FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BN/LRM/2013/0023**
Property	:	**235 Upper Brook Street, Manchester M13 0HL**
Appellant	:	**Upper Brook Street Management RTM Company Ltd.**
Representative	:	**Mr Justin Bates of counsel instructed by Brethertons (solicitors)**
Respondent	:	**Mr Abdul Qayyum**
Representative	:	**Mr Anthony Elleray QC of counsel instructed by Mr Hussain.**
Type of Application	:	**Right to Manage: Section 84(3) of the Commonhold and Leasehold Reform Act 2002.**
Tribunal Members	:	**Judge M Davey (Chairman)** **Mr I James**
Date and venue of Hearing:	:	**13 May 2014**
Date of Decision	:	**19 June 2014**

DECISION

Decision

The Applicant, Upper Brook Street Management RTM Company Ltd., is entitled to exercise the right to manage 235 Upper Brook Street Manchester M13 0HL as claimed in its claim notice of 5 November 2013 and its application to the Tribunal of 30 December 2013. The second application received on 4 February 2014 is dismissed.

Reasons for Decision

The Applications

1. These are the reasons for the decision of the First-tier Tribunal (Property Chamber) ("the Tribunal") on two applications made by the Applicant to the Tribunal. The applications were received on 30 December 2013 and 04 February respectively (although the earlier form was previously faxed to the Tribunal on 24 December 2013).

2. The applications, under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), are made by Upper Brook Street Management RTM Company Limited ("the Applicant"), which is a company formed under the 2002 Act to manage "235 Upper Brook Street, Manchester, England M13 0HL with appurtenant property" ("the Premises"). In each case the Applicant seeks a determination from the Tribunal that the RTM Company was, on the relevant date, entitled to acquire the right to manage the Premises. The Respondent to the applications is Mr Abdul Qayyum, who is the freeholder landlord of the Premises.

Background to the Applications

3. By a claim notice given under section 80 of the 2002 Act, and dated 05 November 2013, the Applicant claimed the right to manage the Premises. The notice was served on the Respondent as the landlord of the Premises. Clause 2 of the claim notice is as follows

> "2. The company claims that the premises are ones to which Chapter 1 of the 2002 Act applies on the grounds that the premises consists of a self contained building which is structurally detached; containing two flats held by qualifying tenants, which is not less than two-thirds of the number of flats in the premises, namely 3..."

4. By a counter notice dated 18 November 2013 the Respondent denied the Applicant's entitlement to exercise the right to manage on a number of grounds. Paragraph 1(b) of the notice stated

> "Furthermore, the premises are terraced houses and not structurally detached. A colour photo is attached. Paragraph 2 of the claim form is denied. It is asserted that the premises do not consist of a self contained building or part of a building within the meaning of section 72 of the 2002 Act." On 24 December 2013 the Applicant applied to the Tribunal for a determination under section

84(3) of the Act that it was on the relevant date entitled to exercise the right to manage the premises.

5. Under cover of a letter dated 24 December 2013 a second claim notice dated 26 December 2013 (*sic*) was sent to the Respondent by the Applicant's solicitors (Brethertons). The covering letter stated that it was given "Strictly without prejudice to the validity of our client's Claim Notice dated 5th November 2013." The letter continued "Our client intends to rely on either Claim Notice in the alternative, which it is entitled to do (see, e.g. *Avon Freeholds Limited v Regent Court RTM Co. Ltd.* [2013] UKUT 213 (LC))."

6. The second claim notice was identical to the first save for changes to relevant dates and the substitution of clause 2 of the first notice as follows

> "2. The company claims that the premises are ones to which Chapter 1 of the 2002 Act applies on the grounds that the premises consists of a self contained part of a building; containing two flats held by qualifying tenants, which is not less than two-thirds of the number of flats in the premises, namely 3..... "

7. Thus the material difference between the two notices was that the premises were now described as a "self contained part of a building" rather than a "self contained building which is structurally detached."

8. By a counter notice dated 27 January 2014 the Respondent denied the claim on a number of grounds. He also alleged that the first claim notice was still in force and therefore the second notice could not be relied on, citing section 81(3) of the 2002 Act. By an application dated 03 February 2014 the Applicant applied to the Tribunal for a determination under section 84(3).

Directions

9. On 9 January 2014, a Tribunal judge issued Directions to the parties, in relation to the first application, inviting them to make representations with a view to the matter being decided without the need for an oral hearing, unless requested by a party or parties. By a letter to the Tribunal dated 16 January 2014, Mr Qayyum requested an oral hearing. This was eventually arranged for 13 May 2014, on which date the hearing was duly held at 11.15 a.m. at 5 New York Street Manchester.

10. No Directions were issued in respect of the second application, which, for some unknown reason, appears not to have been processed any further by the Tribunal office following its receipt. However, the parties have made statements and submissions in the course of the proceedings initiated by the first application which relate to issues raised by both notices and applications. The Respondent submits that it has done so in relation to the second claim without prejudice to its submission that the Tribunal is precluded from considering that claim.

The inspection

11. The Tribunal inspected the premises on the morning of 13 May 2014. The property is a mid terraced dwelling-house which has been converted to three flats one on each of the ground, first and second floors. The flats share a common entrance hall and staircase. There is a basement area, for which the landlord has planning permission for conversion to a flat.

The Law

12. Chapter 1 of Part 2 of the 2002 Act provides for a statutory right to manage premises, to which that Chapter applies, which may be exercised by a duly constituted Right to Manage ("RTM") Company.

13. Section 72(1)(a) of the Act provides that one of the conditions that must be satisfied for the Chapter to apply is that the premises consist of a self-contained building or part of a building, with or without appurtenant property. Section 72(2) provides that a building is a self-contained building if it is structurally detached.

14. Section 72(3) of the Act provides that:

"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."

15. Section 72(4) provides that

"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."

16. Section 72(5) provides that

"Relevant services are services provided by means of pipes, cables or other fixed installations."

17. Section 80 specifies the requirements of a valid claim notice, one of which is that the notice 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 (section 80(2))."

18. By section 81(3) "Where any premises have been specified in a claim notice, no subsequent claim notice which specifies – (a) the premises or (b) any premises containing or contained in the premises, may be given so long as the earlier claim notice continues in force."

19. By section 81(4) "a claim notice continues in force from the relevant date until the right to manage is acquired by the company unless it has been previously been withdrawn or deemed to be withdrawn by any provision in Chapter 1 or ceased to have effect by reason of any other provision of that Chapter."

20. Section 84 (counter notices) provides that

(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 tribunal] for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a) 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

(b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

(6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(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.

(8) An appeal is disposed of—

(a) if it is determined and the period for bringing any further appeal has ended, or

(b) if it is abandoned or otherwise ceases to have effect.

21. Section 86 (1) provides that a RTM Company which has given a claim notice in relation to any premises may, at any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice to that effect in accordance with section 86(2).

The issues to be determined and submissions

22. The first issue is whether the second claim notice could be served at a time when the first claim notice had not been withdrawn. If not the second claim notice would be invalid as such. The Applicant's submission that it could rely on both claim notices in the alternative, was first made in its covering letter to the second claim notice, and reiterated in its Statement of Case dated February 10 2014. Mr Justin Bates, who represented the Applicant at the hearing, drafted that statement, in which it was argued that *Avon Freeholds Limited v Regent Court RTM Co Limited* [2013] UKUT 0213 (LC), a decision of the President of the Upper Tribunal (Lands Chamber) (Sir Keith Lindblom), permitted the Applicant to serve two claim notices in the alternative and if the Tribunal were to find that one of them was valid it does not matter which one.

23. At the hearing Mr Elleray, for the Respondent, submitted that *Avon Freeholds* was not authority for the proposition that two notices could be run in the alternative. In that case, which also involved an application under section 84(3) of the Act, a claim notice was served on the landlord on 11 February 2011. The landlord served a counter notice, dated 9 March 2011. On 17 March 2011 a second claim notice was served, under cover of a letter, which stated that the RTM Company acknowledged that the original notice was not valid. (This was because it had specified the wrong latest date; i.e. 11th rather than 13 March 2011) by which a counter notice had to be served) and was being replaced by a fresh notice. The Upper Tribunal held that the first claim notice

".....clearly was invalid. Given that invalidity – which neither party to the appeal denied – there was no bar to the second claim notice being served when it was. The provisions of section 81(3) did not prevent the service of a second claim notice on 17 March 2011".

24. Mr Elleray submitted that the decision is authority for the proposition that if the first notice is clearly invalid and acknowledged as such by both parties there is no bar to a second notice being served because there is no "claim notice" to be withdrawn under section 86(1). He said that in the present case the Applicant had never acknowledged or claimed that the first notice was invalid. Mr Elleray says that if the Applicant thought that the first notice was invalid it should have said so in the absence of withdrawal of that notice. Otherwise, it is for the Tribunal to determine the validity of the Applicant's claim and the second notice falls away by virtue of section 81(3).

25. In response, Mr Bates, on behalf of the Applicant, appeared to change tack from the position set out in the Applicant's statement of case. He now submitted that there had been no need for the Applicant to withdraw its first claim notice because it was invalid and therefore could not be described as a claim notice that continued in force for the purposes of sections 81(3) and 86. He said that if a notice was invalid it was not necessary for the Applicant to have acknowledged as much when the second notice was given. Mr Bates said that the proposition set out in *Avon Freeholds* was derived from the earlier Upper Tribunal decision in *Alleyn Court RTM Company Limited v Abou-Hamdan* [2012] UKUT 74 (LC) where the proposition that there was no need to withdraw an invalid notice was not stated to be dependent on the parties agreeing its invalidity at the time the second claim notice was served. He argued therefore that the reference to such a requirement in *Avon Freeholds* was an unnecessary gloss on the principle established in *Alleyn Court.*

26. The second issue is whether, if the first claim notice were not invalid, the claim should fail or succeed. That is to say whether the RTM Company was entitled to exercise the right to manage.

27. With regard to the Applicant's entitlement based on the first claim notice, Mr Elleray said that this was not established because the stated ground relied on in the notice was clearly unfounded. Mr. Elleray submitted that the description of the premises as a structurally detached building was an incorrect description of the premises. He said that it was patently clear from the plans and an inspection that they are a terraced property in the middle of a terrace of similar properties and therefore they are not a "self-contained building" which is "structurally" detached" as described in the claim notice. Indeed this point was taken in clause 1(b) of the Respondent's counter notice dated 18 November 2013. He submitted therefore that the claim must fail.

28. As explained above, Mr Bates, for the Applicant, submitted that the first notice was invalid because it is clear that the premises are not "structurally detached" as matter of law and fact. He relies on the decision of the Upper Tribunal in *No 1 Deansgate (Residential) Limited v No 1 Deansgate RTM Company Limited* [2013] UKUT 0580 (LC) where it was decided that for a building to be

structurally detached within the meaning of section 72(1) there should be no structural attachment between the building and any other structure. On the facts 235 Upper Brook Street, which is a mid-terraced house converted to flats is clearly so attached. Thus both parties appeared to be agreed that the claim based on the first claim notice should fail. However, they did so for different reasons. Mr Bates agreed on the basis that the first notice was "invalid" because he wished to submit that the second claim notice was properly served and valid. Mr Elleray did so because in his submission, although the first claim notice was not invalid, the claim should nevertheless fail because the claim notice mis-described the nature of the Premises.

29. A third issue, on which Mr Elleray and Mr Bates also made submissions, was whether the claim would succeed were the Tribunal to agree that the first claim notice had been invalid. As noted above, both parties agreed that the Premises were not a structurally detached building. For the landlord Mr Elleray further argued that the premises did not qualify instead, under section 72(3), as a self-contained part of a building. He said it was problematic whether a terrace could be a "building" for the purposes of section 72(3); but even if the "building" was the terrace, number 235 is not "*a* vertical division of the building" (emphasis supplied) because it is in the middle of the terrace and thus constitutes *two* vertical divisions of the building.

30. Mr Elleray, further submitted that sections 72 (3)(b) and (c) were not satisfied because number 235 shares the water supply, via a common pipe, with numbers 237 and 239. It thus does not have independent services. Originally it also shared the supply with number 233 but by a temporary agreement that property has an independent supply. Mr Elleray submitted that if independent supplies were to be provided for numbers 235, 237 and 239 that would be an expensive operation, which could not be carried out without significant interruption in the provision of services to occupiers of the rest of the building. Mr Bates disagreed and said that services are being provided independently. However, even if that were not the case, the works that would be needed to provide such a supply were not difficult and would not involve significant disruption of supply to other occupiers of the rest of the building. He said that the question of cost (the amount of which he disputed) was not relevant.

Discussion

31. Section 81(3) of the Act is clear. It provides that "Where any premises have been specified in a claim notice, no subsequent claim notice which specifies – (a) the premises or (b) any premises containing or contained in the premises, may be given so long as the earlier claim notice continues in force."

32. The premises specified in each of the claim notices are 235 Upper Brook Street. Thus, in the absence of withdrawal of the first claim notice by the Applicant, in accordance with section 86, it is the Respondent's contention that the second claim notice is of no effect because it was given at a time when the earlier claim notice continued to be in force.

33. The Applicant argues that it was not necessary to withdraw the first claim notice because it was not a valid notice and thus it did not need to be withdrawn. It says that section 86 only applies to a *valid* claim notice. The Respondent says that a first claim notice is not invalid unless recognised and acknowledged as such by the RTM Company when it serves the second notice.

34. In both *Alleyn Court RTM Co. Ltd. v Abou*-Hamdan [2012] UKUT 74 (LC) and *Avon Freeholds Limited v Regent Court RTV Co Limited* [2013] UKUT 0213 (LC), the Upper Tribunal (Lands Chamber) held that an invalid claim notice would not need to be withdrawn because it could not be described as a "claim notice". The Tribunal drew guidance from comments made in two cases on claims made under the Leasehold Reform, Housing and Urban Development Act 1993. (*Sinclair Gardens Investments (Kensington) Ltd v Poets Chase Freehold Company Ltd* [2007] EWHC 1776 and *9 Cornwall Crescent London Limited v Kensington and Chelsea Royal London Borough Council* [2006] 1 WLR 1186). In both cases the court held that if a mandatory statutory provision requires the giving of notice in a particular form and if a purported notice fails to comply with that provision the notice will normally have no legal effect. Thus in each case there was nothing to prevent the claimant tenants, who accepted that their notice was invalid, serving a second and valid notice despite not having withdrawn the first "notice". The relevant provisions of the 1993 Act mirrored those in the 2002 Act.

35. In *Alleyn Court* the reason the RTM Company considered the first notice to be invalid was that copies had not been given to any of the qualifying tenants in accordance with section 79(8) of the 2002 Act. Claim notices were served on 9 and 16 December 2009. They were in identical form. On 13 January 2010 the landlord served two counter notices having written to the RTM Company's solicitors on 9 January 2010 asking them to withdraw the first notice or confirm that it was superseded by the second. It was only on 14 January 2010 that the solicitors replied to confirm that the second notice superseded the first. The Tribunal held that the procedural irregularity in respect of the first notice did not render the claim notice invalid. The notice was "valid on its face" and the failure to serve copies on the qualifying tenants was an omission that could be rectified at a later stage. Thus the first claim notice stood.

36. In *Avon Freeholds* the claim notice issued on 11 February 2011 specified a date for service of a counter notice, which was earlier than one month after the relevant date for response by counter notice under section 84 of the 2002 Act. It thus failed to comply with section 80(6) of the 2002 Act. On 9 March 2011 the landlord served a counter notice denying the claim on the basis that the notice was invalid by virtue of the above defect. On 17 March 2011 the RTM Company issued a second claim notice, which was received on 18 March 2011. A covering letter acknowledged that the original notice was invalid and stated that it was enclosing a "fresh Claim Notice addressing the issue." The landlord's counter notice disputed the claim on several grounds including the contention that the second claim notice was not valid because it was served at a time when the first notice was in force. The LVT accepted

that the first notice was invalid and on appeal the Upper Tribunal endorsed that decision. The President, Sir Keith Lindblom, held that the first claim notice was clearly invalid and thus did not need to be withdrawn by the RTM Company before serving a second notice.

37. The Tribunal agrees with Mr Elleray that *Avon Freeholds* is not authority for the proposition that a RTM Company can run two claim notices in respect of the same premises at the same time before the Tribunal. Only if the first notice is invalid can the second notice be relied on in circumstances where the first notice was not withdrawn at the time the second notice was served. Mr Elleray says that the first notice was not invalid because it had never been acknowledged as such (by contrast with *Avon Freeholds*). Mr Bates said that such an acknowledgment is unnecessary.

38. With respect to both Mr Bates and Mr Elleray, the Tribunal considers that the matter of acknowledgment is beside the point. The Tribunal finds that the critical question is not what the parties had agreed or acknowledged as to the validity of the claim notice but whether on the facts the notice was valid or not as a matter of law when the second notice was given. In *Alleyn* it wasn't and in *Avon Freeholds* it was. The difference was that in the first case the claim notice was "valid on its face" and the fact that it had not been copied to qualifying leaseholders did not affect the validity of the notice. In *Avon Freeholds* it was invalid (on its face) because the requirement in section 80(6) that the date specified as the latest date on which a counter notice may be served must not be less than one month from the date on which the claim notice was given is a mandatory requirement. Thus if a notice specifies an earlier date it is invalid and can be ignored when serving a second valid notice. Of course in most cases the RTM Company will acknowledge that the first notice is invalid because it wishes to serve a second valid notice and explain why it has done so. In the present case this was not done because the Applicant wrongly believed that it could serve two notices and rely on them in the alternative.

39. The fundamental issue therefore is what defects in a claim notice will render it so flawed as to be invalid? The Tribunal finds that such a defect must amount to a failure to provide what is required by the claim notice, as exemplified by the facts in *Avon Freeholds*. Section 80(2) of the Act provides that the claim notice 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". This is clearly a reference to section 72 of the 2002 Act.

40. The first claim notice undoubtedly specified the premises by giving their address as 235 Upper Brook Street, Manchester (being, as noted above, the converted terraced property which was the subject matter of the claim). The notice also contained a statement of the grounds on which it is claimed that that they are qualifying premises viz; "the premises consists of a self contained building which is structurally detached; containing two flats held by qualifying tenants, which is not less than two-thirds of the number of flats in the premises, namely 3..." The question is whether claiming the premises to be a structurally detached building, which all concerned are agreed is patently not the case, is fatal to the validity of the claim notice.

41. Had the notice simply claimed that section 72 was satisfied because the premises consisted of a self-contained building *or* self-contained part of a building the notice would clearly not have been invalid. The dispute would then have centred on whether the premises qualified under either limb. So is a claim that they qualified because they satisfied the first limb without mention of the second limb fatal to the validity of the notice? Or is it the case that provided a ground has been stated, it would be a matter for the Tribunal as to whether the premises qualified under section 72? The irony in the present case is that Mr Bates argues that the first claim notice is invalid, but if that contention fails it becomes, as Mr Elleray contends, a matter for the Tribunal as to whether the claim should fail or succeed.

42. The Tribunal finds that the first claim notice was valid and in force at the time of service of the second claim notice and therefore the second notice was invalid. The mis-description of the premises as being structurally detached does not invalidate the claim notice. The Tribunal is satisfied that the statement in the first claim notice that 235 Upper Brook Street qualified as a structurally detached property, albeit wrong, did not mislead anybody. The subject matter of the claim did not extend beyond that part of the terrace known as number 235 and which contained three flats. Indeed the respondent's counter notice denied that the premises constituted a self-contained building *or part of a building.*

43. The Respondent argues that in such circumstances the claim must nevertheless fail. This is said to be because the premises clearly do not qualify as a structurally detached building as claimed in the first claim notice and the Applicant is precluded from arguing that the premises qualify as a self contained part of a building, as claimed in the second notice, because that second claim notice is invalid. Mr Elleray submitted therefore that the issue of whether the premises were a self contained part of a building was not before the Tribunal. However, he did advance argument that the premises did not so qualify, albeit without prejudice to his main submission.

44. This then raises the question of whether an Applicant may succeed on the basis of the initial claim notice despite the fact that it claimed as the ground on which the premises qualify that they were structurally detached. The Tribunal has already determined that this fact did not invalidate the notice as such. But does this mean that evidence as to the nature of the premises as a self contained part of a building is precluded from consideration? The Tribunal holds that it does not. In *Albion Residential Limited and others v Albion Riverside Residents RTM Company Limited* [2014] UKUT 0006 (LC) a claim notice was served which asserted that the premises as described "consist of a self contained building". The Tribunal proceedings and subsequent appeal concerned the identification of the premises and the issue of whether they were structurally detached. However, in his judgment Mr Martin Rodger QC, the Deputy President of the Lands Chamber, stated (at para. 25) "It was no part of the case advanced on behalf of the Respondent that the Building could be regarded as a self-contained part of a building within section 72(3) of the 2002 Act and no evidence was adduced going to that question." At para. 40 he also stated "It has never been suggested by

the respondent in this application that the Building might alternatively qualify as a self contained part of a building for reasons which were not explored before us in any detail." It is clear therefore that the judge did not consider that a failure to specify such a contention in the claim notice would have been fatal to an argument being advanced during the proceedings as to the premises qualifying as a self contained part of a building.

45. The issue therefore becomes one of whether the premises are able to qualify as a self contained part of a building. Mr Elleray says that the terrace is not a building and refers to the OED definition of a building as a "structure with roof and walls". He says that a terrace is not a building but a block of buildings. However, he says that the part in question does not qualify in any event because, even if the terrace is a building, the premises do not contain a vertical division as required by section 72(3)(a) of the 2002 Act. The Tribunal does not agree. In *Craftrule Ltd. v 41-60 Albert Palace Mansions (Freehold) Ltd* [2011] EWCA 185 the Court of Appeal held that a middle part of a terrace of 160 flats, which part comprised 20 flats, could qualify for collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 as a self contained part of a building, which term was defined in exactly the same way as in the right to manage Chapter of the 2002 Act. Thus vertical divisions between the part of the building over which the right is claimed and the adjoining parts on either side will suffice.

46. The next issue is whether the arrangements for the water supply to the Premises were such that section sub-paragraph (4)(a) or (b) of section 72 is satisfied. Mr Elleray for the Respondent says that the pipe that provides the water supply to 235 also supplies 237 and 239 and an independent supply could only be provided by carrying out of works likely to result in a significant interruption in the provision of that service for the occupiers of the other properties. He submits therefore that section neither 72(4)(a) nor (b) of the 2002 Act is satisfied. Mr Bates says that the supply to the Premises is independent of the rest of the building. However, in so far as numbers 237 and 239 may depend on that supply he submits that it could easily be adapted without significant interruption to those other occupiers so as to ensure that it was independently provided.

47. The Tribunal finds that there is an independent mains supply of water to 235 via the pipe in the basement of 235. In so far as any neighbouring properties take a feed from this supply and are controlled by a stop cock in the basement of 235 the Tribunal finds that this does not mean that the water supply to 235 is not provided independently of that to those neighbouring properties. Thus section 74(2)(a) of the 2002 Act is satisfied. However, even if this arrangement means that it is not so satisfied the Tribunal agrees with Mr Bates that an independent supply could be provided to the Premises without significant interruption in the provision of a supply to those neighbouring properties, thereby satisfying section 72(4)(b) of the 2002 Act. This was supported by the expert report prepared by Thomson Associates for the Applicant and placed in evidence. The Tribunal was not persuaded by Mr Elleray's submission that such works would amount to a costly and significantly disruptive process.

48. The Tribunal therefore concludes that the Applicant may rely on the first claim notice and that the right to manage may be exercised by the Applicant in respect of the Premises 235 Upper Brook Street Manchester M13 0HL which are a self contained part of a building within the meaning of section 72 of the 2002 Act.

49. Finally, the Respondent sought an assurance that if the claim were to succeed the RTM Company could not insure Flat 1 or the basement of 235 Upper Brook Street. The Tribunal declines to give such an assurance on the basis that this is not part of its remit and would refer the Respondent to the relevant provisions of the 2002 Act.