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BIR/47UC/LSC/2007/0002

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**DECISION OF THE MIDLAND LEASEHOLD VALUATION TRIBUNAL AS
TO ITS JURISDICTION TO ENTERTAIN AN APPLICATION UNDER S27A
OF THE LANDLORD AND TENANT ACT 1985**

**Property: Flat 2, Redman House, 70 Main Road, Kempsey, Worcester WR5
3JY**

Applicant: Mrs Gwenda Rigby (joint leaseholder, Flat 2)

Respondent: Redman House Limited (freeholder)

Date of preliminary hearing: 17 April 2007

Appearances: Mr David Rigby and Mrs Gwenda Rigby

No appearance for the respondent

Members of the leasehold valuation tribunal:

Lady Wilson
Mr S Berg FRICS
Mrs C L Smith

Date of the tribunal's decision: 17 April 2007

1. Mr and Mrs Rigby are the leaseholders of Flat 2, Redman House, a Victorian building which has been converted into four flats, all let on long leases. The freeholder of the building is Redman House Limited, a company of which the leaseholders of the four flats are directors and of which Mr Rigby is the secretary.

2. Mrs Rigby has applied to the tribunal under section 27A of the Landlord and Tenant Act 1985 ("the Act"). As it appeared to the tribunal on preliminary consideration of the application that it might not have jurisdiction to entertain it, a preliminary hearing was arranged at the request of Mrs Rigby to consider the question of jurisdiction. A hearing accordingly took place at The Guildhall, Worcester, which was attended by Mr and Mrs Rigby. Neither the freeholder nor any of the other leaseholders was present or represented.

3. Mr Rigby, who presented the case, explained that he and his wife were deeply concerned about the state of the building and what they considered to be the landlord's failure to perform its repairing covenant and to raise the funds required to maintain the building and grounds in a reasonable condition. He showed the tribunal photographs of the building, which did indeed appear to be in need of major works, and of the grounds, which appear to be extensive and to require regular professional care. He described his attempts to persuade his fellow leaseholders that such works were urgently required, all of which had been unsuccessful for various reasons.

4. Section 27A of the Act, so far as is relevant, provides:
 - (1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –*
 - (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*
 - (c) *the amount which is payable,*
 - (d) *the date at or by which it is payable, and*
 - (e) *the manner in which it is payable*

5. It seems to us that what the applicant is seeking to do by this application is not to determine whether she and her husband are liable to pay a service charge, but to

enforce the landlord's covenant to repair and maintain the building. The covenant is clear, and is to be found in clause 6(d) of the lease and in the second schedule. Actions to enforce covenants in leases are matters for the county court and not for this tribunal.

6. At the tribunal's suggestion, Mr and Mrs Rigby have contacted the Leasehold Advisory Service, who have made them aware of the tribunal's powers under section 24 of the Landlord and Tenant Act 1987 to appoint a manager to carry out all or some of the landlord's functions if the circumstances warrant such an appointment, and it may be that such an application would be more appropriate than the present one. However, such an appointment cannot be entertained without a separate application.

6. Accordingly, we are satisfied that we do not have jurisdiction to entertain the present application, which cannot, therefore, proceed further.

CHAIRMAN.....

DATE 17 April 2007