

**H M COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 1 – 11 Marine House, Quayside Drive,
Colchester, Essex CO2 8FX

Applicant(s) : Marine House Residents Association
RTM Limited

Respondent(s) : Estates and Management Limited

Case number: CAM/22UG/LRM/2012/0011

Date of Referral : 7 November 2012

Type of Application : For an Order that the Applicant was, on the
relevant date, entitled to acquire the right to
manage the property (Section 84(3)
Commonhold and Leasehold Reform Act
2002 (“the 2002 Act”)

Date of Inspection: 14 January 2013

The Tribunal : Mr M Graham Wilson
Mr Gerard Smith MRICS FAAV REV

DETERMINATION

- (1) The Tribunal determined that the Applicant was entitled to manage 1 – 11 Marine House, Quayside Drive, Colchester, Essex CO2 8FX.

Reasons

Background

1. The Applicant’s right to manage company (“RTM”) served Claim Notices dated 3 August 2012 claiming to acquire the right to manage 1 – 11 Marine House, Quayside Drive, Colchester, Essex CO2 8FX. The Memorandum and Articles of Association were so as to acquire and manage premises.

2. A Counter-Notice dated 12 September 2012 was served alleging that the premises were not a self-contained building or part of a building, that no Notice of Invitation to participate had been served on the lessee of Flat 9, and that the Claim Notice was not signed.
3. The Tribunal had decided that this was a case which could be determined on a consideration of the papers following an inspection, but without an oral hearing: a Directions Order was issued dated 15 November 2012. In accordance with Regulation 5 of the *Leasehold Valuation Tribunals (Procedure) (Amendments) (England) Regulations 2004* notice was given to the parties that a Determination would be made on the basis of a consideration of the papers including the written representations of the parties following an inspection and that a hearing would only be held if either party requested one. No request was received.
4. The Applicant provided the Tribunal with an inspection bundle. An inspection took place on 14 January 2013.
5. It was common ground that the various flats were held on long leases. At the inspection, the Tribunal found that Flat 1 – 11 were in a single block – Flat 1 – 6 being served by one entrance and the remainder by another. In the centre of the block, at ground floor level, there was a wall behind which lay three covered (by the first floor) parking bays.

The Law

6. Section 72 of the 2002 Act defines premises in the following way:
 - (1)(a) they consist of a self contained building or part of a building, with or without appurtenant land
 - (b) they contain two or more flats held by qualifying tenants, and
 - (c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained within the premises
7. Section 74 limits the people who can be members of the RTM company to “qualifying tenants of flats contained within the premises” plus the landlord from the date on which the right to manage is acquired.
8. Section 78 of the 2002 Act requires that each qualifying tenant in the premises who is not or has not agreed to become a member of

the RTM company must be served with a Notice of Invitation to participate.

9. Section 79 of the 2002 Act states that on the date the Claim Notice is given, membership of the RTM “must...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”. This section further states that a copy of the claim notice must be sent to each qualifying tenant.

The Application and the Decision

10. Both Claim Notice and Counter-Notice were supported by the parties' submissions.
11. There were two issues before the Tribunal (one of the three arguments referred to in the Counter Notices having been withdrawn). The first related to the alleged non-service of a Section 78 Notice on the lessee of Flat 9. Following the inspection, the Tribunal offered the parties an opportunity to deal with this aspect by further evidence. The evidence eventually produced was to the effect that the Notice had been served on 25 June 2012 and this evidence the Tribunal was able to accept. The second issue was whether the flats were in one or two blocks. The significance of this was that if the building were to be deemed two blocks the Application would necessarily fail.
12. Premises are clearly defined by section 72 of the 2002 Act. The Act applies to “premises” if

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- (1)(a) they consist of a self-contained building or part of a building, with or without appurtenant property'
- (b) they contain two or more flats held by qualifying tenants, and
- (c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

(2) A building is a self-contained building if it is structurally detached.

- (3) A part of a building is a self-contained part of the building if –
 - (a) it constitutes a vertical division of the building,
 - (b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
 - (c) subsection (4) applies in relation to it.

13. The Tribunal was satisfied on the basis of its inspection that Flat 1 – 11 Marine House, Quayside Drive, Colchester, Essex CO2 8FX were indeed “premises” as defined by Section 72 and determined that the Applicants were entitled to manage them with effect from 1 May 2013.

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GRAHAM WILSON

Date: 1 February 2013.