



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

Case reference : **LON/00AZ/LRM/2019/0009**

Property : **Chiltern Court and Cheviot Court
Avonley Road London SE14 5EX**

Applicant : **Chiltern and Cheviot RTM
Company Limited**

Representative : **Tina Kumar-Jacob of Counsel**

Respondent : **Asonic UK Limited**

Representative : **Barnaby Hope of Counsel**

Type of application : **Right to manage**

Tribunal member : **Judge Professor Robert Abbey
Richard Shaw FRICS**

Date of decision : **12 February 2020**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act, and the Applicant will acquire such right within three months after this determination becomes final.
- (2) The Tribunal determines that it is just and equitable to make an order pursuant to S. 20c of the Landlord and Tenant Act 1985 as to 100% of the costs incurred by the lessor.

The application

1. This was an application to acquire the right to manage **Chiltern Court and Cheviot Court Avonley Road London SE14 5EX** (“the property/premises”) under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (“the Act”). The Respondent freeholder has served a counter-notice asserting that the Applicant RTM company was not on the relevant date entitled to acquire the right to manage.
2. The Claim Notice is dated 13 February 2019 and the Counter-Notice 26 March 2019. The Applicant’s made an application relating to Right to Manage dated 7 May 2019. The Respondent took issue with the validity of the application to the Tribunal, which then resulted in the matter being set down for a preliminary hearing. The preliminary hearing was heard on 17 September 2019, whereby the Tribunal decided that the Applicant’s application was validly made to the Tribunal in accordance with the Act and that the Tribunal has jurisdiction to consider the application.
3. The Tribunal made a site visit to the property on the morning of the hearing on Monday 12 February 2020 and was able to view all external parts as well as the basement and communal areas.

The law

4. The relevant provisions of the Act are referred to in the Decision below.

The counter-notice

5. In its counter-notice, the Respondent raised several issues and three of these were still unresolved by the time of the hearing. However, at the time of the hearing two of the three were withdrawn by the respondent. This just left the issue relating to the structure of the premises and the effect of section 72 of the act that is set out below. Having considered the documents in the bundle and the legal submissions made by Counsel at the time of the hearing, the Tribunal has made the following decision.

The Tribunal's decision

6. The law that governs structures or buildings to which the Right to Manage might apply is section 72 of the Commonhold And Leasehold Reform Act 2002 which says: -

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) 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.

7. It is the applicant's case that the property is a single self-contained building for the purposes of section 72. It is the respondent's case that "Chiltern and Cheviot Court are not structurally detached" and so the application must fail. In making this decision the Tribunal had to consider the statute and cases that might assist the Tribunal in interpreting the statute.

8. In more detail the applicant relies upon the evidence of an independent surveyor (details set out below) who has come to the conclusion that Chiltern Court and Cheviot Court are structurally attached. The applicant also says that the respondent has failed to identify parts of the property which it asserts to be not attached/detached. The applicant also says that there is continuous brickwork around the entirety of the perimeter of the building and as a result no one part of the building is therefore physically structurally detached from any other part. Moreover Flats 1-6 Cheviot Court and 17-24 Chiltern Court share the same common stairwell and landings.
9. On the other hand the respondent says that the two Courts were always intended to be treated as two separate structures. They take this view because they have different postcodes, the leases refer to them as different “blocks” and they have both been consistently so referred to historically by valuers, architects and historians of the former hospital site. The respondent is of the firm view that the two Courts are not susceptible to being managed as one unit but instead two units.
10. Accordingly, the Tribunal had regard for the Upper Tribunal decision in *CQN RTM Co Ltd v Broad Quay North Block Freehold Ltd* [2018] UKUT 183 (LC) where the Tribunal set out clear guidance as to what might constitute premises that are “structurally detached” or not. The Applicant relies on the following propositions from the Judgment that were derived by the court from previous authorities on the above definition:

(1) The expressions ‘building’ and ‘structurally detached’ are not defined in the 2002 Act and should be given their ordinary and natural meaning.

(2) The statutory language speaks for itself and it is neither necessary nor helpful for a tribunal which is considering whether premises are ‘structurally detached’ to reframe the question in different terms. Thus, it is not helpful to substitute a test of ‘structurally independent’ or ‘having no load-bearing connection’ for that of ‘structurally detached’.

(3) Nevertheless, some explanation of when a building can properly be characterised as ‘structurally detached’ is clearly called for.

(4) What is required is that there should be no ‘structural’ attachment (as opposed to non-structural attachment) between the building and some other structure. The word ‘structurally’ qualifies the word ‘attached’ in some significant manner.

(5) Thus, a building may be 'structurally detached' even though it touches, or is attached to, another building, provided the attachment is not 'structural'.

(6) 'Structural' in this context should be taken as meaning 'appertaining or relating to the essential or core fabric of the building'.

(7) A building will not be 'structurally detached' from another building if the latter bears part of the load of the former building or there is some other structural inter-dependence between them.

(8) So long as a building is 'structurally detached', it does not matter what shape it is or whether part of it overhangs an access road serving some other building.

(9) A building can be 'structurally detached' even though it cannot function independently

(10) Adjoining buildings may be 'structurally detached' even though a decorative façade runs across the frontage of both buildings.

(11) The question whether or not premises in respect of which a right to manage is claimed comprises a self-contained building is an issue of fact and degree which depends on the nature and degree of attachment between the subject building and any other adjoining structures

.....

(13) If a structural part of the premises is attached to a structural part of another building, the premises are unlikely to be 'structurally detached'

11. The Judgment sets out the test/steps when determining whether a building is 'structurally detached' at proposition (12) of the above list. The test is to (a) identify the premises to which the claim relates, then (b) to identify which parts of those premises are attached to some other building, and finally (c) to decide whether, having regard to the nature and degree of that attachment, the premises are 'structurally detached'.
12. The Tribunal also had the benefit of a report from an independent expert Mr Michael Maunder Taylor, a Surveyor asked to report on whether Chiltern and Cheviot Courts were structurally detached or structurally attached. In his opinion, at paragraph 6.1.1 of the report, he

says that Chiltern Court and Cheviot Court are structurally attached for the following reasons:

- (i) *“There is continuous structure of brickwork around the perimeter of the building, and no one part is structurally detached from any other part.*
- (ii) *There is continuous party wall running from ground floor level up to roof level in between each ‘segment’ of the building.*
- (iii) *The basement is situated underneath 1-16 Chiltern Court, and 1-6 Cheviot Court & 17-24 Chiltern Court. The concrete pillars situated within the basement area support these parts of the above-ground structure.*

13. He therefore concludes that for the reasons set out in section 6 of his report it is his opinion that Chiltern Court and Cheviot Court are structurally attached.
14. Taking into account all these factors the Tribunal determines the property is one self-contained building for the purposes of section 72. In that regard the Tribunal preferred the evidence and submissions from the applicant and in particular the helpful report from the independent surveyor, Mr Maunder Taylor. The Tribunal when making the site visit were struck by the contiguity of the structure. There is no discernible feature that might lead the Tribunal to think otherwise. The continuous brickwork around the entirety of the perimeter of the building results in no one part of the building being physically structurally detached from any other part. Indeed, the two courts have a substantial share of the common part being where Flats 1-6 Cheviot Court and 17-24 Chiltern Court share the same common stairwell and landings. Consequently, the property is a continuous form that ensures that this property can be the subject of a Right to Manage determination such as this one.

Summary

15. Overall, the Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act.
16. Therefore, in accordance with section 90(4) within three months after this determination becomes final the Applicant will acquire the right to manage these premises. According to section 84(7):

“(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.”

Section 20c and Costs

17. Section 20c of the Landlord and Tenant Act 1985 states that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before the First-tier Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application. The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.
18. Having read the submissions from the parties and listened to their oral submissions at the hearing and taking into account the determination set out above the Tribunal determines that an order should be made as to 100% of the costs. It is the Tribunal’s view that it is just and equitable to make an order pursuant to S. 20c of the Landlord and Tenant Act 1985 as to 100% of the costs incurred by the Respondent. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Ltd* (LRX/37/2000) in that it was decided that the decision taken was to be just and equitable in all the circumstances. The Tribunal thought it would be just to disallow the right to claim 100% of the landlord’s costs as part of the service charge. The s.20C decision in this dispute gave the Tribunal an opportunity “to ensure fair treatment as between landlord and tenant in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay” (all of) “them.”
19. As was clarified in the *Church Commissioners v Derdabi* LRX/29/2011 the Tribunal took a robust, broad-brush approach based upon the material before it. The Tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and the evidence presented and decided that the order should extend to 100% of the costs. The Tribunal were mindful that this was an issue that that might have been resolved at an earlier stage where the expense of a hearing might have been avoided. Counsel referred the Tribunal to email exchanges to back up this proposition.
20. Finally, and with regard to costs Section 88(3) of the Act states:

“(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.”

21. In the light of the Tribunal’s decision, there is no question of awarding any costs of the proceedings to the Respondent because the application for the right to acquire has not been dismissed.

Name: Judge Professor Robert Abbey **Date:** 12 February 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).