

Barking Reach Residents Association Meeting Minutes
Wednesday 06 April 2022
7.30pm via zoom

Attendance: 17

Meeting started: 7.30pm

AGENDA

Right to Manage - what is it - how does it work?

With guest speakers **David Breare** and **Roger McElroy** of Canonbury Management

David said that RTM is definitely possible in a scenario where two blocks have a shared underground car park and district heating and actually a single RTM process is a necessity as opposed to separate RTMs for each block. This is because the classification of a block is on vertical separation and that vertical separation runs from the top to the bottom of the building.

Leslie Hitchcock House and John Miller House were a good example of this where the blocks could not be vertically separated and so required a single process and must be managed in future as a single entity.

Roger mentioned that there could be a piece of legislation regarding district heating, however, blocks with district heating are eligible for an RTM process.

Maintenance vs defects in buildings – Roger said defects are responsibility of building's developer. Defectives premises act – claims can be made under that act, equivalent to NHBC/insurance policy. If complaints are material, then they can be addressed through those mechanisms, which would be outside of maintenance funds.

David also explained that an RTM process would not at all affect properties values. It ensures a level of transparency where there isn't one if there is a managing agent appointed by the landlord. Providing high levels of service, so it would be a benefit.

Many residents worry about the time commitment and responsibility of being a director in an RTM company. Can you explain what the pros and cons are of being an RTM director and how they are selected? Roger said the appointed managing agent would take over the main responsibilities. It's useful to have directors that have a bit more time to be an RTM director. Directors are appointed by members, usually during the initial RTM process.

In terms of board of directors, a resident asked about if/when a director moves out of the area – what would happen then?

Roger said that the number of directors is not prescribed (there is a minimum of 2 in the articles of incorporation of an RTM company) if one leaves, that remaining director can't make any new decisions until another one is appointed.

In those circumstances, the appointed managing agent would continue to carry out their services. Additionally, Canonbury can provide a second director, who would not have the deciding vote- that would remain with the resident director, who as chair would have the deciding vote.

Generally speaking, three directors is a good number as it allows flexibility if one moves away.

David suggested no more than five because the decision-making process becomes harder with more people on the board.

Another resident asked about individual responsibilities – there seems to be a misconception that individual residents would have to start taking matters into their own hands like cleaning for example.

Roger said the RTM company is a legal entity but not expected to do everything – the contract of management of the building falls with the managing agent appointed. Leaseholders should be respecting that. The agent's role is to screen everything in relation to the management of the block. David said that from the leaseholders' perspective, nothing – in terms of how things are run – should change. Individuals are not expected to do anything that the managing agent has been hired to do.

A third resident asked about TUPE transfers of personnel from the current managing agents; the likelihood of landlord claiming legal fees; and the RTM company needing to be solvent at all times.

Roger said that on handover, the managing agent can decide whether to keep staff or not.

In terms of legal fees, these depend on size of block and legislation, which stipulates they need to be reasonable – anything between £1,500-£2,000 per block, which translates to around £100-150 per leaseholder.

Financially speaking, how/where would service charge funds be kept and managed?

Service charge funds are legally required to be held in a statutory trust account.

Is RTM cheaper?

RTM should not be seen as a cheaper option. In circumstances it could be cheaper but it would depend on whether the existing agent is meeting statutory obligations, whether they are using expensive contractors etc. Many statutory duties carry costs which can't be avoided and these make the bulk of the costs, so residents should not look to RTM to significantly lower the costs although there may be savings to be found here and there.

Are there incurred costs to setting up a statutory trust account?

No, we would setup a trust account as part of our management service as any managing agent should do.

David mentioned that because there is a legal recovery procedure for unpaid service charges, leaseholders that have missed payments will ultimately be faced with a legal challenge, with standard letters going out after 45 days warning of legal action, and eventually taken to court.

Pete Mason, the association's chair, said that once leaseholder have RTM and can see who is making decisions and controlled by residents, they don't feel the same antagonism and suspicion and are keener to pay up. David explained that there are occasions when residents find they are unable to pay. Canonbury will ultimately recover the fees from the mortgage company, so that it makes sense for residents in that situation to approach their mortgage company for relief.

Another resident asked about the reserve fund and also mentioned the communal space, car park and communal playground.

David said that the reserve fund can be used temporarily and communal areas are usually stipulated in the RTM contract.

There has been a supreme court decision (pertinent property) with various blocks each taking RTM. The court decision said that shared spaces will stay with the landlord.

The Supreme Court found that the right to manage does not extend to the RTM company managing the shared estate facilities, which do not form part of the "premises" over which the RTM is exercisable. Gala Unity is now overruled: <https://www.supremecourt.uk/cases/uksc-2020-0066.html>

However, the likelihood is that, for instance, a communal playground would likely still be maintained by the managing agent with the landlord's consent. However the insurance situation then becomes complex.

Breach of contract – unpaid service charges. There is flexibility in terms of charging leaseholders and payment of contracts aligning, David said.

Do residents need to appoint Canonbury as a managing agent if they choose the company to start the RTM process or can another company be selected?

No, we can undertake the RTM process as a paid for service. The management for RTM is offered as a free RTM process in return for one year's management.

Value for money

The RTM company has the same obligations as the freeholder with regards to maintaining a building. David said that RTM should not be looked at as a savings mechanism, it's about control and transparency. A resident mentioned that she is for RTM not because of affordability but because of accountability. David mentioned that it promotes a better level of service and a better level of knowledge. Any money transferred into a reserve fund should be handed over as well as any service charge collected that calendar year once an RTM process is started. He also added that insuring a block of flats would be the appointed managing agent's responsibility. A company like Canonbury or any other reputable RTM company can have access to commercial rates for buildings insurance – a benefit of RTM.

Roger also mentioned that the RTM area is quite competitive, so Canonbury invests heavily in innovation and software for various services to keep residents informed. For example gas meter reading for more accurate bills, update on ongoing projects and maintenance and even a parcel delivery service.

Another resident mentioned outstanding services that should have been completed by the previous managing agent.

David mentioned that issues that have been defective need to be taken up with NHBC or another insurance service. So in this instance there would be no payment from leaseholders.

Pete mentioned the Fielders Quarter buildings, for which Bellway has set up the Fielders Crescent Management Company Ltd– and how Pinnacle Places stated that they are appointed by the residents and that RTM does not apply, because the residents will run the company. He said that it turns out however, that Bellway has 75% of the shares, and that the landlord will have that in perpetuity, so they can overturn any decision of resident directors instantly.

David said that Pinnacle in fact means that an RTM is not needed and that this is not true. He agreed that the landlord can overturn any decision of resident directors instantly.

The Fielders Quarter Management Company Ltd does not have full control so any significant management decisions would most likely still come from the freeholder.

For more information on Right to Manage legislation:

<https://canonbury.management/>

<https://www.legislation.gov.uk/ukpga/2002/15/section/72>

<https://www.legislation.gov.uk/ukpga/2002/15/schedule/6>

<https://www.kdllaw.com/legal-updates/3mar21>

Meeting ended 20.55pm