

656



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

Case Reference : LON/00AM/LRM/2018/0026

Property : The Clarendon, 86 Balcorne Street,
London E9 7Au

Applicant : The Clarendon (86 Balcorne Street)
RTM Company Ltd

Representative : Leasehold Doctors (Project
Managers)

Respondent : Ground Rent Trading Limited

Representative : N/A

Types of Application : No fault right to manage

Tribunal Members :
Judge Tagliavini
Mr. D Jagger MRICS

**Date and venue of
Hearing** : 26 November 2018
10 Alfred Place, London WC1E 7LR

Date of Decision : 26 November 2018

DECISION

Decisions of the tribunal

- I. The tribunal finds that the Applicant has acquired the Right to Manage the subject project at The Clarendon, 86 Balcorne Street, London E9 7AU.**
-

The application

1. This is an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) seeking the tribunal’s determination that it is entitled to acquire the Right to Manage (RTM) the subject premises.
2. The Applicant served a notice dated 7 August 2018 on the Respondent seeking to acquire the RTM. By a counter-notice dated 8 August 2018 the Respondent denied the Applicant’s claim and asserted that the premises did not qualify as the commercial element of the property exceeded 25% of the internal area.

The issues

3. Therefore, the only issue which the tribunal is required to consider is whether the use of the roof space and a small area of the basement used for commercial purposes comprise 25% of the internal area of the premises.

The premises

3. The premises are a converted public house comprising of seven flats of which four lessees are participating in this application.

The hearing and evidence

4. Neither party requested an oral hearing and therefore the tribunal determined the application on the documents provided by the parties.
5. The Respondent asserted that by reason of the roof space being subject to a commercial lease for the use of telecommunications (mast) as well as a small area in the basement used by the telephone operator, the area used for commercial purposes excluded the Applicant from acquiring the RTM.
6. The Applicant relied on Schedule 6 of the 2002 Act which requires a consideration of the extent of the internal areas that are used as commercial parts of the premises.

Reasons for the decisions of the tribunal

7. In reaching its decision the tribunal had regard to Schedule 6 of the 2002 Act which states:

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

(a) of any non-residential part, or

(b) (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 of 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.

7. Although the tribunal were provided with photographs of the subject property, neither party provided any measurements of the roof space and basement used for commercial purposes. However, the tribunal could determine that the roof space comprised the external area and therefore did not form part of any internal area as required by Schedule 6 of the 2002 Act. Similarly, although the tribunal was not provided with any measurements for the “small” basement area used for telecommunications purposes the tribunal determined that on the balance of probabilities it is unlikely to exceed 25% of the internal areas of the premises.

7. Therefore, the tribunal finds that the legislation requires a consideration of the internal areas used for commercial uses but that in

the instant case, the majority of the area used for commercial purposes is clearly an external part of the premises and the basement area is not sufficient to disqualify the Applicant's RTM.

Conclusion

8. Therefore, the tribunal finds that the subject premises is not excluded and the Applicant is entitled to acquire the Right to Manage in accordance with its Notice.

Section 20C

9. In light of the tribunal's findings it does not consider it is reasonable for the Respondent to add the costs of seeking to oppose this application to the service charge account.

Signed: Judge Tagliavini

Dated: 26 November 2018