some distance away and which is not in the ownership of the respondent.

The respondent further argues that the incorrect definition of 'the premises' amounts to consequential inaccuracies affecting compliance with several sections of the Act, including;

- S78(2): notice of invitation to participate – reference to 'the premises';
- S78 (3): notice of invitation to participate - compliance with regulations;
- S80(2): contents of claim notice to 'specify the premises';
- S80(8): claim notice to contain such other particulars as may be required by regulations; and
- S80(9): claim notice must comply with requirements as to the form of the claim as may be prescribed by regulations.

The respondent's statement of case asserts that as a result of he misdescription of 'the premises' and the failure to comply with the statutory and/or regulatory requirements the applicant was not entitled, on the relevant date, to acquire the right to manage.

The background facts

10. There was little, if any, dispute about the background facts.

The freehold of 201 and 203 Southend Arterial Road

11. The subject freehold property is registered at HM Land Registry with title number BGL117869. Both parties have appended official copies of the register [13] and [17]. What the register actually records in entry 1 of the Property Register is:

"1. (09.10.2015) The Freehold land shown edged red on the plan of the above title filed at the Registry and described in the Property Register Schedule hereto.

Entry 2 records that the land edged green on the title plan was has been removed from the title and re-registered with a different title number. That is not relevant to what I have to decide.

The Property Register Schedule records:

1. *Short description:* 201 Southend Arterial Road ...
Plan reference: 5 (Part of), 6,7 and 8

2. *Short description:* 203 Southend Arterial Road ...
Plan reference: 5 (Remainder) and 9

The freehold property is one part of a pair of semi-detached properties which has been adapted to create two self-contained flats. Both flats were sold off on long leases as follows:

<u>Property</u>	<u>Lease date</u>	<u>Term</u>	<u>Date of Registration and No.</u>	
201	03.10.2002	99 years	09.10.2015	EGL448054
203	30.09.2002	99 years	05.05.2016	BGL123448

The respondent was registered as the proprietor of the freehold interest on 09.10.2015.

12. Neither party exhibited a copy of the title plan. The register is open to the public and I have obtained a copy of the title plan. It is annexed to this decision. I consider it to be of relevance.
13. It does not appear to be in dispute that the freehold building comprising the two flats 201 and 203 Southend Arterial Road is a self-contained part of a building within the meaning of s72(3) of the Act.
14. Southend Arterial Road is a busy dual carriageway road to the east of London and just within the M25. It can be seen from the title plan that the properties to the north of the carriageway bear odd numbers and that the properties to the south bear even numbers. This is a common but by no means universal method of numbering properties on each side of a street or road.

202 Southend Arterial Road

15. The freehold title of 202 Southend Arterial Road is registered at HM Land Registry with title number EGL54538 [23]. The registered proprietor is recorded as being Gary Humphreys and Sandra Angela Leake.
16. A title plan has not been provided but at [19-22] the applicant exhibits Mapsearch Snapshots which show the location of the two relevant freehold properties. From these I can see that 202 Southend Road is on

the opposite side of the road to 201/203 and some distance to the north-west. I have made an annotation on the annexed title plan showing, in crude terms, the rough location of 202.

Discussion

17. In essence the respondent argues that the claim notice in seeking to acquire the right to manage '201-203 Southend Arterial Road' seeks the right to acquire the right to manage premises 201, 202 and 203 Southend Arterial Road which comprise two separate sets of premises, 201/203 on the one hand and 202 on the other hand, which premises are physically separate and which are in separate ownership. The respondent has cited the decision in *Triplerose Ltd v Ninety Broomfield Road RTM Co Ltd* [2015] EWCA Civ 282 in support of the proposition that an RTM company can only acquire the right to manage one self-contained block or building.
18. This argument means that the use of a hyphen between the numbers 201 and 203 necessarily means that 202 is to be included. If that is right it means that the hyphen and the word 'to' have the same meaning and effect. The respondent says that the use of the hyphen gives rise to ambiguity and uncertainty and that for clarity the expression '201 and 203 Southend ...' should have been deployed. The respondent argues that an unambiguous identification of the premises to which the claim relates must be given in the articles of association and related documents because that is obviously important to the statutory scheme which created the no fault right to manage.
19. The applicant argues that there can be no possible confusion over the extent of the property subject to the claim. In support it cites the register of the freehold title of 201 and 203 Southend Arterial Road which plainly refers to just to two flats and full details of the leases of both of them were given in the claim notice.

Further that 202 Southend Arterial Road is a quite separate premises and that neither in the articles of association nor in any of the documentation issued is there any mention of or a suggestion that the right to manage extended to 202 Southend Arterial Road. It also complains that the counter-notice merely listed generic allegations that the applicant was not entitled to acquire the right to manage on the relevant date but failed to explain why the allegation was made and that it was not until the respondent served its statement of case in answer that the respondent explained its position.

20. S72 of the Act sets out the type of premises to which Chapter 1 applies. As I have mentioned above it does not appear to be in dispute that the building comprising the two flats, 201 and 203, is a self-contained part of a building within the meaning of s72(3) – certainly the respondent does not assert that it is not. Apart from the physical requirements of a building to amount to 'premises' to which the Chapter applies, there is no express definition in the Chapter of the expression 'premises'.

21. S73 of the Act sets out what is a RTM company and makes several references to 'premises'. S73(2)(b) requires the articles of association of a RTM company to state that one or more of its objects is 'the acquisition and exercise of the right to manage the premises'.

RTM Companies (Model Articles) (England) Regulations SI 2009/2767 govern the form and content of the articles of association of a RTM company. The detail is set out in Schedule 1. Paragraph 1 of Part provides a number of defined terms and it states:

'the Premises' means [name and address]

I infer this means that there is a requirement to identify the premises in question. Some premises may have both a name and an address but some may simply have an address. It is my judgment that a pragmatic approach should be taken when construing the requirement. If a premises does not have a name, it is not essential to give both a name and an address. An address, or at least a reasonable description of the premises, is clearly required so as to identify them. The precise form of the address or description of the premises will vary according to the particular circumstances of each case.

22. In the present case the form adopted was '201 – 203 Southend Arterial Road...'. The respondent does not contend that this expression caused it any confusion or lack of certainty but asserts that the expression necessarily includes 202 Southend Arterial Road and thus as that property is a separate set of premises in separate ownership the articles of association and all subsequent documentation deploying that description are not in compliance with the Act and thus render the process invalid.
23. Despite challenging the validity of the claim notice the respondent has not cited any of the legion of authorities on the subject of the validity of statutory notices, many of which concern property notices, and some of which concern notices given under the Act. I do not propose therefore to do so myself. I simply say that each case is fact specific and context is all.
24. Standing back and taking a broad view I reject the respondent's assertions that the expression '201-203 Southend Arterial Road' necessarily includes a reference to 202 Southend Arterial Road such that the applicant was intending to acquire the right to manage those premises.
25. As I have mentioned earlier in England it is common, but not universal, that the numbers of properties on one side of a street or road are even numbers with odd numbers on the other side of the street or road, if there is one. Whilst I accept that the expression '201-203 Southend Arterial Road' is capable of including 202 a person would not ordinarily assume that it must do so. In common usage a building containing two

flats might reasonably be described as '202 and 203...' or '201/203...' or, as here '201-203...'.

In my judgment and in context any of those expressions would be a sufficient description of the premises for the purposes of Chapter 1 of the Act.

26. Of course in a perfect world greater precision would have been deployed. But the Act does not operate in that world. A terrace or series of properties in a street might well be described as, for example 1-13 and that may or may not include the even numbered properties. In context the recipient would make an enquiry if clarification was required. HM Land Registry in its description of a portfolio of properties might well deploy a description such as '1-13 (odd numbers only)' but that registry operates in very structured environment where clarity and attention to detail is paramount. That is quite different to the environment in the property sector with which I am concerned.

27. I therefore find that the articles of association of the applicant company are not deficient as asserted by the respondent.

28. The respondent alleges that an incorrect definition of the premises the subject of claim offends s78 of the Act. This section concerns the requirement, in certain circumstances, that certain qualifying lessees must be given a notice of invitation to participate. In this case no such notices were given. The claim notice asserts that the long lessees of 201 and 203 are both qualifying lessees and both are members of the RTM company. Even if the property at 202 Southend Arterial Road was included there is no qualifying tenant of it and so in any event no notice of invitation was required to be given. Thus I am not concerned with any alleged failure to comply with s78 of the Act.

29. In paragraph 8 of its statement of case [11] the respondent also asserts that the incorrect definition of the subject premises offends s80(2), (8) and (9) of the Act. The respondent has not identified the regulations referred to. S80(1) imposes an obligation that the claim notice 'must specify the premises...' For the same reasons as given above, in my judgment the claim notice does specify the premises to which the claim relates and the claim notice, taken in its entirety, makes express reference to 201 and 203 Southend Arterial Road. There is no express reference to 202 Southend Arterial Road at all.

30. In these circumstances I find the claim notice to be a valid notice.

Thus I find the applicant was, on the relevant date, entitled to acquire the right to manage the premises comprising flats 201 and 203 Southend Arterial Road.

That right will become exercisable on the acquisition date provided for in s90 of the Act.

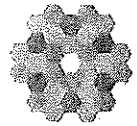
Judge John Hewitt
10 January 2019

ANNEX - RIGHTS OF APPEAL

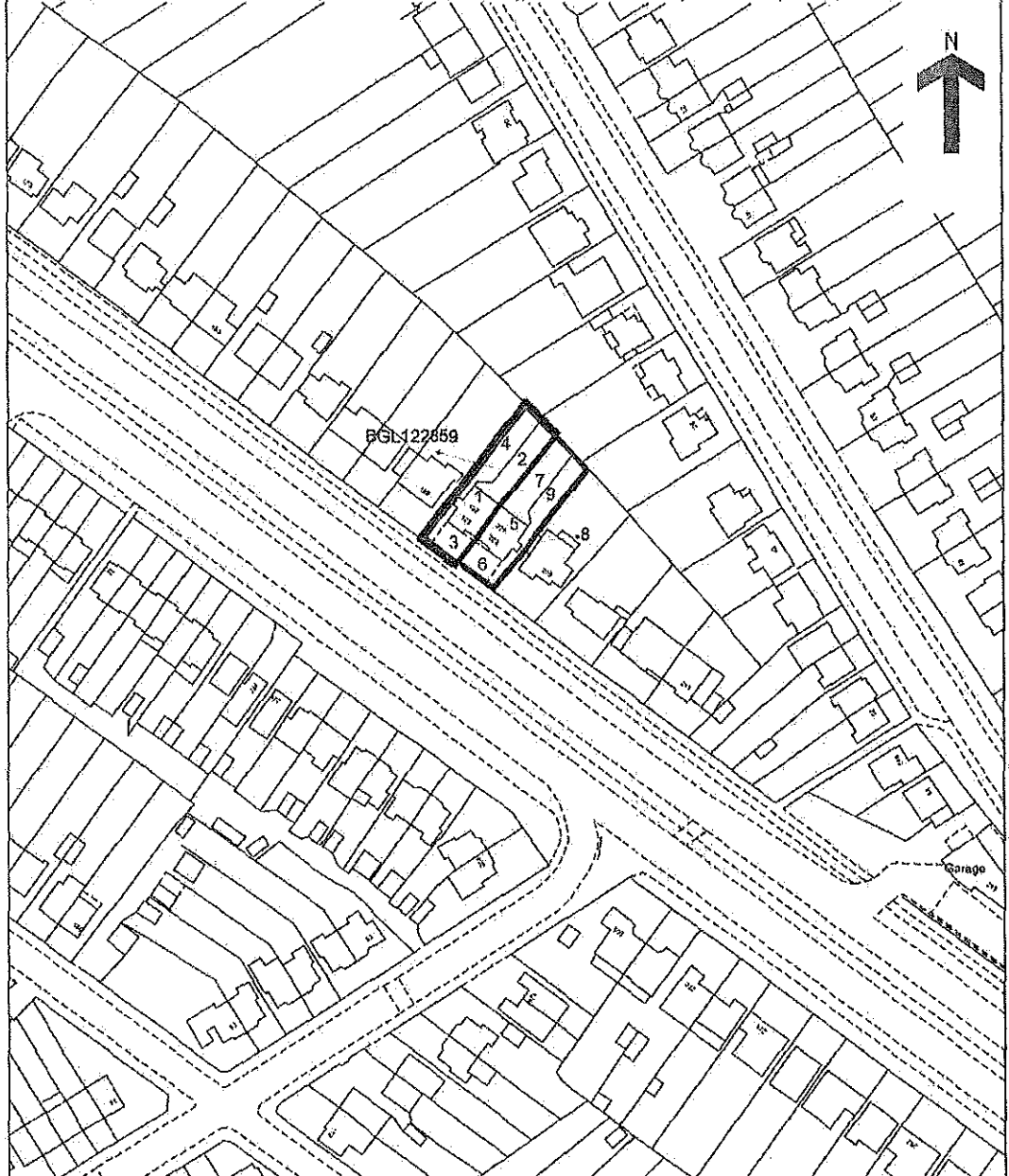
1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

HM Land Registry
Current title plan

Title number BGL117869
Ordnance Survey map reference TQ5489NW
Scale 1:1250
Administrative area Havering



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202
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This title is dealt with by HM Land Registry, Birkenhead Office.