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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : **MAN/00BY/LRM/2014/0001**

Property : **Abbeymill Court, 107 High Street,
Wavertree, Liverpool L15 8JS**

Applicant : **Abbeymill Court Right to Manage Limited**
Representatives : **Bennett & Co, Solicitors**

Respondent : **Mr C Munro**
Representative : **Goldsmith Williams, Solicitors**

Type of Application : **Commonhold and Leasehold Reform Act
2002 – section 84(3)**

Tribunal Members : **Judge J Holbrook
Mr J Faulkner FRICS**

Date and venue of Hearing : **Determined without a hearing**

Date of Decision : **19 March 2014**

DECISION

DECISION

Abbeymill Court Right to Manage Limited was not on the relevant date (1 November 2013) entitled to acquire the right to manage the premises known as Abbeymill Court, 107 High Street, Wavertree, Liverpool L15 8JS.

REASONS

Background

1. On 1 November 2013 (“the relevant date”) the Applicant gave a claim notice under section 79 of the Commonhold and Leasehold Reform Act 2002 (“the Act”) to the Respondent. The premises specified in the claim notice were Abbeymill Court, 107 High Street, Liverpool L15 8JS (“the Premises”).
2. The Respondent is the landlord under seven long leases of apartments in the Premises and, on 9 December 2013, he gave the Applicant a counter-notice under section 84 of the Act alleging that it was not entitled to acquire the right to manage the Premises on the relevant date. In particular, the counter-notice alleged that the Premises are not a self-contained building or part of a building.
3. On 28 January 2014, an application was made to the Tribunal under section 84(3) of the Act for a determination that the Applicant was on the relevant date entitled to acquire the right to manage the Premises.
4. On 30 January 2014, the Tribunal directed that this matter should be dealt with upon considering the written representations of the parties following an inspection, but without an oral hearing (unless a hearing should be requested). Written representations were subsequently received from each party, but neither party requested a hearing. The Tribunal therefore convened to determine the application on 17 March 2014.

Inspection

5. The Tribunal made an external inspection of the Premises at 10:00 am on 17 March 2014. Also present at the inspection were Mr Munro (the Respondent); Mr Denman (the Respondent’s solicitor); and Mr Holmes (the Applicant’s solicitor).
6. The Premises form part of a purpose-built development of 14 flats and two houses constructed about five years ago. The flats are comprised within a single building (“the Building”) of modern brick construction over four storeys with a pitched tiled roof and a timber frame and concrete floors. Although the Building abuts the adjacent property to the west, it is a self-contained building.
7. The Building fronts High Street. Behind the Building is a residents’ car park – and the two houses are situated to the rear of the car park. Access from High Street to both the car park and the houses is by means of a gated underpass

through the centre of the Building at ground floor level. There is an uncovered atrium above the central part of the underpass.

8. Viewed from High Street, it is apparent that the Building consists of two halves, centred on the mid-point of the underpass. The two halves of the Building are essentially mirror images of one another. To the left of the underpass, two entrances give access to seven of the apartments (known as 105 High Street). To the right of the underpass, two further entrances give access to the other seven apartments (known as 107 High Street) – and it is this part of the Building which comprises the Premises.
9. Although the Tribunal did not inspect the internal arrangement of the accommodation within the Building, the parties agreed that the salient features are as follows:
 - 9.1 At ground floor level, there are two apartments on either side of the underpass.
 - 9.2 At both first and second floor levels, there are also two apartments on either side of the underpass. However, a part of each apartment “overflies” the underpass. The internal wall which divides the apartments which are accessed from the left of the Building from the apartments which are accessed from the right is positioned directly above the mid-point of the underpass.
 - 9.3 At third floor level, there is just one apartment accessed from the left of the Building and one apartment accessed from the right. A part of each of these apartments also overflies the underpass. However, these particular apartments are constructed so as to overlap to the front and rear of the atrium – the effect is that part of the living accommodation for the apartment on the left extends to the right beyond the mid-point of the underpass at the front of the Building. Likewise, part of the living accommodation for the apartment on the right extends to the left beyond the mid-point of the underpass at the rear of the Building.

Law

10. A right to manage company may acquire the right to manage premises only if the premises concerned are premises to which Chapter 1 of Part 2 of the Act applies. Section 72 of the Act provides:
 - (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) ...
 - (c) ...
 - (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) *...*

11. Section 84(3) – (6) of the Act provides that:

- (3) *Where the RTM company has been given one or more counter-notices ... the company may apply to the appropriate 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 ... 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.*

Conclusions

12. The Premises are a part of a building (i.e., the Building). However, it is clear that the Premises are not a self-contained part of that Building (for the purposes of section 72(3) of the Act) because they do not constitute a vertical division of the Building. This is because of the overlapping nature of the apartments on the third floor (described at paragraph 9.3 above).
13. There is apparently an issue between the parties as to whether there is a defect in the drafting of the leases of the third floor apartments: in particular, whether the leases recognise the overlapping nature of the two apartments, or whether they were drawn up on the incorrect assumption that the physical division between them matches that of the first and second floor apartments. We do not consider that this dispute affects the outcome of the issue which we must determine. Section 72 of the Act requires us to consider the structural reality of the Premises, and the reality is that they include the entirety of one of the third floor apartments as constructed, part of which overflies parts of the Building which are not included within the Premises. Thus, irrespective of any defect in the lease of that apartment, the Premises cannot be said to constitute a vertical division of the Building.
14. We also find that the structure of the Building is such that the Premises could not be redeveloped independently of the rest of the Building. This is not only because the Premises do not constitute a vertical division of the Building, but also because the two halves of the Building depend upon each other for mutual support due to the existence of the underpass.
15. Finally, whilst not now a determinative factor, we record for the sake of completeness that the evidence did not appear to support the Respondent's assertion that services provided for occupiers of the Premises could not be provided independently without carrying out works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the Building.