FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LRM/2020/0001**
Property	**:**	**Arthur Court, 219 Queensway, London, E2 5HP**
Applicant	**:**	**Arthur Court (Queensway) RTM Company Ltd**
Representative	**:**	**N/A**
Respondent	**:**	**Arthur Court Freehold Limited**
Representative	**:**	**In Person**
Type of application	**:**	**Application in relation to the denial of the Right to Manage**
Tribunal members	**:**	**(1) Judge Amran Vance** **(2) Mr D Jagger**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
HMCTS Code		**V: CVPREMOTE**
Date of Decision	**:**	**27 October 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we were referred were included in a hearing bundle provided by the Respondent.

DECISION

1. The Applicant was not entitled to acquire the right to manage Arthur Court on the relevant date. The application by the Applicant company, for a determination that it is entitled to acquire the right to manage Arthur Court, is therefore dismissed.

BACKGROUND AND REASONS FOR DECISION

2. On 15 January 2020, the tribunal received an application made under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") seeking a determination that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage premises known as Arthur Court, 219 Queensway, London, E2 5HP ("the premises"). When the application was made the Applicant was represented by solicitors, Realty Law.

3. By a claim notice dated 7 November 2019, the Applicant had given notice that it intended to acquire the Right to Manage the premises on 20 March 2020. Part 1 of the schedule to the notice identified the leaseholders of 48 flats as being both qualifying tenants and members of the Applicant company.

4. By a counter notice dated 16 December 2019, the Respondent, the lessee-owned freehold company of the premises, disputed the claim, alleging that the Applicant had failed to establish compliance with sections 78(1), 79(2), 79(5) and paragraph 1, Schedule 6 of the 2002 Act.

5. The tribunal issued directions on 21 February 2020. These provided for the parties to exchange statements of case, and specified that any party who wished to rely upon expert evidence may apply to the tribunal for permission to do so. Although the directions stated that the application was to be determined at a face to face hearing, the hearing was subsequently converted into one to take place by remote video conferencing, because of the Covid-19 pandemic.

6. Realty Law were subsequently replaced as the Applicant's solicitors by Weightmans, solicitors. However, by email dated 6 May 2020, Weightmans informed the tribunal that it was no longer representing the Applicant in this application. As at 2 June 2020, both parties were acting in person, having previously been represented by solicitors, and that remained the case up to the hearing of the application.

7. On 30 July 2020, Judge Vance gave permission to each party to rely upon expert evidence both, in the form of a report, and orally at the hearing of this application. The expert was to address the question of the extent of non-residential floor space in the premises. The parties were directed to liaise to agree a suitable date and time for the inspection and notify the tribunal as to that date that had been agreed. In the event, the Applicant did not produce or seek to rely upon an expert's report. The Respondent relied upon a report from a surveyor, Mr Chris Avery, FRICS dated 11 September 2020.

8. On 16 September 2020, the tribunal received an email from Mr Zoheb Siddiqui, the Director representing the Applicant in this application. Mr Siddiqui stated that by a resolution passed that day,

> "all Members of the Board of Directors of the RTM Company unanimously decided to resign from their mandate……".

9. The tribunal wrote to the Applicant on 18 September 2020, requesting confirmation from the Applicant as to whether, in light of the resignation of all the directors of the RTM company, the Applicant wished to withdraw its application. A 'spokesman' for the Applicant replied on 8 October 2020, by email, as follows:

> ".....please rest assured that this spokesman service keeps fully available to promptly update the Tribunal in case the Members of the Company will convene any Extraordinary General Meeting and will appoint new replacement Directors".

10. No further communications have been received from the Applicant since the email of 8 October 2020, and no Director of the Applicant company, or any other person, attended the hearing of the application on the Applicant's behalf. Contrary to the tribunal's directions, it failed to provide a supplementary statement of case in support of its application.

11. Present at the hearing were Mr Simon Mumford (the leaseholder of Flat 95), Mr Shuvo Loha (the leaseholder of Flat 103), and Ms Dunja Noack, (representing the leaseholder of Flat 3). Also present was Mr Chris Avery, FRICS, the Respondent's expert surveyor. Mr Loha presented the case on behalf of the Respondent.

12. The Respondent's primary case is straightforward. It contends that the Applicant is not entitled to acquire the right to manage the premises, because more than 25% of the internal floor area of the premises is non-residential. This, it says, is because of the presence of a mezzanine and basement car park, both of which are let to National Car Parks Limited, under a long lease that specifies that the premises are not to be used for any purpose other than for garages or offices. A copy of the commercial lease was provided in the Respondent's hearing bundle.

The Respondent also states that the parking spaces are not used in conjunction with particular dwellings within Arthur Court and so they cannot be regards as being occupied for residential purposes.

13. Schedule 6 of the 2002 Act provides that certain buildings are exempt from the right to manage. It states as follows:

"Buildings with substantial non-residential parts

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."

14. Mr Avery, the Respondent's expert, states in his report that he carried out a measured survey of Arthur Court, using a laser measuring device, and then used specialist software to create a suite of Computer Aided Design("CAD") drawings of the premises. He calculates that the floor space of the various areas of the premises as follows:

Residential	6,557.53 sq. metres
Common parts	1,766.42 sq. metres
Commercial (mezzanine and basement car park)	2,791.70 sq. metres
TOTAL	11,115.65 sq. metres

15. There is no evidence at all from the Applicant to counter Mr Avery's assessment. This is despite the fact that the issue of the premises being exempt from the right to manage, because of the extent of the commercial space, was raised as long ago as the Respondent's counter notice.

16. We see no reason to doubt the contents of Mr Avery's report, or that he has properly discharged his responsibilities as an expert witness. He is clearly an experienced surveyor, as evidenced by his qualifications and experience set out at the start of his report. He has been a full member of the Royal Institute of Chartered Surveyors since 1972, and a Fellow from 1986. He is the principal professional in his firm which was established in 1994, as a niche firm specialising in residential property matters, operating mainly in central and south London. He states that he has previously appeared as an expert witness before this tribunal, the Upper Tribunal (Lands Chamber), and the County Court. He also explains that he has had approximately eight years' experience of using the Architab CAD software used to prepare his report. His has signed his report, confirming his understanding that the duty of an expert is to help the tribunal, and that this overrides any duty to the Respondent.

17. In the absence of any evidence to the contrary, we therefore accept that the measurements stated in Mr Avery's report are factually accurate. There is no suggestion by the Applicant that the car park areas are occupied, or intended to be occupied, for residential purposes, nor that they are comprised in any common parts of the premises, or that any of the parking spaces are used, or intended for use, in conjunction with a particular dwelling contained in the premises. As such, we conclude that they are commercial areas, for the purposes of paragraph 1 of Schedule 6.

18. Adopting Mr Avery's measurements, the combined internal floor area of the entire premises is 11,115.65 sq. metres. However, when determining the internal floor area of the premises, to identify if the premises is exempt from the RTM provisions, the common parts of the building are disregarded (subparagraph 1(4) of Schedule 6). Disregarding the common parts provides a combined internal floor area of the entire premises of 9,349.23 sq. metres. Twenty-five per cent of that figure is 2,337 square metres. As the internal floor area of the car park areas totals 2,791.70 sq. metres, the size of the commercial areas exceeds 25% of the internal floor area of the premises. Specifically, the size of the internal floor area of the car park areas totals 29.86% of the total internal floor area of the premises. The premises is therefore exempt from the right to manage provisions of the 2002 Act.

19. This being the case, there is no need for us to address the other points raised by the Respondent in their statement of case, namely lack of evidence from the Applicant to confirm that it had complied with the

requirements of section 78(1) of the 2002 Act (to give a notice of invitation to participate to qualifying tenants of a flat in the premises) and section 79(2) (which required it to give those qualifying tenants a notice of claim to acquire the right to manage the premises at least 14 days before the claim notice was served on the Respondent). We simply record that as the Applicant has not responded to the Respondent's submissions on this point, and has not provided any documentary evidence of compliance, we cannot be satisfied the requirements of section 78(1) or section 79(2) were met.

20. The Respondent has asked for an order for payment of the costs it has incurred in this application. At the hearing of this application the tribunal explained that it does not have the power to make an inter-party costs order against the Applicant. However, the Respondent has a statutory right to costs under sections 88 and 89 of the 2002 Act, and if these are not agreed with the Applicant, an application can be made to the tribunal for a determination as to the amount of costs payable. It should be noted that liability for the Applicant's statutory costs extends to all members of the RTM company. It is also open to the Respondent to make an application under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, for which it would need to establish that the Applicant has acted unreasonably in bringing, defending or conducting proceedings.

Name: Judge Amran Vance **Date:** 3 November 2020

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.