



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

Case reference : LON/00AH/LRM/2020/0031

Property : Langham Court, 1a Suffolk Road, South
Norwood, London SE25 6BF

Applicant : Langham Court (SE25)RTM Company
Limited

Representative : Ms. Peishu Lin

Respondent : Mr Ajay Marria

Representative : Mr John Galliers

Type of application : Application in Right to manage

Date of hearing : 29 March 2021
Tribunal member(s) : Judge Daley
Mrs A Flynn MRICs

Date of decision : 11 May 2021

DECISION

This has been a remote video hearing. The form of remote hearing was **V:CVPREMOTE**. A face-to-face hearing was not held because it was not practicable, and all issues could be determined at a remote video hearing. The documents referred to are within the electronic bundle, the contents of which have been noted and taken into account by the Tribunal. The order made is set out at the end of the reasoning

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant does not have the Right to Manage.

The application

1. This was an application to acquire the right to manage Langham Court 1A Suffolk Road, London SE25 ("the 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.

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 Section 72 (6) Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002, Schedule 6, paragraph 1 on the grounds that the non-residential part of the premises exceeded 25 %.

The Hearing

4. At the hearing the Applicant was represented by Ms Lin, the Respondent was represented by Mr John Galliers of BLR Property Management Company.
5. In her written submissions and in her evidence, Ms Lin set out as follows:
: The building is located in South Norwood London and is located at the corner of two roads. The entry to Langham Court is on 1A Suffolk Road, London, SE25 6BF. Langham Court was completed in 2014, it contains fourteen flats and 2 shop units. Of the fourteen flats, seven flats have their own designated parking spaces; six flats are built with own balconies. and underneath is the retail unit -Tesco Express on 1-9 South Norwood Hill, South Norwood, London SE25 6AA.
6. There is also a smaller commercial unit at the rear of the premises at the rear of the property inside the electric parking gate. Ms Lin informed the Tribunal that the smaller commercial unit had been occupied as a residential dwelling in 2015, as a dwelling for foreign workers, Ms Lin asserted that this had been occupied in this way for more than 2 years.
7. Ms Lin stated that she was aware of this as the tenants within the property had observed the occupation of the premises for at least two years.

8. In her Statement of Case Ms Lin stated that -: “On 5/1/2021, I had to report to Croydon Council – Housing Standard & Enforcement Team regarding the smaller shop unit’s continued use for residential purposes. Despite multiple leaseholders’ endeavour to inform Mr Marria that this unit should not be lived in due to its substandard quality as a dwelling, the foreign workers kept staying overnight. She stated that the leaseholders had in the past called the police as the occupiers had damaged the gate to the car parking.
9. Ms Lin also sought to rely on the Landlord’s intention as he had applied for planning permission to convert the small commercial unit into a one-bedroom flat in 2017. His application for Planning Permission had been refused by the Local Authority. However Ms Lin asserted that this part of the building should be considered as residential.
10. Ms Lin also referred to the fact that the unit had sought and been granted planning permission under class A1 for the premises to be used as Gym, and was let subject to contract, however, she stated that this had only happened after the leaseholders had claimed the Right to Manage. She stated that the company who were supposedly taking a lease of the property, was a dormant company. Ms Lin stated that the rent was £30,000 per annum. She was sceptical about the viability of the premises being rented out, and was concerned that this might be used as a device to defeat the right to manage claim.
11. Ms Lin also considered that other parts of the building should be considered as residential, such as the parking used by the leaseholders, the balconies associated with the flats and the storage areas. She also considered that the areas in the Tesco’s used by the staff for their welfare needs, such as the rest room should also be considered as part of the residential premises.
12. In her evidence Ms Lin referred to a detailed measurement based on the original architects drawing which was carried out on 21 January 2021, by Martin Dobson and Dobson and Poole. She provided details of measurement for the building, which included the basement and ground floor. This included the commercial units. The basement was calculated as having 89.8 square metre,(residential) and 171.0 square metres (commercial). In respect of the ground floor the measurements were 238.4 (residential) and 311.3 (commercial). In the report he stated that taking into account the staff welfare area attached to the Tesco, the residential part of the building comprised 83.8%.
13. Ms Lin submitted that it was correct to include these areas, as Paragraph 3 of Schedule 6, which permitted any property of the premises used or intended to be occupied for residential purpose. Ms Lin stated that this included the Basement Boiler room as Ms Lin submitted that this was for the use of the leaseholders

14. On behalf of the Landlord, Mr Galliers did not agree with the Applicant's submissions, or agree that the surveyors had calculated the residential parts of the premises in accordance with the 2002 Act. He stated that if the building was measured in compliance with the requirements under the 2002 Act, then the Applicants did not meet the requirements to exercise the right to manage.
15. He submitted that with the percentages of Residential parts of the building were 71.04% and the commercial part of the building was 28.98%, disregarding hardstanding and external areas in the way required by the 2002 Act.
16. In his submissions he stated that:- "...The Applicants have referred to a planning application for change of use of this unit to residential which was refused on 15th Dec 2017. The Applicants contention is that the intended use of the premises is residential. However, this contention is at odds with the evidence the Applicant has provided proving that use of the premises for residential purposes would be in contravention of The Town and Country Planning Act 1990. The two cases referred to in the Applicant's statement, Westbrook Dolphin Square Ltd v Friends Life Ltd [2015] 1 W.L.R. 1713 and Q Studios (Stoke) RTM Co Ltd v Premier Ground Rent No. 6 Ltd [2020] are not relevant to this application as in both cases, the use of the premises for residential purposes did not contravene The Town and Country Planning Act 1990. At the date the Claim Notice was served in September 2020, number 9 South Norwood Hill was unoccupied, under offer and the intended use was as a commercial gymnasium."
17. He stated that these arrangements were in place prior to the Right to Manage Application, he further relied upon the refusal of planning permission for the change of the building to residential use he had also included the terms of the lease and informed the Tribunal that the completion of the lease has been delayed due to Covid 19 restrictions, but the intended use of the premises remains the same.
18. He stated that this was part of the commercial space and should be excluded for the purposes of calculating the residential areas, in respect of the - Tesco Retail Unit, he also stated that the Applicant in their case had sought to include the welfare area of the Tesco, and that this approach was incorrect as the whole of the larger retail unit has planning use Class A1. He stated that Residential use is not permitted in any part of the retail unit and that by law Tesco was required to provide welfare facilities for its staff.
19. Mr Galliers stated that the Applicant had also included the common parts within their calculations, and that in accordance with the 2002 Act these parts of the premises should be disregarded. Mr Galliers also did not accept that the external car park should be included in the

calculation, he submitted that there was no reference in Schedule 6 to any external areas being included in the calculation.

20. In his statement of case he submitted that "...The letter from Dobson and Poole dated 1st February 2021 states in the first paragraph that their measurements are of the gross external floor areas. This is incorrect as Schedule 6 refers only to the internal floor area. However, even using the measurements provided by Dobson and Poole, once the adjustments are made to comply with Schedule 6, the proportions are 28.96% commercial space and 71.04% residential space."

The Tribunal's decision and the Reason for the Decision

21. The Tribunal considered carefully the written and oral submissions of the parties. In respect of Schedule 6 of paragraph 1 (2) of the 2002 Act, the Tribunal noted that a part of the premises was to be considered as non-residential if it was neither occupied, or intended to be occupied for residential purpose.
22. The Tribunal in applying this test has given residential its ordinary and common sense meaning, of "a person's home", the fact of living in a particular place. Using the ordinary and normal meaning, it is clear to the Tribunal that the Tribunal Welfare Area within Tesco, is excluded from the residential part of the building and should be considered "Non-Residential" For this reason we have excluded the welfare area which comprising 28.70 square metres from the calculation.
23. The Tribunal has also applied the same test to the boiler/plant room, of the premises, we have also considered in respect of this area whether it can be said that this area is being used in conjunction in conjunction with a particular dwelling. The Tribunal has considered the photographic evidence, it has noted that this area appears to have been used as an informal storage area, and at best can be considered a communal space, as it is not used in conjunction with a particular area, Accordingly the Tribunal considers that the boiler/plant room is non-residential.
24. In respect of the Car Park, the Tribunal noted that Schedule 6 1 (3) of the 2002 act refers to garages or parking space which is part of the premises. We consider that such a car park needs to be integral to the premises, such as an underground car park. The car parking in this premises is not "part of the premises." Accordingly the Tribunal considers that this is not part of the residential premises.
25. In respect of the non- occupied commercial units, we considered the cases relied upon by the Applicant in particular Westbrook Dolphin

Square -v- Friends Lift Ltd [2015] 1WLR 171, and Q Studios (Stoke) RTM Company Limited -v- Premier Ground Rent No6 (2020). The Tribunal considers that these cases can be distinguished from the subject property. These cases involved student dwelling; however the Tribunal considers that the distinct difference in the subject case is that the commercial unit was never constructed or intended to be used for residential purposes. It was noted that factually they had been occupied as sleeping accommodation in the past, although the extent and the duration of the occupation is not agreed by the parties.

26. The Tribunal noted however that planning permission had been refused by the council to convert the premises into residential accommodation due to the unsuitability of the unit. No conversion had taken place and the photographs provided, show that there is a lack of cooking facilities and facilities and or bathing facilities within the premises. The Tribunal considers that this unit was not intended to be residential, and that at the time of the notice for the right to manage it was no longer occupied in that way. For this reason the Tribunal is not satisfied on a balance of probabilities that this unit was residential.
27. The Tribunal consider that the Application for the Right to Management must fail as more than 25% of the premises is non-residential.
28. The Tribunal has in the annexe included the calculated floor area of the premises and its finding in respect of each of the areas in dispute.

Costs

29. 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.”

Name:

Date:

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).

Appendix one

Gross External Areas Description	Area Square metres	Parties position	Percentage of Total of the premises	Tribunal's findings
Flats 1-14	1558.9	Agreed as Residential	0.59	As per agreed by the parties
Tesco Ground Retail - Unit 1	316	Parties agree as commercial	0.12	As per agreed by the parties
Tesco LG (Stock/cold store) Welfare	114 28.70 Total:142.70	Disputed status	0.05	The Tribunal finds that this part of the premises is not residential
Car Park (all) Boiler/Plant ditto Communal	268.40 102.90 88.89 Total:460.19	Disputed status	0.17	The Tribunal finds that this part of the premises is not residential And must be excluded from the calculation
Commercial Unit 2	176.91	Disputed status	0.07	The Tribunal finds that this part of the premises is not residential And must be excluded

				from the calculation
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Total Residential

Total Non-Residential