



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

Case reference : **LON/00AC/LRM/2016/0008**

Property : **Heathside, 562 Finchley Road,
London NW11 7SB**

Applicant : **Heathside (Golders Green) RTM
Company Limited**

Representative : **Dr Devra Kay, Director**

Respondent : **Osprey Management Company
Limited**

Representative : **Tolhurst Fisher LLP**

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

Tribunal member : **Judge N Hawkes**

Venue : **10 Alfred Place, London WC1E 7LR**

**Date of paper
determination** : **5th August 2016**

DECISION

Decision of the Tribunal

The Tribunal determines that the applicant was entitled to acquire the Right to Manage on the relevant date. The Right to Manage is acquired on the acquisition date defined by section 90(4) of the Commonhold and Leasehold Reform Act 2002 (being three months after the date on which the Tribunal's determination becomes final).

The application

1. This application is made under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for a determination that, on the relevant date, the applicant Right to Manage Company was entitled to acquire the Right to Manage Heathside, 562 Finchley Road, London NW11 7SB ("the property"). The respondent is the freehold owner of the property.
2. By a claim notice dated 14th March 2016, the applicant gave notice that it intended to acquire the Right to Manage the property on 24th July 2016.
3. By a counter-notice dated 22nd April 2016, the respondent disputed the claim alleging that the applicant has failed to establish compliance with sections 79(5) and 79(8) of the 2002 Act.
4. By an application dated 2nd July 2016, the applicant has applied to this Tribunal for a determination and directions were issued on 9th July 2016 ("the Directions").
5. The Directions provide that the application will be determined on the papers unless, within 30 days of receiving the Directions, either party requests a hearing. Neither party has requested an oral hearing and, accordingly, this application has been determined on the papers.

Section 79(5) of the 2002 Act

6. Section 79(5) of the 2002 Act provides:

"... 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."

7. Paragraph 2 of the Directions provides that the application together with enclosures (and any Supplementary Statement as provided for in paragraph 4 of the Directions) shall be regarded as the applicant's case.

8. Paragraph 6 of the application refers to the contents of the applicant's covering letter dated 3rd June 2016. In its covering letter, the applicant asserts that the property is a retirement block containing 36 flats which are held on long leases and one flat which is owned by the freeholder with no lease. In its Statement in Reply, the respondent does not dispute this assertion regarding the total number of flats.
9. It is also asserted by the applicant in its letter dated 3rd June 2016 that the leaseholders of 23 flats appear on the Claim Notice as members of the applicant Right to Manage Company. A copy of the Claim Notice has been provided to the Tribunal with the application. In the applicant's Supplementary Statement which is signed by Dr Kay, a director of the applicant Right to Manage Company, it is stated that "There has been in excess of 50% participation of flats from the start of the process."
10. The Tribunal has been provided with a copy of the Memorandum of Association of the applicant company to which there are 20 subscribers. 19 of these subscribers (all save for Miriam Bertha Katz) are included in the list of persons who are both qualifying tenants and members of the applicant company in the claim notice.
11. The respondent has not asserted that any of the specific individuals listed in the Memorandum of Association were not members of the applicant Right to Manage Company on the relevant date or that they were not qualifying tenants of flats contained in the premises.
12. Having considered the submissions and the documents which have been provided, the Tribunal finds on the balance of probabilities, that the membership of the RTM company, on the relevant date, included a number of qualifying tenants of flats contained in the premises which was not less than one-half of the total number of flats so contained in accordance with section 79(5) of the 2002 Act.

Section 79(8) of the 2002 Act

13. Section 79(8) of the 2002 Act provides:

"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."

14. The respondent relies upon section 111(5) of the 2004 Act which provides:

"A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been

notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice."

15. The respondent asserts that the address for service of the qualifying tenants of flats 12, 16, 28 and 35 is not the flat address but "an alternative address" to which copy notices should have been sent. However, the respondent landlord has not produced any evidence that the claim notices were not served correctly and has not raised any positive case regarding any particular proposed alternative address.
16. The applicant states that copies of three certificates of proof of posting in respect of the service of copies of the claim notices on the qualifying flats 12, 16 and 28 can be found at page 157 of the respondent's own bundle of documents. The relevant notices were served on addresses other than the flat addresses and the applicant explains in its Supplementary Statement why the qualifying tenants were served at these alternative addresses.
17. Dr Kay explains that the applicant has not been notified of by the qualifying tenant of flat 35 of a different address in England and Wales at which he wishes to be given the notice and the Tribunal has been provided with evidence of the service of a copy of the claim notice on the qualifying tenant of flat 35 by posting it by hand through the letter box of the flat. In all the circumstances, the Tribunal is satisfied, on the balance of probabilities, that the Claim Notices were correct served.
18. The Tribunal therefore determines that the applicant was entitled to acquire the Right to Manage on the relevant date. The Right to Manage is acquired on the acquisition date defined by section 90(4) of the Commonhold and Leasehold Reform Act 2002 (being three months after the date on which the Tribunal's determination became final).

Judge N Hawkes

5th August 2016