



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

Case reference : **LON/00BG/LRM/2021/0005**

Property : **40 Bow Common Lane, London E3 4AX**

Applicant : **40 Bow Common Lane (London) RTM
Company Limited**

Representative : **Prime Property Management**

Respondent : **Assethold Limited**

Representative : **Scott Cohen, solicitors**

Type of application : **Right to manage**

Tribunal member(s) : **Judge Dutton
Mrs S Redmond BSc Econ MRICS**

Date of decision : **26 August 2021**

HMCTS code : **P: PAPERREMOTE**

DECISION

Covid-19 pandemic: description of hearing

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined on paper. The documents that the Tribunal were referred to are in a bundle of 80 pages, the contents of which have been noted.

Decisions of the Tribunal

- (1) The Tribunal determines that the building, 40 Bow Common Lane, London E3 4AX (the premises) are correctly defined in the Articles of Association and that accordingly the applicant is an RTM company which complies with the provisions of s73(2) and that the Claim Notice complies with s80(2) of the Commonhold and Leasehold Reform Act 2002 (the Act).
- (2) 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.

The application

1. This was an application to acquire the right to manage the premises under Part 2 of Chapter 1 of the Act. A Claim Notice dated 11 November 2020 defined the premises as 40 Bow Common Lane, London E3 4AX. In the Counter Notice there were initial skirmishes alleging breaches of ss 80(6), 73(2) 79(6) and 80(2) of the Act.

The law

2. The relevant provisions of the Act are referred to in the decision below.

The counter-notice

3. In its counter-notice, the Respondent raised 4 issues. However, by a statement in reply dated 4 August 2021 these were condensed to one issue and followed from the respondent's statement of case. This was the allegation that the definition of the premises in the Claim Notice was inconsistent with the description of the freehold at the HM Land Registry which appears to be 42 – 46 Bow Common Lane under title number EGL 217899. It was said that the RTM company had not been validly constituted in that the Articles of Association refer only to 40 Bow Common Lane.
4. The case is set out at paragraphs 17 onwards in the statement of case and paragraphs 5 onwards in the respondent's statement of reply, which we have noted. The planning documents refer to 42 -46 Bow Common Lane granting permission for re-development to provide nine residential units, plus ancillary matters. No plans associated with the planning permission were supplied.

5. The Land Registry documents raised as many questions as it answered. The original owners appear to have been 4246 BCL Limited who acquired the title on 7 October 2015 for £1.75m, with what would appear to be 4 flats. The respondent acquired their interest on 22 July 2020 at a price of £85,175 with nine flats, as per the planning permission. No Land Registry plans are provided by either party, which is a great pity.
6. The applicant says that the correct address of the premises is 40 Bow Common Lane and produces photographs of the building, both aerial and at ground floor level, the latter of which clearly demarks the property as number 40. The aerial photograph shows a stand alone building consistent with the planning documents.

The Tribunal's decision

7. This application relates to a request to acquire the right to manage the premises under the Act. We accept the respondent's contention that there must be clarity as to the premises for which the right is intended. To ascertain the position, we need to consider the submissions made and the documents supplied by the parties.
8. The Land Registry documents show an initial purchase at £1.75m and a sale on to the respondents at only £85,175, after it would seem, on the balance of probabilities, that the planning had been complied with. The planning documents and the Land Registry documents were, it would seem, introduced by the respondent. We do not understand why they did not include the Land Registry plans, which would have assisted us, or the plans for the planning, which would certainly have shown the extent of the premises, or indeed the plans which were presumably annexed to the transfer between 4246 BCL Limited and the respondent in July 2020. Further the definition of 42 – 46, would on the photographic evidence, which is not challenged, include other properties.
9. For the applicants we have been supplied the photographs and with an explanation, which suggests the Post Office does not recognise the address 42 – 46 Bow Common Lane but does appear to recognise that 44 is a separate building.
10. In our finding there can be no doubt that the respondent knows the extent of the premises for which a right to manage is sought. The Land Registry entries, whilst still adopting the address 42 – 46 Bow Common Lane for the register on 31 July 2020 should be considered in conjunction with the transfer to the respondent, the details of which must be in the respondent's control but have not been produced to us. The members of the RTM company can be in no doubt that the management relates to 40 Bow Common Lane, and we find that the photographic evidence and the submissions made by the applicant in its statement of case support us in the finding we make.

Summary

11. 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.
12. 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.”

Costs

13. Section 88(3) of the Act states:
 - “(3) An RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate 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.”
14. 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 Dutton

Date: 26 August 2021

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).

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.

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.