FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/LRM/2020/0024** **P: PAPERREMOTE**
Property	**:**	**Sheldon House, 1 Baltic Place, London N1 5AQ**
Applicant	**:**	**Sheldon House RTM Company Limited**
Representative	**:**	**Jobsons Solicitors Limited**
Respondents	**:**	**Long Term Reversions (Torquay) Limited (1)** **Mr Jason Spearing (2)**
Representative	**:**	**Pier Management Limited (for the First Respondent)**
Type of Application	**:**	**Section 84(5) Commonhold and Leasehold Reform Act 2002** **Right to Manage**
Tribunal Members	**:**	**Judge Donegan** **Mrs Anthea Rawlence MRICS (Valuer Member)**
Date of Paper Determination	**:**	**09 February 2021**
Date of Decision	**:**	**16 February 2021**

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face to face hearing was not held due to current lockdown restrictions and all issues could be determined on paper. The documents that the Tribunal was referred to are in a bundle of 463 pages, the contents of which have been noted.

Decision of the Tribunal

The applicant was not entitled to acquire the right to manage ('RTM') Sheldon House, 1 Baltic Place, London N1 5AQ ('the Property') on 16 May 2020.

The background and application

1. The application concerns an RTM claim under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'). It relates to the Property, which is a mixed-use development comprising both residential flats and commercial units; all of which are let on long leases. The members of the applicant company are leaseholders of some of the flats and units, the first respondent ('R1') is the freeholder and the second respondent ('R2') is the head-leaseholder of Unit 4. R1 was previously called Regis (Ground Rents) Limited.

2. The Property was originally constructed in about 2005, as a self-contained four-storey building with 11 office units. R1's predecessor, Datagrove Limited, subsequently built flats on two additional floors and extended the front of the building. They also changed part of the use of the third and four floors to residential, resulting in a total of 13 flats. R1 purchased the freehold in June 2010. Unit 4 was converted into two flats in or about 2013. Unit 6 was similarly converted, in or about 2015. R1 consented to both conversions.

3. The determination bundle included an official copy of the freehold register dated 22 June 2020. There are a total of 29 registered leases in the schedule of notices of leases; two relate to parking spaces and one relates to the roof surface and airspace. The other 26 leases relate to Flats 1-14 and Units 1-10. There are two leases of Unit 4 and two leases of Unit 6. The applicant and R1 both referred to Flat 15 in their statements of case but this is not detailed in the schedule.

4. The applicant gave a claim notice to R1, pursuant to section 79 of the 2002 Act, on 16 May 2020. This is the "*relevant date*" for the purposes of subsection (1). The schedule to the notice listed the qualifying tenants who were members of the company; being the leaseholders of Flats 1, 5, 6, 8, 9 and 15 and Units 3, 5, 6, 6A, 7, 8, 9 and 10.

5. R1's representative, Pier Management Limited ('PML'), served a negative counter-notice on the applicant on 26 June 2020. Paragraph 1 reads:

"We allege that, by reason of section(s) 75 (3) and 79 of the Commonhold and Leasehold Reform Act 2002, Sheldon House RTM Company Limited ('the company") was not entitled to acquire the right to manage the premises specified in the claim notice, more specifically:

- *The premises consist of 10,000 sq' (sic) of commercial premises*
- *The tenants of the commercial units are not qualifying tenants of residential flats, business tenancies are excluded.*
- *The total number of flats held by members of the RTM company is less than half the flats held under qualifying leases"*

6. No counter-notice was served by R2.

7. The Tribunal application was submitted on 24 August 2020 and was stated to be an "*Application for a determination that on the relevant date the RTM Company was entitled to acquire the Right to Manage* " (Annex 1). Directions were issued on 20 October 2020 and extended on 10 December 2020. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 09 February 2021.

8. The single issue to be determined, as identified in the directions, is "*whether on the date on which the notice of claim was given, the applicant was entitled to acquire the Right to Manage the premises specified in the notice*."

9. The relevant legal provisions are set out in the appendix to this decision.

The parties' submissions

10. The Tribunal was supplied with a digital bundle, in accordance with the documents. This ran to 463 pages and included various documents, including the statements of case served by the applicant and R1. However, it did not include official copies of the leasehold registers (save those relating to the parking spaces) which would have assisted the Tribunal. R2 has not participated in these proceedings.

11. R1 contends that the Property was excluded from RTM on the relevant date, as the internal floor area of the non-residential parts exceeds 25 per cent of the total internal floor area (paragraph 1 of schedule 6 to the

2002 Act). Further, less than half the qualifying tenants of flats were members of the applicant company in breach of section 79(5).

12. It is convenient to deal with section 79(5) first. The applicant contends that 8 out of the 11 original commercial units have been converted to residential use. It relies on certificates of lawful use issued for Units 3, 4, 5, 6, 6A, 8, 9 and 10, by the London Borough of Hackney on 20 April 2016. The reasons for approval, as stated in the certificate, were "*The information submitted is sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the premises have been used as a self-contained dwelling (use class C3) for a continuous period of not less than four years prior to the submission of the application.*" The applicant says that Units 3, 5, 8, 9 and 10 have been in residential use since 2006, Units 6 and 6A since 2009 and Unit 4 since 2012. This is based on the dates these units were registered for Council Tax.

13. The applicant submits that each of the 8 converted units is a "*dwelling*", as defined in section 112 (1), as they are separately occupied for residential purposes. Each is also a "*flat*" within this subsection and held by a qualifying tenant. If this is correct then there are 23 flats held by qualifying tenants; 13 of which were members of the applicant on the relevant date. A total of 14 flats and units were listed in the schedule to the claim notice, including Unit 7. The parties agree this unit remains in commercial use, which means it must be disregarded. However, 13 out of 23 flats would satisfy the one-half criteria.

14. As to floor areas, the applicant contends that Units 3, 4, 5, 6, 6A, 8, 9 and 10 are all in residential use, which is a question of fact. All 8 units have been occupied for residential purposes for several years.

15. The applicant asserts that only Units 1, 2 and 7 are in non-residential use, within paragraph 1(2) of schedule 6. It relies on measurements taken Mr Orlando Leopard, as detailed in a witness statement dated 22 December 2020. He is the leaseholder of Unit 1 and obtained access to all flats and units at the Property save for Unit 4. He used a Bosch Professional Laser Measure GLM30 to measure these flats/units and estimated the area of Unit 4, from a lease-plan. His measurements were summarised in a table exhibited to the statement. His conclusion is that "*the residential parts of the property equate to 82.54% of the total floor area*".

16. R1 accepts that Units 4, 6 and 6A are all used for residential purposes and they are flats held by qualifying tenants. It agreed this change of use. In the case of Unit 4, it granted a retrospective licence for the conversion into two flats and entered into deeds of variation. In the case of Units 6 and 6A, it granted new leases where the permitted use is "*use as authorised or permitted under the relevant planning legislation from time to time*".

17. R1 disputes residential use of Units 3, 5, 8, 9 and 10. In each case, the permitted use in the lease is "*use as offices within Class B1(a) of the Town and Country Planning (Use Classes) Order 1987 as at the date this lease is executed*". Further, the Tenants covenants to observe and perform the regulations in schedule 4, which include:

> *"1 Not to use the Property for any purpose other than the Permitted Use or hold any sale by auction in the Property or occupy the same or any part thereof for any unlawful immoral noisy or noxious purposes nor to use the Property or any part thereof as residential accommodation nor to do or allow to be done in or upon the Property or in or about any part of the Building any act or thing which may annoy or tend to cause annoyance nuisance damage or danger to the Landlord or any of the tenants or occupiers of any other part of the Building or the owners or occupiers of any nearby or adjacent property or which may injure or tend to injure the character thereof for residential purposes"*

18. R1's contends that the leaseholder of Units 3, 5, 8, 9 and 10 is not a qualifying tenant of these flats, within section 75(2). Each lease was a business tenancy under section 23(1) of the Landlord and Tenant Act 1954 ('the 1954 Act'), when granted. The issue is whether they were still business tenancies at the relevant date. If they were in residential use this would be a clear breach of regulation 1 and the applicant cannot rely on these breaches. The certificates of lawful use and registration for Council Tax do not override the permitted use in the leases, which are still business tenancies.

19. R1 says it had no knowledge of the actual use of these five units until August 2020, when the applicant supplied copies of the planning certificates. It has not given consent to a change of use and has always treated these units as commercial. It has stopped issuing demands or communicating with the leaseholder, save for arranging an inspection; presumably to avoid waiver of any right to forfeit the leases.

20. R1 points out that JCSI Holdings LLP ('JCSI') is the leaseholder of Units 3, 5, 8, 9 and 10. R2 is a designated member of JCSI and should have been aware of the need for freeholder's consent for change of use, having obtained consent for Unit 4. The applicant has not addressed this omission and does not admit or deny a breach of the leases.

21. If R1 is correct then these five units should be disregarded when applying section 79(2). This would leave 18 flats held by qualifying tenants and only 8 of these were members of the applicant on the relevant date. Further, the five units were in non-residential use and the internal floor area of the non-residential parts would be 41.83% of the total. This would mean the Property is excluded from RTM by paragraph 1(1) of schedule 6 to 2002 Act.

22. R1 relies on various measurements in a 2011 planning statement from Austin Mackie Associates Limited, for the proposed change of use of Unit 4. Based on these measurements, the internal floor area of the non-residential parts would marginally exceed 25%, even if Units 3, 5, 8, 9 and 10 are treated as residential. R1 made various criticisms of Mr Leopard's measurements and calculations, pointing out that common parts should not be included and suggesting that balconies and parking spaces should be excluded. Its measurements should be preferred, as Mr Leonard had not undertaken a professional measured survey.

23. The parties referred to various authorities; ***Bishopsgate Foundation v Curtis [2004] 3 EGLR 57***, ***Gaingold Ltd v WHRA RTM Co Ltd [2006] 1 EGLR 81***, ***Henley v Cohen [2013] EWCA 480***, ***Uratemp Ventures Ltd v Collins [2001] UKHL 43***, ***JLK Ltd v Ezekwe and others [2017] UKUT 277 (LC)***, ***Connaught Court RTM Company Ltd v Abouzaki Holdings Ltd [2008] 3 EGLR 175***, ***KW RTM Company Ltd v Lemonland (Kings Wharf) Ltd unreported LON/00AM/LEE/2006/0003 LVT***.

24. It is clear from all of these cases that whether part of a building is in residential use is essentially question of fact. The applicant drew support from ***Kings Wharf***, which was a decision of the Leasehold Valuation Tribunal ('LVT'). It concerned live-work units that were largely occupied for residential purposes, despite restrictions in the leases. The LVT applied a County Court decision (***Bishopsgate***) and held that actual occupation for residential purposes satisfied the residential use requirement, even where there was a potential breach of the lease. Neither of these decisions is binding on the Tribunal and they pre-dated the Court of Appeal's decision in ***Henley***. Further, ***Kings Wharf*** can be distinguished as the leases permitted residential occupation of part of the units and the freeholder accepted that the leaseholders were qualifying tenants.

25. R1 relied on ***Henley***, which concerned a disputed enfranchisement claim under the Leasehold Reform Act 1967 ('the 1967 Act'). The appellant had a lease of a two-storey building comprising a shop on the ground floor with storeroom above. The appellant sought consent to convert the first floor into a flat, which was refused by the respondent. Notwithstanding this refusal, he proceeded with the conversion (in breach of his lease) and then served a notice of claim under the 1967 Act. At first instance, HHJ Cowell concluded that the building was not reasonably called a house and did not qualify for enfranchisement. One of his reasons was the appellant's breach of covenant, which founded the entitlement to enfranchisement.

26. The first instance decision was upheld by the Court of Appeal. R1 referred to the following paragraphs in the leading judgment of Mummery LJ:

"*59. In my judgment, it would, as a general rule, be unacceptable, if a person were entitled to enforce a right to acquire property compulsorily by deliberately doing something that was necessary to found the claim, which act was wrongful as between him and the person against whom he seeks to enforce that right. When a right of that kind is based on a statute the question will be whether the language of the relevant provision, construed in the context of the purpose and scheme of the legislation, and applied to the circumstances of the particular case, made that right available to that the person seeking to enforce it.*

60. The judge found that the claimants deliberately committed breaches of the covenant in clause 5 by carrying out the unauthorised works to the Premises and they did so in order to qualify for the right to acquire the freehold. Their inaction involved committing, as against the freeholder, a wrong in order to qualify for invoking a procedure to acquire compulsorily from him a right. There is accordingly a direct and close connection between the unlawful alterations to the first floor of the Premises, on which the claimants base their claim to enfranchise, and the statutory rights which they seek to enforce. Without these conversion works adapting the first floor for living in the 1967 Act would not apply at all.

61. In my judgment, no case has been made out for holding that the benefit of the enfranchisement provisions of the 1967 Act is available to a long leaseholder in such circumstances. As a matter of statutory construction it cannot have been intended by Parliament to give the lessee the right to enfranchise by making, in breach of covenant, the very adaptation of the building for living in that is necessary for him to exercise the right. The claimants seek to enforce a right acquired by committing a wrong. In general the law should not allow and does not allow that."

27. The applicant distinguished the facts in ***Henley***. It is not seeking to rely on its own breach or those of its members. The five units have been in residential use for several years, with R1's knowledge and any breach of the leases has been waived. Further, they were not converted to make the Property qualifying premises for RTM purposes.

The Tribunal's decision

28. The applicant was not entitled to RTM for the Property on the relevant date (16 May 2020).

Reasons for the Tribunal's decision

29. The Tribunal first considered the number of flats held by qualifying tenants on the relevant date. When the original leases were granted, the 11 commercial units were all business tenancies under the 1954 Act. R1 accepts that Units 4 and 6 had each been split into two flats and were in residential use when the claim notice was served. These four flats were all held by qualifying tenants.

30. The issue is the status of Units 3, 5, 8, 9 and 10. The certificates of lawful use and Council Tax registrations suggest residential use. The applicant asserts that R1 and its predecessor were aware of the changes of use but this is disputed. There was no witness statement from anyone at JCSI to support this assertion and no evidence that R1 or its predecessor had been notified of the changes, or were aware of them.

31. In each lease the permitted use is offices (B1(a)) and residential use is expressly prohibited. If these units are now in residential use, without freeholder's consent, this is a breach of each lease. Based on the limited evidence available, the Tribunal finds that each of the five units was in residential use on the relevant date and this use was in breach of regulation 1 in schedule 4 to the leases. This is not a determination of breach under section 168 of the 2002 Act, as there is no application under subsection (4) and it is arguable whether the units come within subsection (1). However, it is a finding of fact for the purposes of this application.

32. At the very latest, the conversion of these units had taken place by April 2012 (four years before the certificates of lawful use). It is very unlikely the conversions were undertaken with a view to making an RTM claim in 2020. However, the claim is founded on a breach of lease by JCSI, which is a member of the applicant company. Without the unauthorised conversions, in breach of lease, the Property would not qualify for RTM (see paragraph 34, below). The applicant should not be allowed to rely on these breaches to enforce a statutory right. The Tribunal finds that all five leases were still business tenancies on the relevant date. This means Units 3, 5, 8, 9 and 10 were not flats held by qualifying tenants and the applicant did not meet the requirements of section 79(5). As at the date of the claim notice, there were 18 flats held by qualifying tenants. Only 8 of these tenants were members of the applicant. This means the notice was invalid and the applicant was not entitled to RTM on the relevant date.

33. Having decided the claim notice was invalid, it is unnecessary for the Tribunal to decide if the Property qualifies for RTM. However, it could assist the parties and reduce the scope for future disputes.

34. The Tribunal has found that Units 3, 5, 8, 9 and 10 were all in residential use on the relevant date but the leases were still business

tenancies. These units were occupied for residential purposes but this was in breach of the leases. They were not intended for occupation for residential purposes and come within paragraph 1(2)(a) of schedule 6. This means all five units were non-residential parts of the Property and the non-residential parts exceed 25% of the internal floor area, taken as a whole. Accordingly, the Property was excluded from RTM on the relevant date. That is not to say it can never qualify for RTM. If the change of use is regularised, whether by freeholder's consent or otherwise, then the five units could become residential parts. In that event, up to date professional measured surveys will be required to establish if the non-residential parts exceed 25%.

Name: Tribunal Judge Donegan **Date:** 16 February 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).

Appendix of relevant legislation

Landlord and Tenant Act 1954

Section 23 Tenancies to which Part II applies.

(1) Subject to the provisions of this Act, this Part of this Act applies to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes.

(1A) Occupation or the carrying on of a business—

(a) by a company in which the tenant has a controlling interest; or

(b) where the tenant is a company, by a person with a controlling interest in the company,

shall be treated for the purposes of this section as equivalent to occupation or, as the case may be, the carrying on of a business by the tenant.

(1B) Accordingly references (however expressed) in this Part of this Act to the business of, or to use, occupation or enjoyment by, the tenant shall be construed as including references to the business of, or to use, occupation or enjoyment by, a company falling within subsection (1A)(a) above or a person falling within subsection (1A)(b) above.

(2) In this Part of this Act the expression "business" includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporate.

(3) In the following provisions of this Part of this Act the expression "the holding", in relation to a tenancy to which this Part of this Act applies, means the property comprised in the tenancy, there being excluded any part thereof which is occupied neither by the tenant nor by a person employed by the tenant and so employed for the purposes of a business by reason of which the tenancy is one to which this Part of this Act applies.

(4) Subject to subsection (5), where the tenant is carrying on a business, in all or any part of the property comprised in a tenancy, in breach of a prohibition (however expressed) of use for business purposes which subsists under the terms of the tenancy and extends to the whole of that property, this Part of this Act shall not apply to the tenancy unless the immediate landlord or his predecessor in title has consented to the breach or the immediate landlord has acquiesced therein.

In this subsection the reference to a prohibition of use for business purposes does not include a prohibition of use for the purposes of a specified business, or of use for purposes of any but a specified business, but save as aforesaid includes a prohibition of use for the purposes of some one or more only of the classes of business

specified in the definition of that expression in subsection (2) of this section.

(5) Where the tenant's breach of a prohibition (however expressed) of use for business purposes which subsists under the terms of the tenancy and extends to the whole of that property consists solely of carrying on a home business, this Part of this Act does not apply to the tenancy, even if the immediate landlord or the immediate landlord's predecessor in title has consented to the breach or the immediate landlord has acquiesced in the breach.

(6) In subsection (5) "home business" has the same meaning as in section 43ZA.

Commonhold and Leasehold Reform Act 2002

Section 75 Qualifying tenants

(7) This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.

(2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.

(3) Subsection (2) does not apply where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (business tenancies) apply.

(4) Subsection (2) does not apply where –

(a) the lease was granted by sub-demise out of a superior lease other than a long lease,

(b) the grant was made in breach of the terms of the superior lease, and

(c) there has been no waiver of the breach by the superior lease.

(5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.

(6) Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flats.

(7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flats.

Section 79 Notice of claim to acquire right

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"), and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which the notice of claim is given.

(2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.

(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one half of the total number of flats so contained.

(6) The claim notice must be given to each person who on the relevant date is –

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (referred to in this Parts as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained, but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the tribunal or court by which he was appointed.

Section 84 Counter-notices

(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 specified provisions 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 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 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 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.

Section 112 Definitions

(1) In this Chapter –

...

"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling

"flat" means a separate set of premises (whether or not on the same floor) –

(c) which forms part of a building,

(d) which is constructed or adapted for use for the purposes of a dwelling, and

(e) either the whole or a material part lies above or below some other part of the building.

...

SCHEDULE 6

PREMISES EXCLUDED FROM THE RIGHT TO MANAGE

1(1) This Chapter does not apply to premises falling within section 72(1) if the internal floor area –

(b) if any non-residential part, or

(c) (where there is more than one such part) of those parts (taken together)

exceeds 25 per cent of the internal floor area of the premises (taken as a whole)

(2) A part of premises is a non-residential part if it is neither –

(a) occupied, or intended to be occupied, for residential purposes; nor

(b) comprised in any common parts of the premises.

(3) Where in the case of any such premises any part of the premises (such as, for example, a garage, parking space or storage area) is used, or intended for use, in conjunction with a particular dwelling contained in the premises (and accordingly is not comprised in any common parts of the premises) it shall be taken to be occupied, or intended to be occupied, for residential purposes.

(4) For the purpose of determining the internal floor area of a building or any part of a building, the floor or floors of the building or part shall be taken to extend (without interruption) throughout the whole of the interior of the building or part, except that the area of any common parts of the building or part shall be disregarded.