

649



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

**Case reference** : **LON/00BG/LRM/2018/0021**

**Property** : **Wharfside Point South, 4 Preston Road, London E14 9EX**

**Applicant** : **Wharfside Point South RTM Company Limited**

**Representative** : **Realty Law**

**Respondent** : **CFIF Nominee Limited**

**Representative** : **Northover Limited**

**Type of application** : **Application in relation to the denial of the Right to Manage**

**Tribunal members** : **Judge Pittaway  
Mrs E Flint FRICS  
Mr J Francis QPM**

**Date and venue of determination** : **24 October 2018 10 Alfred Place, London WC1E 7LR**

**Date of decision** : **28 November 2018**

---

**DECISION**

---

## Decisions of the tribunal

The tribunal determines that the Applicant will acquire the Right to Manage the property known as Wharfside Point South, 4 Preston Road, London E14 9EX on the "acquisition date" as defined in section 90 of the Act.

## The application

1. The tribunal has received an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the "Act")
2. By a claim notice dated 2 June 2018 the Applicant gave notice that it intended to acquire the right to manage the property known as Wharfside Point South, 4 Preston Road, London E14 9EX (the "Property") on 17 October 2018.
3. By counter notice dated 13 July 2018 the Respondent disputed the claim alleging that by reason of section 80 of the Act on 2 June 2018 the applicant was not entitled to acquire the right to manage the premises specified in the notice.
4. Directions were made dated 28 August 2018 for this matter to be considered by way of a paper determination unless either party requested an oral hearing. The respondent requested an oral hearing on 28 September 2018. The directions provided for the application to stand as the applicant's statement of case with the respondent making a statement in reply and the applicant having an opportunity to make a supplemental reply.

## The respondent's case

5. The respondent made written submissions (received by the tribunal on 20 September 2018) opposing the right to manage. At the hearing Mr Bates of counsel on behalf of the respondent reiterated and expanded upon those submissions.
6. In his submission no notice claiming the right to manage had been validly given to the respondent.
  - (a) In particular, in order to be valid, a claim notice under section 80(2) of the Act 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"*.
  - (b) By section 72(1)(a) of the Act the premises must consist of a self contained building or part of a building. Mr Bates submitted that

these two categories are distinct and that it is critical for the claim notice to make it clear into which category the premises the subject of the claim notice fall, as the qualifying tests are different, depending upon whether a building is self-contained (when section 72(2) provides it need only be shown to be structurally detached) or a self contained part of a building (when by sections 72(3) –(5) it must be shown to be capable of vertical division, capable of independent redevelopment and with separate service media, or media that can be made independent without causing significant interruption).

- (c) In Mr Bates' submission the distinction is important here as it results in the applicant either having to show that the drainage system is not structurally attached to Wharfside Point North; or in the applicant having to show that the shared drainage system can be made independent without significant interruption. This is not a small matter. Once the RTM company elects which of the two limbs it seeks to rely on the respondent can commission expert evidence. It would be cost inefficient to commission this evidence for both alternatives.

7. Mr Bates referred to, but dismissed, two possible saving powers.

- (i) Under section 81(1) of the Act a claim notice is not invalidated by an inaccuracy. In his submission a failure to state the type of building is an omission, a complete failure to comply with a prescribed requirement. It is not an inaccuracy in a particular, which is to what the saving provisions of section 81(1) are directed.
- (ii) By reason of the decision in *Elim Court RTM Co Ltd v Avon Freeholds Limited* [2017] EWCA Civ 89 ("*Elim*") an error of "critical importance" invalidates the notice; whereas one of "secondary importance" may not. Mr Bates submitted that the error here is of critical importance; referring to the distinction between failure to comply with statutory requirements and failure to comply with the requirements imposed by statutory instruments made in *Elim*.

### **The Applicant's submissions in reply**

- 8. Mr Loveday on behalf of the applicant made the following submissions in the applicant's supplementary statement of case and at the hearing, and as also set out in his skeleton argument.
- 9. First he considered whether the claim notice satisfied the requirements of section 80(2). In his submission it did.

- (i) The applicant should not be criticised for having used the exact wording of section 72(1) i.e. "*building or part of a building*".
  - (ii) Section 80(2) does not require the claim notice to particularise whether the premises are a building or part of a building; a general statement is sufficient. The object of section 80(2) is to ensure the recipient is aware of the premises claimed and the basis of the claim and this is achieved by the formula used in the claim notice.
  - (iii) Mr Loveday distinguished the various verbs used in the eight separate requirements of section 80 (2), pointing to the fact that to the extent the section says anything about the "building" the notice is required to "contain a statement". This is vaguer than the requirement, for example, to "specify" something, which appears elsewhere in the section. All that is required is for the claim notice to contain a statement about the "grounds" on which the claim is made.
  - (iv) The scheme of the Act does not suggest that legal issues, such as whether the premises are a building or a part of a building have to be worked out in advance. The Act contemplates that such issues can be resolved by the tribunal.
  - (v) Statutory requirements to state "grounds" are common and it is not generally necessary to particularise statutory grounds beyond giving the words of the statute. For example, notices under section 25 Landlord and Tenant Act 1954 may include several grounds; the inclusion of one does not invalidate the inclusion of others.
10. In support of his submissions Mr Loveday referred the tribunal to the decision in *Pineview Ltd v 83 Crompton Street RTM Co Ltd* [2013] UKUT 0598 (LC) ("*Pineview*"), insofar as it related to appurtenant property. In that case the claim notice, which was held to be valid, referred to the premises consisting "*of a self-contained building or part of a building*". There the tribunal held that the object of section 80(2) was to ensure that the recipient of the notice was aware of the premises themselves and the basis on which the claim was asserted, and that the claim notice was not required to be comprehensive. It should contain a statement of grounds, rather than full particulars of the detail of the claim. It was acknowledged that the cautious draftsman would seek to keep all options open by framing the claim notice in the most general terms.
11. The respondent has not suffered the alleged, or any, detriment as a result of the form of the claim notice and the applicant could and may still commission expert evidence which considers whether the premises satisfy section 72(2) or 72(3) or (4).

12. If for any reason the claim notice does not comply with section 80(2) Mr Loveday submitted that this did not invalidate the notice; many defects in statutory notices are not fatal.
13. Mr Loveday referred the tribunal to the recent decision in *Elim* and also that in *Cheerupmate2 Ltd v Calce* [2018] EWCA Civ 2230 ("*Cheerupmate*"). In his submission the failure to identify which of the two routes to qualification is not fatal because
  - (i) it is not of "critical" importance (contrary to Mr Bates' submission);
  - (ii) the alleged requirements are not particularised in section 80(2);
  - (iii) by reason of sections 81(3) and (4) the server of the impugned notice could not immediately serve another;
  - (iv) the discrepancy between the claim notice and the statutory form lies not in the information provided but in the clarity of the information;
  - (v) the claim notice contained all the information required by section 80(2); and
  - (vi) the requirement for a statement of grounds is subordinate to the purpose of the notice.
14. Further, or alternatively, Mr Loveday submitted that if the notice was invalid the applicant relies on the provisions of section 81(1). Following the decision in *Assethold v 14 Stansfield Road RTM Company Ltd* [2010] UKUT 262 (LC) the alleged requirements are "*an inaccuracy in...particulars required by or by virtue of section 80.*" It follows that the notice is not invalidated by any such failure.
15. Mr Loveday touched on the fact that the counter-notice did not specify section 72 as a provision relied on, as required by Right to Manage (Prescribed Particulars and Forms) (England) Regs (SI2010/825) Schedule 3

### **Reasons for the tribunal's decision**

16. The tribunal accept Mr Loveday's submissions that the claim notice satisfied the requirements of section 80(2), and his reasons for so submitting set out above.
17. The tribunal accept Mr Bates' submission that the decision in *Pineview* related to appurtenant property but consider that what the tribunal said

in that decision applies equally to buildings and part of buildings. In that decision the tribunal noted that the notice claim referred to building and part of buildings and it found the notice claim valid.

18. The tribunal however also note that the decision in *Pinewood* made the point that no universal rule can be formulated (at paragraph 65). Given that the property here is a free standing building and the only possible issue is whether or not there is shared drainage the tribunal is satisfied that the recipient of the notice was aware of the premises themselves and the basis on which the claim was asserted.
19. The respondent has not suffered the alleged, or any, detriment as a result of the form of the claim notice and the applicant could and may still commission expert evidence which considers whether the premises satisfy section 72(2) or 72(3) or (4).
20. The tribunal note that the counter-notice did not specify section 72 as a provision relied on, as required by Right to Manage (Prescribed Particulars and Forms) (England) Regs (SI2010/825) Schedule 3
21. The tribunal finds that the Applicant acquires the Right to Manage the Property on the "acquisition date" as defined in section 90 of the Act.

**Name:** Judge Pittaway

**Date:** 28 November 2018

### **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).