



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

Case reference : LON/00AU/LSC/2017/0460 &
LON/00AU/LAM/2018/0001

Property : Various Flats at Manor Mansions,
455 Holloway Road London N7 6LR
Harris Johnson Developments Ltd
(Flat 6)
Trevor Collins (flat 4)

Applicant : Christopher Gordon Coates (Flat 3)
Samantha Gaskin (Flat 1) and the
remaining leaseholders at the
property

Representative : Mr Adrian Carr- Counsel

Respondent : Kernberg Holdings Limited

Representative : Mr Henry Webb instructed by
Colman Coyle Solicitors
Mr Eli Kernkraut- Director

Also in attendance : Mr Keng Wai Lee (flat 2)
Mr Alessandro Traverso (flat 8)
Mr Marco Araldi flat 2
Mr Elliot Esterson proposed
manager (Trent Park Properties
LLP)

Type of application : Appointment of Manager

Tribunal member(s) : Judge Daley
Mr Martindale

**Venue and date of
hearing** : 19 April 2018 & 4 July 2018 at 10
Alfred Place, London WC1E 7LR

Date of decision :

DECISION

1. There are two applications before the tribunal in respect of the property known as Flats 1-10 Manor Mansions, 455 Holloway Road, London N7 (the "Property"). First an application under the above named individual tenants who seek the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 (the "1987 Act"). Secondly the landlord sought a determination under section 27A of the Landlord and Tenant Act 1985 (the "1985 Act") as to whether service charges are payable against the leaseholders of Flats 1, 2, 3, 4, 6 and 8. The remaining flats are retained by the landlord.
2. The premises which are the subject of these applications are a three storey detached mansion block consisting of 10 flats which were constructed in or around 1900. Six of the flats are subject to long leases and four of the flats are retained by the landlord.
3. Directions were made on 19 January 2018 in relation to both applications. At paragraph (7) of the Directions the tribunal identified the following issues:- (a) is the preliminary notice compliant with section 22 of the Act and/ or if the preliminary notice is wanting, should the tribunal still make an order in exercise of its powers under section 24(7) of the Act? (b) Has the applicant satisfied the tribunal of any ground(s) for making an order, as specified in section 24(2) of the Act? (c) is it just and convenient to make a management order? (d) Would the proposed manager...be a suitable appointee and, if so on the terms and for how long should the appointment be made.
4. Further directions were also given at paragraph (8) concerning the service charges. However at the date of the hearing both counsel agreed that the application in relation to the service charges was "somewhat academic". The service charges related to proposed major works that were to be undertaken and the issues had been subsumed by the application for the appointment of a manager. The tribunal therefore made no finding in respect of application **LON/00AU/LSC/2017/0460**.

Preliminary issues

5. At the hearing, Counsel for the Applicants Mr Carr, provided the Tribunal with copies of a page which had been omitted from the bundle.
6. Both counsel also provided copies of their skeleton argument. Both counsel agreed that the issues set out in the Directions were the matters that they would need to address at the hearing.
7. The Respondent's position as advanced by his counsel, Mr Webb, had somewhat evolved since the making of the application to appoint a manager. He was now agreeable to appointing Mr Esterson as the manager for the premises, although he did not consider it necessary for the Tribunal to appoint him, as he considered this to be draconian, given the wide range of powers that this would involve. He also did not accept that grounds existed for the appointment of a manager.

The application for the appointment of a manager

8. Mr Carr, Counsel on behalf of the Applicants, provided the Tribunal with opening submissions which dealt with the background leading to the Applicants serving the section 22 Notice. Mr Carr referred the Tribunal to two reports which had been prepared by Davies & Davies chartered surveyors dated 12 February 2018. (On 1-5 Manor Mansions and 6-10 Manor Mansions).
9. In particular counsel highlighted work which needed to be undertaken to the parapet walls which was in identical terms for both buildings. In relation to 1-5 Manor Mansions, the report stated-: *“... It is evident that the red bricks are saturated with corroded bricks due to the inherent poor design of the coping stones which do not effectively discharge rainwater away from brickwork below therefore repair and making good is required to the brickwork and stonework to include random area that require repointing and removal of moss and weed growth. The copings should be removed to allow provision of a physical damp proof course.”* In relation to the rainwater fittings the report noted that-: *There are various areas damp staining to the adjoining brickwork indicating blocked downpipes and/or deteriorated joints therefore all rainwater fittings must be thorough overhauled to ensure that they function adequately, and replace where necessary (Sic)..”* Of the structure, it was noted that *“...the stonework is in poor decorative order therefore general repair, preparation and redecoration is required as soon as possible. There is cracked and defective stonework to the left hand side ground floor sub-sill of the left hand side front bay which also includes some old cracked brickwork that must be cut out and repointed...”*
10. Counsel stated that this report provided a snapshot of the premises at this moment in time. He referred the Tribunal to a report from Drivers Norris dated 23 March 2004. Counsel stated that there had been no work carried out in the property in the intervening 14 years. At the date of the report the condition of the exterior of the property was described as follows-: *“... The exterior paintwork is poor and neglected in places with denuded joinery and peeling paintwork noted e.g. the windowsills. The masonry paintwork to the rendered sections has peeled and blistered in places and has become dirty and stained. However it should be remembered that the block was last painted many years ago with external redecoration overdue...”* The report (which was prepared by Mr Peter Tasker) further stated of the general condition of the property that, -: *“ We recorded disrepair and neglect to other parts of the structure and find it unusual that rather than address issues like the defective down pipes, blocked gullies or unstable boundary walls the Landlord proposes to replace the windows...”*

11. The overall condition of the property was described at paragraph 12 of the report which stated-: *“... It should be noted that the blocks are overdue for repair and re-painting and the level of disrepair noted would normally be addressed during a periodic planned programme of works. However, we consider that the block was last re-painted approx. 10 years ago and if this is the case then the Landlord is not enforcing the lease repairing covenants.”*
12. Mr Carr referred the Tribunal to photographs that had been taken of the premises which depicted damp, cracked window ledges, and in respect of the electrical intake cupboard, he asserted that based on the photographs, the Tribunal could be satisfied that there was evidence (supported by the reports) that the intake cupboard presented a fire risk.
13. Counsel then set out the clauses of the lease that he relied upon in support of his contention that the landlord was in breach of the lease. In particular he referred to clause 6 A the repairing covenant.
14. Counsel then invited the Tribunal to consider the scheme of major work that had been proposed by the landlord.
15. The Tribunal then referred to the witness statements and heard oral evidence.
16. The Tribunal heard from Mr Edward Harris on behalf of the Applicants. In his evidence Mr Harris stated that money had been spent on professional advisers, however despite the reports no work such as work to the roof, or work of maintenance had been carried out. He corrected part of his statement dated 7 March 2018, by setting out that although he had stated that a leak was affecting his premises had never been repaired it had in fact been repaired and the costs had been claimed from the building insurance.
17. In his statement, Mr Harris stated that the applicants had formed an unofficial Resident’s association in order to attempt to get the landlord to carry out his obligations. Mr Harris stated that a Section 20 Notice, dated 3 November 2011, was served. However no action was taken to carry out the work set out in the notice.
18. In the statement, Mr Harris set out at some length the history concerning the attempts, both by the landlord and the tenant, and the disagreements which had arisen in the course of trying to carry out major works at the premises. He also outlined the disrepair which had arisen which led to Preliminary Notice for Appointment of a Manager being served on 3 July 2017.
19. In cross examination, Mr Harris accepted that he did not reside at the premises and that his flat was rented to tenants, subject to a shorthold assured tenancy. Mr Harris denied that he had caused a delay in the work. He stated that in his opinion the specification prepared by Calford Seadon was too detailed, and that in his view the presentation was causing

a higher estimate. He did not agree that his priority had been having the garden landscaped, and having pleasing aesthetics in order to increase the let ability of the property.

20. Mr Harris had referred the landlord to his contractors for an estimate, however as his contractor had not provided the landlord with a copy of his insurance certificate. Mr Harris' contractors had undertaken various work to his properties
21. Mr Harris stated that he had wanted the work to be carried out, he denied causing delays.
22. Mr Webb in his Skeleton Argument stated that the landlord's position was that -: *"...The application to appoint a manager is opposed by a majority of the flats in the Property – 4 of these (flats 5, 7, 9 and 10) are held by the Respondent itself; the other 2 are held by Mr Araldi ... and Mr Lee... (flat 2) and by Mr Traverso (flat 8) ... The Respondent's position is that it is not in breach of the lease and that is not just and convenient to make an order in this case.*
23. The leaseholders of Flats 2 and 8 oppose the application for the right to manage.
24. The Tribunal heard from Mr. Traverso, He had signed a statement dated 20 March 2018. Mr. Traverso lived at flat 8. He indicated that he was opposed to the application to appoint a manager. In his witness statement, he stated that he had *"... 2. I have always found Mr. Kernkraut of Kernberg Holdings Limited to be very helpful and cooperative 3. I have no doubt about Mr. Kernkraut's ability to manage the building and once the works have been carried out I am confident in Mr Kernkraut's ability to continue managing the building."*
25. In his oral evidence, Mr. Traverso stated that he had brought the flat 31 in August 2011. He had undertaken a building survey which had uncovered problems with the brickwork and had identified the fire hazard in the cupboard. He has been informed by the previous owner of meetings which had taken place between leaseholders concerning the proposed major works. He had also taken part in some of the later meetings. He stated that he had also attended the meetings held by Mr Harris as part of the Resident's association. He stated that the meetings had uncovered *"... lots of contrasting opinions and interests"*. He felt that it had not been helpful that Mr Kernkraut had not been invited to the meetings.
26. Mr Traverso stated that he had attended two meetings to discuss the major works. He had suggested that the priority should be making the

building water tight and safe from fire hazards. At the second meeting he recalled Mr Harris attending, he stated that the landscaping of the premises had appeared to be a priority, and that it had appeared to him that the other matters that Mr Harris had wanted to discuss were largely cosmetic. There had also been the view expressed that the work should not cost more than £70,000.00. He stated that he had not been taken aback concerning the proposed costs of the major work as he had spent £40,000.00 in renovating the flat he had purchased. Moreover his surveyor had given him an indication of the likely costs so the sum proposed by Mr Kernkraut did not seem outrageous.

27. He stated that at a meeting on 19 March 2018, he had thought that it had been agreed that the costs of the work could be split, however there had been objection to this.
28. He had personally found Mr Kernkraut to be helpful and prepared to agree to work being undertaken. He recalled that when water had been coming into his flat Mr Kernkraut had readily agreed to Mr Traverso's builder fixing the problem and sending the bill to Mr Kernkraut.
29. He was concerned that if a manager was appointed, that person would be under the control/influence of the existing leaseholders.
30. In answer to questions asked by counsel in cross-examination, Mr Traverso accepted that he was not affected by damp on the ground floor however; he stated that if there is a problem with the fabric of the building, he was not going to say that he did not care about it.
31. Mr Carr asked about whether Mr Traverso was aware of any work being carried out at the premises since he purchased the premises in 2011. He stated that Mr Kernkraut had agreed to his undertaking work to the light fittings and had then reimbursed him.
32. Mr Lee the leaseholder for flat 2 was also available to give evidence. He had filed a statement in identical terms to the one which had been signed by Mr Traverso. The Tribunal decided that it was not necessary to hear from Mr Lee. It accepted his written witness statement and also that he was here to oppose the application.
33. Mr Kernkraut had provided a witness statement which was dated 22 March 2018. In his statement at paragraphs 2 & 3 he stated:- 2. *"...I have been a landlord for over 45 years. I have a large property portfolio comprising of both residential and commercial premises. I estimate that through my holding companies I own approximately 85 properties.* 3. *I am actively involved in the day to day management of*

my properties. I take my responsibilities as landlord very seriously. I have always tried to deal with any concerns that leaseholders raise promptly and in a professional manner. This is the first time an application to Appoint a Manager has been brought against me...

34. Mr Kernkraut also set out in his statement about the history of the premises, including details of repairs that were carried out to the roof in 1997/1998. He denied knowledge of a residence association, and also did not accept that the building had been allowed to deteriorate throughout 2007 and 2008. He stated that there had been a blocked drain at the premises which had been repaired. He acknowledged that the building was in need of upgrading and decoration. He stated in paragraph 17 of his witness statement that -: “ *In 2011, therefore, having discussed the matter with the leaseholders and with their agreement I approached Calford Seaden and arranged for one of their surveyors to visit the Building so that they could put together a programme of works to address the outstanding works...*” This was followed by a Section 20 Notice being served on 3 November 2011
35. Mr. Kernkraut then set out that during 2012 he was involved in a number of meetings during which the work was discussed, until 12 December 2012 when he received a telephone call from Mr Harris. He was informed by Mr Harris that the leaseholders that they no longer wished to use the specification of works produced by Calford Seaden. Mr. Kernkraut was not happy about this, and as a result he stated that an impasse was reached and the work was postponed.
36. Following this a revised schedule of work was prepared and a *Notice of Intention to carry out the works* was served on 22 June 2015. Following this, Mr Collins and Mr Harris nominated Mr Robert Bolton of RBC Projects Limited to carry out the work and Mr Waxman of Hartley Projects Limited to oversee/ supervise the works. Mr Kernkraut stated that Mr. Bolton had not provided a copy of his insurance certificate as requested. There was a considerable period of discussions concerning the contractors and the work and although Mr Kernkraut appointed both of the suggested contractors the demand for the service charges was not served until 7 August 2017. By which time Mr Bolton’s original quotation had expired.
37. Mr. Kernkraut stated that the new quotation was almost identical to the original quotation from Collins contractors. He stated that although flats 2 and 8 had paid the demand. Mr Kernkraut accepted that the matter had a convoluted history however he did not accept that the delay was caused by him. He stated that in an effort to try to rebuild his relationship with the applicants he would be happy to appoint Mr Esterman however he did not accept that it was necessary for a Tribunal appointed manager.

38. In cross examination, Mr. Carr challenged Mr. Kernkraut's account. He asked him about his obligations under the lease, and queried why it had taken 7 years from the Notice being served and pointed out that the work had still not been undertaken.
39. He reiterated the fact that he had tried to obtain the agreement of all of the leaseholders prior to the work being carried out. He also denied that he was in breach of the terms of the lease.
40. The Tribunal had indicated to the parties that it would make a decision on whether a manager needed to be appointed and only if the grounds existed would it consider whether Mr Esterman was suitable to be appointed.

Closing submissions on whether a manager ought to be appointed

41. In his closing submissions, counsel invited the Tribunal to make an order appointing a manager. In his Skeleton argument he considered firstly -: *Whether the Land lord is in breach of the Lease:*

By clause 6(A) (i) of the Lease L covenanted with T that it will:

As often as may in the opinion of the Surveyor be necessary wash and paint in suitable colours and in a workmanlike manner or otherwise treat in an appropriate manner (a) all the outside would iron cement and stucco work of the Building usually painted or treated as the case may be and to clean and brush down all the outside stonework of the Building (if any) and (b) all inside walls ceilings wood and iron work of the common parts of the Retained Property the use of which is common to the Lessee and the lessees or occupiers of other parts of the Lessor's Property AND ALSO at all times during the said term to keep the walls ceilings and floors of the Retained Property (but excluding those of any flat for the time being not demised by a lease in similar terms to this Lease as envisaged in clause 5(C) hereof) and the whole of the structure roof balconies foundations and main drains of the Building and the walls rails fences and gates appurtenant thereto in good repair and condition

This clause of the Lease was quoted in full in the Third Schedule to the Notice ... and which T alleges L has breached within the meaning of LTA 1987 s.24(2)(a)(i).

T instructed Davies & Davies surveyors (“D&D”) to inspect the Building and prepare a report on its general and structural condition. D&D inspected the Building on 31.1.18 and produced written reports on the Building dated 12.2.18 Those reports were sent to L on 7.3.18 (2nd Harris, para 2 ...).

Despite having copies of the D&D reports, Mr Kernkraut has not stated that the D&D reports are in any way incorrect – indeed he has not commented on the D&D reports at all in his lengthy statement.

In the circumstances, the tribunal is invited to find that the content of those reports is true. In particular, the tribunal is invited to consider the photographs taken by D&D on their inspection. These photos graphically show that the exterior and interior of the Building is in a very poor state of repair.

42. Counsel further stated in his oral closing submissions, that Mr Kernkraut although an experienced landlord was relatively inexperienced in dealing with residential property. He accepted that this may be why the issues arose. He reminded the Tribunal of Mr. Kernkraut evidence that he liked to do things by consensus. However, he submitted that this was not always possible. Parliament had also provided mechanisms for getting work done and it was for landlords to use those mechanisms.
43. He submitted that where the tenants do not agree, that there is a duty on the landlord to get the work done. He acknowledged that there were leaseholders who were not happy with a manager being appointed. Mr Carr reminded the Tribunal that Mr Kernkraut was also a leaseholder, and that in saying a majority of the leaseholders did not wish for an appointment to be made, Mr Kernkraut’s properties should not outweigh other leasehold interests. He noted that the other leaseholders who supported Mr Kernkraut were at best lukewarm in their endorsement of him and their witness statements before this Tribunal had been prepared pro forma statements.
44. He referred to the fact that no work had been carried out for over 20 years. This was despite three section 20 notices being served. He submitted that the building desperately needed repairs and maintenance and that even if the Tribunal considered the notice defective it was just and reasonable for an order appointing a manager to be made.
45. In his Skeleton Argument on behalf of the Respondent, Mr Webb stated that this was an unusual application, as everyone agrees about the necessity of the work and in general terms, the costs. Mr Aradi and Mr Lee and Mr Traverso had paid for the work to be carried out. However he submitted that it was the delay in providing the funds, which had caused the delay in the work being undertaken, and that was at the behest of the other leaseholders.

46. Mr Webb submitted in his skeleton arguments that-: “...*The preliminary notice served by the Applicants in July 2017 The sole ground relied upon by the Applicants is set out in the second schedule ... – i.e. that a manager should be appointed under section 24(2) (a) of the 1987 Act. This requires the Applicants to prove that:*
47. *The Respondent is in breach of an obligation owed by it to the Applicants under their leases; and*

That it is just and convenient to make the order in all the circumstances of the case.

In respect of such an application, it is important to note the comments in Commercial and Residential Service Charges (Bloomsbury 2013) at [47-57] that:

“By definition, the effect of an order made under section 24 of the Landlord and Tenant Act 1987 is to deprive the landlord of his legal and contractual right to manage the property in his ownership. The making of such an order is, therefore, a serious step that will not be undertaken lightly by the [FTT]. It is considered that, even where the [FTT] is satisfied that one or more of the statutory grounds in section 24 of the Landlord and Tenant Act 1987 is made out, it is only where those grounds disclose comparatively serious mismanagement on the part of the landlord that the [FTT] should go on to exercise its residual discretion to order the appointment of a manager.”

Despite this, it is not readily apparent precisely what facts and matters are relied upon by the Applicants in support of the application:

The mandatory requirements of section 22(2) of the 1987 Act are that the notice should specify the matters that would be relied on by the tenant for the purpose of establishing the grounds (section 22(2) (c)) and should specify a reasonable period to take such steps for the purpose of remedying the matters complained of (section 22(2) (d)). It is submitted that the section 22 notice served by the Applicants does neither:

The third schedule... merely refers to the landlord’s repairing covenant and asserts that “the landlord has for years failed to honour that covenant”; and

The fourth schedule ... gave the Respondent an unreasonably short period of 3 months in which to collect the service charges and carry out the works which it was already intending to undertake and also specified for remedy matters which do not fall within section 24 and for which no basis was identified in the notice (i.e. that the tenants should be reimbursed unspecified historic service charges and that “the lessees” unspecified legal costs should be paid).”

48. Mr Webb further submitted that the Section 22 notice was defective, in that it failed to identify the specific work and the date by which the work should be carried out. It also failed to set out the matters relied upon by the applicants it merely repeated the already agreed schedule of work.
49. Mr Webb also set out that it was not reasonable or just and convenient for an appointment to be made on the grounds of breach of covenant, in that the work had not been carried directly because the tenants had yet to pay the service charges, which in turn would provide funding for the work.
50. Accordingly, the Tribunal should not exercise its power to appoint a manager. He submitted that although the landlord had not undertaken the work the Tribunal should consider all of the circumstances in particular the reason for the delays and the lack of cooperation from the leaseholders, he also cited delays caused to the landlord by his decision to use their nominated contractor rather than just relying on his own.
51. He submitted that the landlord had actively pursued the 2010 work being carried out, and that the Tribunal should consider the fact that the majority of leaseholders objected to the appointment. He did not accept counsel's submission that Mr Kernkraut did not as a leaseholder have an equal say. He stated that taking away the management function was a draconian step, and that having a Tribunal appointed manager would be more expensive for all of the leaseholders in the long run. He also referred to the fact that the landlord was not being unreasonable and was prepared to appoint Mr Esterman to manage the property without the need for a Tribunal appointed manager.
52. He submitted that the applicants had failed to show serious mismanagement of the premises or in the circumstances, for reasons he had set out breach of the terms of the lease.
53. He further submitted that the Tribunal should consider that two of the leaseholders had concerns about the appointment of the manager. They were worried about the appointee and the influence that might be exerted by others. They were also concerned that the priorities of these leaseholders may not be in the general interest of the care and up keep of the building, but more cosmetic in nature.
54. Mr Traverso also added on his own behalf that he had always found Mr Kernkraut to be helpful and cooperative and had responded to requests.
55. Mr Webb's final point was that if a manager should be appointed by the Tribunal, the Tribunal should consider that the appointment had been made to resolve an impasse and accordingly costs should be recovered by the landlord.

The decision of The Tribunal on whether a Manager should be appointed

56. The Tribunal has determined that it is just and reasonable to appoint a manager to manage the building. This was a finely balanced decision.
57. The Tribunal noted that although in many respects the appointment of a manager may be seen as indicative of some failing on the part of the manager, the real issue was the breach of clause 6(A) of the lease. The Tribunal accepted that a breach had occurred. The Tribunal heard about the many and competing interests which made it difficult for the director to carry out his obligations and the consensual approach that he wished to take. Nevertheless the covenants in the lease were his responsibility as landlord any failure to enforce those covenants amounted to a breach of the lease.
58. Although the Tribunal accepted that he was in part hampered by the attitudes of the leaseholders, he had many tools at his disposal in carrying out those covenants (including legal action), the Tribunal finds that the landlord breached clause 6A of the lease in not carrying out the repairs and maintenance on a timely basis.
59. The Tribunal is aware that as landlord the Respondent wore two hats (one as a leaseholder) and that as such, Mr Webb was correct that a number of leaseholders objected to the order. However the function of the Tribunal is not to serve as a democracy, neither is it necessary for us to seek a consensual approach. Our decision is based on the fact that the Respondent throughout the period had ample opportunity to enforce the covenant, and in determining whether it is necessary to make an order, the Tribunal consider that the situation has become entrenched at the premises, and nothing that we have heard enables the Tribunal to have confidence that matters would move forward without an appointment being made.
60. The Tribunal has considered the submissions of Mr Webb concerning the section 22 notice, although in our view the section 22 notice could have been better worded and lacked clarity in some regard, it was in our view sufficient to put the Respondent on notice as to what was required. If the Tribunal is wrong about this, then as a secondary decision the Tribunal dispenses with the requirement for notice under Section 22.

The evidence of Mr Elliot Esterman of Trent Park Properties

61. The evidence of Mr Elliot Esterman. Mr Esterman appeared before the Tribunal in support of the Applicant's submission that he should be appointed as manager under Section 24 of the Landlord and Tenant Act 1987.
62. Mr Esterman of Trent Park Properties LLP had prepared a letter/statement in compliance with the Tribunal's directions dated 7 March 2018. In his statement, he stated as follows-: "I can confirm that

I will accept [the] appointment by the Tribunal and will comply with the current edition of the Code of Practice published by RICS.

63. He set out that he had been involved in the management of residential properties for over 20 years and that he had worked as a residential property manager for several large well-established property management companies. He had begun trading as Trent Park Properties in June 1997.
64. In his statement he set out his proposed management plan for the building. He stated: “...I have visited the property and noted its poor condition due to many years of lack of maintenance. My aim is to prioritise the major works required to bring the building back into a good state of repair so that going forward it can be managed and maintained at minimal cost and internal and external repair and redecoration works are carried out on time and on a regular basis in accordance with the leases...”
65. Mr Webb was invited to ask questions of Mr Esterman on behalf of the Respondent. He was asked about Trent Park Properties, and the partnership arrangements. He explained that he was a partner along with his mother would was a sleeping partner. There were 3 full-time and 1 part-time employees.
66. He stated that he would be dealing with matters on a date to day basis. His charges would be £4000 plus VAT. He would invoice the service charge account. In answer to questions about how his time for attending the hearing was to be accounted for he stated that he had had no discussion concerning charging his fees for attending the hearing to the service charge account.
67. He was asked about whether there would be a separate charge for work undertaken outside of the normal day to day management such as the major work. He confirmed that he would and that the charge would be 10% of the costs of the work. He stated that if Mr Waxman was used to supervise the work then he would reduce the fees.
68. He was asked about the work that he would undertake in respect of the major work, he stated that in all probability it would be necessary to serve a fresh section 20 notice and carry out all of the necessary consultation. He stated that he would ask the same surveyor to update the schedule of works, or alternatively a surveyor from one of the firms used by him.
69. He stated that he was aware that the property was in a conservation area, and that he had had experience of managing cyclical works within conservation areas.
70. He confirmed that he would if appointed follow the lease impartially without taking direction from the landlord or tenant and would liaise with both, but would take the lead as a professional managing agent. He was asked how he would go about dealing with issues between

tenants and he stated that he would build relationships by emailing contacts and ensuring that he liaised with everyone on an equal footing.

71. He was asked by the Tribunal how he had come to be approached by the leaseholders, and whether he had any personal connection with any of them. He stated that he had been approached through the leaseholders' solicitor Ms Gaskin. She had asked him whether he had been appointed as manager. He believed that she had found his details through the ARMA Website.
72. He confirmed that he had been appointed in 2007 in relation to the management of 45 Lea Bridge Road, in a case where there was an absentee landlord. Mr Esterman confirmed that he still managed the property.
73. Mr Esterman was asked about his insurance, and provided the Tribunal with a copy of his public liability insurance certificate. The Tribunal asked Mr Esterman whether he would be prepared to have his management fees capped at £14,000.00 regardless of whether the costs of the major work increased. He confirmed that he would be prepared to agree to this.

The decision of the Tribunal on the appointment of Mr Esterman of Trent Park Properties.

74. The Tribunal having heard from Mr Esterman and considered his written submissions dated 7 March 2018, determines that he is a suitable person with appropriate experience, and that as he is willing to be appointed, he ought to be appointed as manager for the premises.
75. In accordance with section 24(1) Landlord and Tenant Act 1987 [Mr Esterman of [Trent Park Properties ('the Manager')] is appointed as manager of the property at [Manor Mansions, 455 Holloway Road London N7 6LR ...] ('the Property').
76. The order shall continue for a period of [3] years from [4 July 2018]. If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.
77. The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of functions and services attached to this order;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and

approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.

78. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
79. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges. In making this decision, the tribunal considered that although the Respondent was prepared to appoint Mr Esterman, the respondent did not accept that it was necessary to make an appointment, as the Applicant has succeeded in his application; it is just and reasonable that an order should be made.

Name: Judge Daley

Date: 23.08.18

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

DIRECTIONS

1. The manager shall manage the premises in accordance with the management plan appended to this order in schedule 2.
2. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
3. That no later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date; the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
4. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon [4 July 2018] become rights and liabilities of the Manager.
5. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
6. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
7. By no later than [4 July 2019], the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date, providing a copy to the lessees of the Property and the Respondent at the same time.
8. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.

9. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) [Set] Demand and collect [ground rents,] service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) [Set] Demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (v) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

- (i) Fees for the above mentioned management services will be a basic fee of £4000.00 for the premises. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the cost (to be capped at £14,000 for the major work set out in the Section 20 notice/ intention to carry out work dated 22 June 2015 or the equivalent work). This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

Schedule 1

Section 24 of the Landlord and Tenant Act 1987

1. A leasehold valuation tribunal may, on an application for an order under section 24 of the Act, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which Part II of the Act applies:
 - (a) such functions in connection with the management of the premises, or
 - (b) such functions of a receiver, or both, as the tribunal thinks fit.

Such an order may be made only where the tribunal is satisfied that one or more of the circumstances set out in section 24(2) of the Act exist and only, in each case, where the tribunal is satisfied that it is just and convenient to make the order in all the circumstances of the case.

Schedule 2

The management Order dated: 23 August 2018

MANAGEMENT ORDER

Interpretation

In this order

- (a) "Common Parts" means any garden area, postal boxes, refuse store, security gates, paths, halls, staircases and other access ways and areas (if any) within the Premises that are provided by the Respondent for common use by the Lessees or persons expressly or by implication authorised by them.
- (b) "Freeholder" means the person or persons with the benefit of the freehold title registered at HM Land Registry under Title Number LN209096.
- (c) "Functions" means any functions as set in this Order.
- (d) "Leases" means the long leases vested in the Lessees.
- (e) "Lessee" means a tenant of a dwelling holding under a long lease as defined by section 59(3) of the Landlord & Tenant Act 1987 ("the Act").
- (f) "the Manager" means Elliot Esterson, Trent Park Properties LLP, 5 Elstree Way, Borehamwood, Herts, WD61SF.
- (g) "the Premises", means all that property known as 1-10 Manor Mansions, 455 Holloway Road, London, N7 6LR.
- (h) "the Respondent" is Kernberg Holdings Limited and includes any successors in title of the freehold estate registered under title number LN209096 or any interest created out of the said freehold title.

IT IS ORDERED THAT

1. Elliot Esterson is appointed Manager of the Premises under Part 2 of the Landlord and Tenant Act 1987 (including such functions of a Receiver as are necessary) for 3 years commencing on 4 July 2018 and ending on 3 July 2021 and is given for the duration of his appointment such powers and rights particularised below:

- a. To receive from the Lessees all service charges, interest and any other monies payable under the Leases and any arrears due thereunder, the recovery of which shall be at the discretion of the Manager.
- b. To receive from the Respondent, for the period that any flat in the Premises is not let or is let without a Lessee being under an obligation to pay a service charge, interest or other monies that would otherwise be payable under the Leases, all service charges, interest and any other monies that are payable under the Leases as a result of such flats not being so let and this includes the right to recover any arrears due thereunder, the recovery of which shall be at the discretion of the Manager.
- c. In respect of the Maintenance Year ended on 31 March 2018:
 - i. to prepare audited accounts for that Maintenance Year in accordance with paragraph 3 of Part I of the Fourth Schedule to the Leases;
 - ii. to deliver copies of those audited accounts to the Lessees and the Respondent;
 - iii. to notify the Lessees and the Respondent of the amount by which any estimate prepared by the Respondent for the Maintenance Year ended on 31 March 2018 shall have exceeded or fallen short of the actual expenditure in that Maintenance Year; and
 - iv. to demand payment of any shortfall from the Lessees and the Respondent or to credit any excess to the Lessees and the Respondent in the service charge accounts for the Maintenance Year ending on 31 March 2019 (as the case may be)
- d. The right to prepare a budget for the service charge year ending on 31 March 2019 and to give notice of the budget to the Lessees and the Respondent and to raise an interim service charge demand once he has established
 - i. the expenses already incurred by the Respondent in the Maintenance Year ending on 31 March 2019; and
 - ii. the sums required on account in accordance with any budget he issues.
- e. The power and duty to carry out the obligations of the Respondent contained in the Leases and in particular and without prejudice to the foregoing.

- i. The Respondent's obligations to provide services;
- ii. The Respondent's repair and maintenance obligations; and
- iii. The Respondent's power to grant consent,

but, for the avoidance of doubt, the Manager shall not be empowered to carry out any functions of the landlord arising from Chapters I and II of the Leasehold Reform, Housing and Urban Development Act 1993.

- f. The power to delegate to other employees of Trent Park Properties LLP, appoint accountants and surveyors as he may reasonably require assisting in the performance of his functions.
- g. The power in his own name to bring or defend any legal action or other legal proceedings in connection with the Leases or the Premises and to make any arrangement or compromise on behalf of the Respondent including but not limited to proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases;
- h. The power to commence proceedings or such other enforcement action against the Respondent.
- i. The power (in his own name) to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- j. The power to open and operate (in his own name) client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to s42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the leases (if any) or to powers given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.
- k. The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent or any Lessee owing sums of money to the Manager.

1. The power to borrow (in his own name) all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondent.

2. The Manager shall be paid for providing his services in accordance with the Schedule of Functions and Services as set out below.
 - a. The Manager shall receive from each Lessee the sum of £400 (inclusive of VAT) per annum.

 - b. The Manager shall receive from the Respondent, for the period that any flat in the Premises is not let or is let without a Lessee being under an obligation to pay a service charge, interest or other monies that are otherwise payable under the Leases, the sum of £400 (inclusive of VAT) per annum per flat that is not so let.

 - c. For the avoidance of doubt, as at the date that this Order is made, four flats are not so let and the Manager may, as at the date of the Order and until such flats are so let, therefore recover £1,600 (inclusive of VAT) per annum from the Respondent.

3. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.

4. From the date of this Order, the Respondent shall not, whether by itself or any agent, servant or employee, demand any further payments of service charges, administration charges or any other monies from the Lessees. Such functions are transferred to the Manager forthwith.

5. The Respondent, the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.

6. From the date of this Order, the Respondent and the Lessees shall - on receipt of 48 hours written notice - give the Manager reasonable

access to any part of the Premises which he might require in order to perform his functions under this Order.

7. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon the date of this order become rights and liabilities of the Manager.
8. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or freehold.

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note to the Tribunal and, upon a request being made, to any Lessee of the Property or the Respondent.
2. That no later than four weeks after the date of this order the Respondent shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The Manager shall account forthwith to the Respondent for
 - a. the payment of ground rent received by him;
 - b. the payment (when received by him) of the expenses incurred by the Respondent in accordance with part II of the Fourth Schedule to each of the leases for the period from 1 April 2017 to the date of this Order PROVIDED THAT the Manager shall not be liable to the Lessees for any payment made to the Respondent in accordance with this Direction which the Lessees later successfully challenge in any court or tribunal of competent jurisdiction;

- c. and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
4. By no later than 6 months after date of the management order, the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date.
5. Within 28 days of the date of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the Respondent and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon an application by any interested party.
6. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- i. Maintain appropriate building insurance for the Property.
- ii. Ensure that the Manager's interest is noted on the insurance policy.
- iii. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Property with the insurer.

Ground rent

- i. Collect ground rent from the Lessees.

Service charge

- i. Prepare an annual service charge budget (consulting with the Lessees as appropriate), administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- ii. Set, demand and collect service charges (including contributions to a reserve fund and service charges due for the period 1 April 2017 to the date of this Order), insurance premiums and any other payment due from the lessees.
- iii. Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- i. Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- ii. Maintain efficient records and books of account which are open for inspection by the Respondent and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- iii. Maintain on trust an interest bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- iv. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- i. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.

ii. The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

i. Fees for the abovementioned management services will be a basic fee of £400 per annum per flat (inclusive of VAT). Those services additionally include the services set out above and in the Manager's letter dated 7th March 2018 under the heading "Full Block Management" services.

ii. Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the cost or £14,000 (exclusive of VAT), whichever is the lesser sum, unless an application is made to the Tribunal (which is granted) to exceed this sum.

iii. The charge of 10% shall include any professional fees of any surveyor engaged to monitor the works.

iv. An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.

v. The Manager is entitled to be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of Counsel, solicitors and expert witnesses) of and incidental to any application or proceedings whether in the Court of First-tier tribunal, to enforce the terms of the Leases. For the avoidance of doubt, the Manager is directed to use reasonable efforts to recover any such costs etc directly from the party concerned in the first instance and will only be entitled to recover the same as part of the service charges in default of recovery thereof.

vi. VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.

Complaints procedure

i. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

