



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

Case reference : **BIR/00AW/LVM/2020/0001**

HMCTS code (paper, video, audio) : **P:PAPERREMOTE**

Property : **1 Palace Gate, W8 5LS**

Applicant : **Michael Maunder Taylor**

Representative :

Respondent(s) : **(1) Winchester Park Limited
("WPL")(freeholder/landlord) acting
by:
(2) fixed charge receivers
(3) Eperstein SARL (lessee of Flat 1)
(4) Number One Group Jersey Capital
PCC (tenant of Unit 6)**

Representative : **Mr Alon Mahpud (representative of 4th
Respondent)**

Type of application : **Application for a variation of a
Management Order under section 24 of
the Landlord and Tenant Act 1987**

Tribunal members : **Judge D. Barlow
Mr D. Satchwell FRICS**

Date of decision : **23 July 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, no-one requested it and all issues could be determined in a remote hearing/on paper. The documents that the Tribunal were referred to are identified in paragraphs 18 and 19, the contents of which were considered by the Tribunal.

DECISION OF THE TRIBUNAL

The Tribunal varies the Management Order and extends the period of the Managers appointment to the 31 May 2023.

REASONS

The application

1. The Application received on 23 April 2020 is to vary a management order dated 26 July 2018 (“the 2018 Order”), which is due to expire on 25 July 2020, to provide for a further period of some 2 years ten months, expiring on 31 May 2023.
2. The variations sought are:
 - (a) An extension of the term of the 2018 Order for a further period of just over 2 years and 10 months to expire on 31 May 2023.
 - (b) Variations to the 2018 Order to secure directions on handing over the management and surplus funds on expiry of the 2018 Order.
 - (c) Further variations as contained in a draft management order attached to the Manager’s statement of case (“the draft order”).
3. The Tribunal is therefore required to determine whether to vary the 2018 Order to extend the term of the Managers appointment and in so doing, whether to incorporate the variations suggested in the application and the draft order, which can be summarised as follows:
 - (i) To extend the term of the appointment until the 31 May 2023.
 - (ii) To reduce the minimum professional indemnity cover to the sum of £1,000,000.00.
 - (iii) To re-set the annual management fee at £7880.00 plus VAT.
 - (iv) To include provision for the handover of the management functions and surplus funds on expiry of the order.

4. The lessees of Flats 2, 3 and 4 support the application. The tenant of Unit 1E also supports the application.
5. No objection to the application has been received from WPL, the fixed charge receivers, or the tenant of Unit D.
6. The 3rd and 4th Respondents have objected to the application.

The background

7. The Property which is the subject of this application is a seven-storey building on the corner of Kensington High Street and Palace Gate. The entrance to the communal hall and stairs is on Palace Gate. The property comprises 5 flats and 3 commercial units. The commercial units occupy the basement and ground floor with the flats on the ground floor and above.
8. No party requested an inspection of the Property and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
9. The 4th Respondent holds Unit 6 under a medium term commercial lease and has been represented by Mr Alon Mahpud in these proceedings. The 3rd Respondent holds Flat 1 under a long residential lease. The beneficiary of the trust under which Flat 1 is held, is personally connected to Mr Alon Mahpud. Prior proceedings, including those leading to the appointment of the Manager, indicate that Mr Mahpud was formerly a director of WPL responsible for management of the Property.
10. The Applicant was appointed as Manager of the Property following a decision of the Tribunal dated 26 July 2018, for a period of 2 years expiring on 25 July 2020. The circumstances giving rise to the appointment merit a brief explanation.
11. Following a long history of litigation at Palace Gate, on the 26th June 2015, the Leaseholder of Flat 2 (Wayland Investments Inc.) and the predecessor in title of Flat 3 (Trustees of the Palace Gate Discretionary Trust) (“the Leaseholders”) made an application to the Tribunal for the Appointment of a Manager under section 24 of the Landlord and Tenant Act 1987. The Respondent to the application was WPL. Mr Alon Mahpud was then managing the Property and alleged by the Leaseholders to be the “controlling mind” of WPL. Shortly after the application was made, WPL appointed Neil Maloney FRICS to act as managing agent at the Property.
12. On 26th June 2017, a Tribunal (BIR/00AW/LAM/2015/0001) issued “Preliminary Decision, Adjournment and Directions”. The determination was an unusual one. At paragraph 45, the Tribunal said:

“The Tribunal finds as set out above, that of the applicant’s four grounds three pass the gateway or threshold but the Tribunal further finds that this is not a clear-cut case where it would be just and convenient to appoint a Manager at this time. In the Tribunal’s view, it would have been clear-cut in favour of an appointment had Mr Mahpud continued to manage the Premises given the findings of the previous Tribunal as to his Managerial competence and given the breaches that have occurred”

13. The Tribunal concluded that this was a significant step by way of improvement and that a period of six months should be allowed to “*see how Mr Maloney goes on*”. The application was then adjourned on directions that the parties make further submissions by 15 January 2018, following which the Tribunal issued its final decision on 26 July 2018.
14. The final decision concluded that there had been no real change in the standard of management since the hearing in January 2017. The Respondent had failed to convince the Tribunal that the Property was being effectively managed. At paragraph 21, the Tribunal said:

“Bearing these points in mind, the Tribunal, therefore, has no hesitation in finding it just and convenient to appoint a new Manager. No criticism has been made of the Applicants’ proposed appointee, Mr Michael Maunder Taylor FIRPM, AssocRICS, whom the Tribunal finds eminently suitable as referred to in the Preliminary Decision. (para.46). The Tribunal has, as stated above, given the Respondent, more than adequate time to demonstrate that the property is now being managed in a transparent and competent manner and yet, despite a two-day hearing and numerous exchanges of documentation post-hearing, many, if not most of the Applicants’ concerns remain outstanding. In the Tribunal’s view it is time for an independent outsider to step in and manage and the Tribunal feel that backed up by the authority of a suitable order such Manager will do a better job than the combined and hitherto inadequate efforts of the Respondent and Mr Fisher.”

15. Following the decision granting the 2018 Order, Joint fixed charge receivers of the Property, Messers Pitt and Fraser of Fraser CRE, were appointed. The receivers have not been discharged and Winchester Park Limited (“WPL”) currently therefore, acts through the fixed charge receivers.

16. There have been proceedings between the Manager and various leaseholders during the current appointment as follows:
- (i) An application for directions under case reference BIR/00AW/LVM/2018/0002, concerning overpayments of service charge by the lessee of Flat 4 prior to the Managers appointment, which was determined against the lessees wishes.
 - (ii) An application under s27A of the Landlord and Tenant Act [1988], case reference BIR/00AW/LAM/2019/0301, for determination of a right to demand payment into a reserve fund for the planned costs of external repairs to the building, and the reasonableness of the amount demanded, following a refusal to pay by the lessee of Flat 1. Determined that clause 13 of the lease allowed for the retention of a reserve fund but that a reduced sum should be substituted for that demanded in the first and second years.
 - (iii) An application under case reference BIR/00AW/LAM/2019/0004, for directions concerning the liability of the tenant of Unit 6 to pay a service charge and the basis of the fair proportion, following the tenant's refusal to accept liability. This is due to be determined by the Tribunal on 15 July 2020.

The Law

17. This application is under section 24 of the Landlord and Tenant Act 1987 and the relevant parts state:

“(9) The appropriate Tribunal may on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the Tribunal may by order direct that the entry shall be cancelled.

(9A) The Tribunal shall not vary or discharge an order under section (9) on the application of any relevant person unless it is satisfied –

(a) That the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made and

(b) That it is just and convenient in all the circumstances of the case to vary or discharge the order.”

The Parties Submissions

18. The Tribunal has received and considered a 46-page numbered bundle of documents which includes the statement of the Manager, the Draft Order, the statement of Mr Alon Mahpud on behalf of the 4th Respondent dated 5 May 2020; and the statement of Ms Elizabeth Taylor on behalf of the 3rd Respondent date 5 May 2020. [MMT 1-46]
19. The Tribunal has also received a Reply and further submissions, (exhibiting a 155-page bundle of documents [ES 1-155] from Counsel instructed by the 3rd Respondent. The bundle was received on the 26 June 2020, (a day after the deadline specified in the directions). However, in accordance with the overriding objective contained in Rule 3 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules the Tribunal has exercised discretion to extend the 3rd Respondents time to reply to the 26 June 2020 and has considered all the relevant submissions and documents in the 3rd Respondents bundle, even if no direct reference is made to them in this decision.
20. Mr Mahpud also filed an ‘out of time’ reply and further submissions on behalf of the 4th Respondent, notwithstanding the Tribunal’s refusal to extend his time limit. As his submissions appear to be no more than a copy of the reply and submissions filed by the 3rd Respondent’s Counsel, the Tribunal does not deem it necessary to make any determination on the late filing, or to consider these submissions.
21. The lessees of Flat’s 2, 3 and 4 made submissions objecting to the late filing of the 3rd Respondents reply and submissions; and also objected to Mr Mahpud’s late submissions, which the Tribunal considered before exercising its discretion to extend the 3rd Respondents time limit.

The Manager’s Statement [MMT 1-6]

22. The Manager concedes that management of Palace Gate has not been straightforward, due to a legacy of unresolved issues and the need to balance the differing concerns of parties who have historically, resolved their disputes through litigation. The Manager confirms that his approach is to seek to clarify the differing views before postulating a resolution. An approach that he concedes is not always successful and has on three occasions, required referral to the Tribunal for a determination (as referred to in paragraph 16 above).
23. The Manager states that it was reasonable for him to have made the applications in order to resolve the areas of dispute and enable the parties to move forward.

24. When reporting to the lessees and tenants on the outcome of the s27A application the Manager sought their views on an extension of the Management Order and only made this application because there was majority support for it.
25. In relation to financial matters the Manager confirms that all service charge payments are up to date with the exception of arrears that have accrued on two units. Flat 1 has an outstanding contribution to the reserve fund of £7199.94, which is being pursued by the Manager's solicitor following service of a pre-action letter. Unit D has service charge arrears of £10,222.43. The situation has been complicated by the dissolution of the former tenant followed by an assignment of the lease to the current tenant on terms that render the assignment unregistrable at HM Land Registry. The joint receivers are working on a solution with the tenant's solicitor which will allow for the lease assignment to be registered and the arrears paid.
26. A determination of Unit 6's liability to contribute to the service charge will be made by a Tribunal on the 15 July 2020 which may result in a further adjustment to the service charge for the Property.
27. Shortly after his appointment the Manager instructed a Chartered Surveyor to inspect the building and advise on a long-term maintenance plan. That report was used to calculate the reserve fund contributions required from the lessees. A ball park figure of £220,800.00 (including VAT and fees) was identified by the surveyor, which the Manager intends collecting through the reserve fund. Following the Tribunal decision referred to in paragraph 16 (ii) above the sum of £16,000.00 has been demanded for the first and second years of the appointment. This sum is lower than originally requested and will mean re-programming the start of the works beyond 2021.
28. A reserve fund contribution of £94,400.00 will be demanded in 2021, the third year and the Manager will obtain a detailed specification for the cost of external repairs and decorations which the Surveyor has identified as necessary to avoid consequential damage to the interior. The Manager will then consult the lessees, as required by s20A of the Landlord & Tenant Act 1985. A final contribution of £94,400.00 (adjusted to take account of the actual costings, following the consultation process and the tenders received) will be sought in 2022, the fourth year. By the end of the fourth year the Manager should be holding circa £220,800.00 in the reserve fund which will allow the external major works to be carried out the following year, i.e. year five and is the reason for the extension to 31 May 2023.

29. The Manager acknowledges that the high contributions to the reserve fund for the necessary external works may impact on the long-term maintenance plan for internal decorations and lift works planned for 2022, some of which may have to be deferred. He will obtain a report on refurbishment of the lift so that long term works can be reprogrammed and the reserve fund adjusted. It is however likely that internal decorations and lift refurbishment will not be programmed until after expiry of the extended term.
30. The 2018 Order provides for an annual management fee of £7,500.00 reviewed annually in line with inflation. Taking account of the inflationary uplift, the Manager proposes a fee of £7,880.00 plus VAT subject to the same annual review and does not propose any increase to the other fees stipulated in the 2018 Order.

3rd Respondent's submissions

31. The statement of Elizabeth Taylor [MMT 44-46] confirms that the 3rd Respondent objects to the application on grounds which can be summarised as follows:
- (i) The Manager rushed into legal action over the reserve fund (referred to in paragraph 16(ii) above) without attempting to correspond with the lessee directly.
 - (ii) The contribution to the reserve fund demanded by the Manager was unreasonable.
 - (iii) The Manager acts in a biased way in favour of other lessees. He doesn't correspond very much with us and on 19 February 2020 refused to correspond other than through his lawyer which results in unnecessary expense to the service charge.
 - (iv) The Manager failed to include the 3rd Respondent in correspondence about this application.
32. Ms Taylor also relies on the Tribunals decision dated 10 January 2020 on the application referred to in paragraph 16(ii) above, which commented that:
- “...it is not reasonable to demand these substantial sums without proper consultation”*
- “For any works to be carried out detailed specifications will have to be prepared and tenders sought from appropriate contractors...”*
- “The Tribunal does consider the Applicant is entitled to collect reasonable sums for future expenditure”*

4th Respondent's submissions

33. Mr Mahpud's statement [MMT 40-42] confirms the 4th Respondent objects to the application on grounds that can be summarised as follows:

- (i) The Manager has failed to meet or make one phone call to discuss Unit 6 to avoid wasting legal fees and other costs to the service charge.
- (ii) The Manager acts in a way that is biased against the 3rd and 4th Respondent and in favour of the lessees of Flats 2, 3 and 4, he has met with each lessee more than once but has failed to meet or propose a meeting with anyone from Unit 6.
- (iii) An excessive approach to litigation is taken by the Manager who refuses to consult or communicate reasonably with the 3rd and 4th Respondents and demonstrates poor judgement.
- (iv) The Manager fails to properly check historic information concerning service charge apportionments for Unit 6 resulting in constant unnecessary legal proceedings.
- (v) The Manager's approach has been impartial and unfair, the only two lessees he has not hesitated to take legal action against are the 3rd and 4th Respondents, the demand for excessive sinking funds and refusal to acknowledge or address any concerns demonstrates poor judgement in communications and management of the building.
- (vi) The service charge budget for professional fees is about 65% of the budget and a good Manager should be given the opportunity to proactively manage the property in place of the current Manager who has failed with many of the items and disputes.

34. Mr Mahpud also relies on the Tribunal decision of 10 January 2020 which he says demonstrates that the sinking fund was excessive and unreasonable and that the costs of the proceedings could have been avoided if the Manager was willing to debate the issues properly.

The Manager's response to the Statements of Ms Taylor and Mr Mahpud

35. The Manager denies that he failed to communicate with the 3rd Respondent on the reserve fund and instead took immediate legal action [MMT 6]. He exhibits detailed emails that were exchanged with Ms Zetterberg (a beneficiary of Eperstein Sarl and wife of Mr Mahpud) between 14 November 2018 and 5 December 2018 concerning the service charge budget [MMT 10-18] and states that great lengths were taken to reach agreement with Eperstein Sarl before the s 27A application was made.

36. The Manager states that his refusal to engage in correspondence with Ms Taylor in February 2020 about outstanding arrears of service charge/reserve fund apportionment, was reasonable, because his solicitor, Gisby Harrison, had already been instructed to pursue the debt [MMT 6]. Copies of email correspondence between Gisby Harrison and Ms Taylor between 20 February to 9 March 2020 concerning the arrears are exhibited at **MMT 20 – 25**.
37. As to failing to include the 3rd Respondent in correspondence concerning this application, the Manager exhibits a copy of his letter of 16 January 2020 [MMT 27-28] emailed to all lessees, asking them to confirm their intentions on expiry of the 2018 Order. He notes that the email address at the top of the email dated 20 January 2020 was that of Ms Zetterberg.
38. In response to the objections raised by Mr Mahpud the Manager denies having failed to meet or take any phone calls to discuss Unit 6. He states that he has spoken to Mr Mahpud on a number of occasions relating to the handover of documentation, management functions generally and specifically in relation to Unit 6. Also, that correspondence received from Mr Mahpud is properly considered and a full reply given.
39. So far as the allegation of bias is concerned the Manager denies the allegation and exhibits an exchange of emails with Mr Mahpud in November 2019, following a telephone conversation with Mr Mahpud during which he raised the issue of impartiality [MMR 7-9].
40. The Manager agrees that constant legal actions are ideally to be avoided but points out that his duties under the 2018 Order cannot be achieved where there is deadlock between the parties and his solicitor has advised him to take action.
41. With regard to the application concerning Unit 6, the Manager states that he has investigated the current and historic position concerning the contribution paid by Unit D, but as the Tribunal had not, on the earlier proceedings, agreed or determined that any portion of the service charge for Unit 6 would be paid by Unit D, an application to the Tribunal for directions was reasonable and the course recommended by his solicitor.
42. The Manager also points out that had he failed with many of the items and disputes concerning the building, as suggested by Mr Mahpud, then it was unlikely the remaining lessees of the building would have supported the application.

3rd Respondent's Reply and further submissions

43. The reply prepared by the 3rd Respondent's Counsel raised a number of issues (new submissions) concerning the application:

- (i) It postulates that the appointment of fixed charge receivers by the registered lender is a fundamental "change of control" which undermines the premise on which the original order was made i.e. that WPL was unsatisfactory.
- (ii) The reply suggests that the Manager has failed to make the purpose of the extension of the management order clear. He has merely set out a report of events and his proposals for the future management. That, it is said, is insufficient or appropriate for a 2-3 year extension particularly as all the proposals could be resolved by a competent Manager.
- (iii) There must be a burden on those seeking an extension to show: valid and sensible reasons; justification in the face of concerns or objections; and that it is in the wider interest to make use of the Tribunal (and public resources) by extension of the appointment – which the Manager has failed to discharge.
- (iv) The Manager's evidence fails to deal with his long-term plans for who is to be the managing the premises on expiry of any extended term.
- (v) There is insufficient information about the current state of the service charge accounts to make a determination.
- (vi) The appointment of a Manager generates an additional layer of dispute and cost which may be largely unnecessary if a managing agent could be in place. Examples given are the application by the former managing agent to be joined as a party and to set aside part of the decision of 26 July 2018. The applications mentioned at paragraph 16 above. The Manager's supplemental submissions to the Tribunal on the application mentioned at paragraph 16 (ii) above, concerning whether his powers derive from the lease or the order; and the recent case of *Chaun-Hui v K Group Holdings Inc* [2019] UKUT 371, commented on in an article "Absurd and utterly confusing" by counsel formerly instructed by the lessees of Flats 2, 3 and 4.
- (vii) The extension confers no apparent benefit to the parties. If no Manager was appointed each of the lessees and the freeholder would appoint legal representatives to air their grievances. The issues and disagreements are not resolved by the appointment of a Manager it just adds another layer of jurisdiction and legal challenge.

44. The reply then makes submissions on the Manager's statement. Commenting on the three disputes mentioned in paragraph 16, the 3rd Respondent considers that the dispute with Flat 4 is a consequence of the effect and scope of the Manager's appointment. It is critical of the Manager's approach to the reserve fund demands that gave rise to the dispute with the 3rd Respondent and states that the ongoing arrears litigation is not a reason

to extend the appointment. It is also critical of the directions application to determine the service charge issues with Unit 6 and again questions whether this can justify an extension of the appointment. The same argument is advanced on the collection of arrears for Unit D.

45. In relation to the proposed major works – the 3rd Respondent again questions the need for a court appointed Manager to facilitate this and observes that paragraph 24 of the Manager’s statement does not clarify why he is needed to facilitate the works. The 3rd Respondent goes on to question the Managers experience to fulfil his appointment, particularly in relation to overseeing major works.
46. On fees the 3rd Respondent complains that the charges of 2% of the costs of the works for supervision and service of notices is unsatisfactory as it is in conflict with his duty to secure the best price, and makes the same point in relation to the fee of 20% of the insurance premium.
47. The 3rd Respondent has a perception that the Manager is biased in favour of the lessees of Flats 2, 3 and 4. A bias that it attributes to the Manager’s approach to issues concerning the building. A meeting with the three lessees, referred to in a letter of 14 November 2018 is cited as evidence of bias [exhibited at **ES 89-93**]. The 3rd Respondent states that if the evidence of the 3rd and 4th Respondents is accepted, the test for bias, as set out in *Porter v Magill* [2002] 2 AC 357 at 493-494 is met, in that a fair-minded observer, having considered the relevant facts would conclude that there was a real possibility that the Manager was biased. Furthermore, there is no need for the 3rd Respondent to establish actual bias because the relevant test under s24(9) of the 1987 Act is whether, in appearing to have consulted privately with the lessees of Flat 2, 3 and 4 the Manager had created an impression of bias which is inconsistent with the role of the Tribunal Manager.
48. The 3rd Respondent comments on the decision in *Orchard Court Residents Association v St Anthony Homes* [2003] 2 EGLR 28 (“the Orchard Court decision”) and states that, notwithstanding the case established that the Tribunal did not need to reconsider the threshold criteria in section 24(2) of the 1987 Act, it would be egregious for the Tribunal not to place weight upon the original purpose of the appointment.
49. It is also argued that the Tribunal is not required to have regard to the section 24 (9A) criteria because this is not an application by a ‘relevant person’ as defined in s24(2ZA) of the 1987 Act. The critical issue is whether the Tribunal should exercise its power under section 24(9) and that power is not constrained by whether there will be a recurrence of the circumstances that led to the order being made.
50. Finally, the 3rd Respondent seeks an order under section 20C of the 1985 Act and Paragraph 5A of Schedule 11 to the 2002 that the costs of these proceedings are not treated as relevant costs for the purpose of the service charges payable by the lessees or the freeholder.

Tribunal's consideration of the evidence and the party's submissions

51. The Tribunal has, over the course of the proceedings under BIR/00AW/LAM/2015/0001, considered the history of the management of the Property and the interaction of the lessees with the freeholder and its Managers before making the 2018 Order. The situation was deemed untenable and the management of the Property in jeopardy for the many reasons set out in the preliminary decision dated 26 June 2017 and in paragraphs 17-22 of the final decision dated 26 July 2018.
52. It appears from the statements of the parties and the ongoing litigation between the Manager and certain of the lessees that there had been little or no improvement in the relationships.
53. There has been a change of circumstances since the 2018 was made, in that fixed charge receivers of the freehold have been appointed. However, this does not mean that any extension of the 2018 Order will be made without regard to the original premise. The rationale for the original appointment was to provide effective management having found that WPL was not managing the Property effectively. WPL is currently not in a position to manage the Property and the fixed charge receivers have no wish to. The role of the Tribunal is therefore to consider whether continuation of the order is necessary to ensure that what was being done inadequately and ineffectively, continues to be done adequately and effectively. With no management proposals from the landlord, the fixed charge receivers or the lessees (other than those supporting an extension), the change of circumstances does not present an opportunity for the Tribunal to consider an alternative scheme for management of the property.
54. The Manager has been in place almost two years. The Tribunal finds that the Manager has effectively performed his duties under the 2018 Order. He has taken steps to identify and put in place a long-term management plan for the major works required to the building, which was one of the main issues prompting the lessees' application for a Tribunal appointed Manager. The current proposals take account of the need to levy substantial contributions to the reserve fund over a period of 4 years.
55. Following the Tribunal's decision on the s27A application referred to in paragraph 16(ii) above, the Manager revised the proposed timetable for the works in order to balance affordability against the risk of further deterioration of the building and consequential damage. The Manager makes sensible proposals for managing these issues within the context of long-term management plans which he anticipates should allow for the essential external works to be fully funded with tenders in place for commencement of the works in 2023.

56. The Manager, having sought the views of all lessees, now seeks an extension of his appointment to coincide with the expiry of the 2022/23 service charge year. The Tribunal finds that this will provide a consistent approach to managing the Property up to the point where the major works can be satisfactorily commenced and allow for an orderly hand over of the Managers functions, including the reserve fund, on expiry of the extended order.
57. The Manager has provided a draft order which reduces the level of the Manager's professional indemnity cover to £1,000,000.00. As the Manager has not provided any reason for this the Tribunal does not propose varying the sum stipulated in the original order. The Manager has proposed an annual fee of 7,880.00 plus VAT to take account of inflation since the 2018 Order was made. As this in effect means that no material increase in fees is sought, the proposed fee is approved. As part of the application the Manager asked for the order to be varied to include provisions for handover on expiry of the order. As no such provisions have been included in the draft order the Tribunal will update the order to include these.
58. The application is supported by the majority of lessees. The freehold landlord (through its receivers) has neither supported or objected to the application and appears to have no interest in appointing a Manager or agent to manage the Property.
59. The Tribunal has considered the grounds of objection and the concerns advanced by the 3rd and 4th Respondents and finds as follows:

Failure to communicate appropriately

60. The evidence attached to the Manager's statement does not support Mr Mahpud's allegation that the Manager refuses to meet or take phone calls about Unit 6. The email exchanges attached to the Manager's statement refer specifically to a telephone conversation between Mr Mahpud and the Manager. The Manager appears from the email exchanges to have taken great care to provide a detailed and reasonable explanation of the matters that had been discussed.
61. Neither does the evidence support Ms Taylor's allegation of failure to communicate appropriately. The email exchanges between Gisby Harrison and Ms Taylor demonstrate that the matter she complains of was in the hands of the Manager's solicitor and he quite properly explained that she would need to address her points to Gisby Harrison. The email exchanges between the Manager and Ms Zetterberg indicate that the Manager took great care to address all her concerns and provide detailed explanations of the service charge items she was challenging, in a polite and professional manner.

Allegation of bias

62. The 3rd and 4th Respondent both refer to a letter dated 14 November 2018 as evidence of apparent (if not actual) bias [ES 147]. It concerns the service charge budget for 2019 and refers to a meeting with the lessees of Flats 2, 3 and 4 at which the budget was discussed. The letter then confirms that the Manager had received an email from Mr Mahpud who was authorised on behalf of the lessees of Flats 1 and 5 and also the landlord. The Manager then set out the issues raised by all the lessees and his replies to each point.
63. A meeting with the lessees of Flats 2, 3 and 4 also appears to have been raised by Mr Mahpud in a telephone call with the Manager in November 2019. Part of the Manager's detailed response to Mr Mahpud confirms that the meeting he attended was not within his control. The lessees had called the Manager in to complain about the services, lack of maintenance, and the short term /holiday subletting of Flat 1, Flat 5 and Unit 6. The Manager also confirmed that he was happy to meet with Mr Mahpud and Ms Zetterberg when they were next in London. [MMT 9]
64. Counsel refers to the test in *Porter v Magill* [2002] 2 AC 357 and suggests that the meetings create a perception of bias which is inconsistent with the Manager's duties.
65. The Tribunal accepts that the Manager must conduct his duties in an impartial and unbiased way and it is good practice, in so far as practicable, to avoid situations that might create a perception of bias, particularly where the underlying hostility between the parties gives rise to particular sensitivity to such perceptions. However, the Tribunal does not find any evidence of actual bias or lack of impartiality by the Manager who appears to have consulted on the service charge and other issues in an open and even-handed manner. Furthermore, the Manager was as ready to pursue the lessee of Flat 4 for arrears of service charges as he was to pursue the lessees of Flat 1 and Unit 6.
66. So far perception of bias is concerned, a lessees' perception, without any evidence of actual bias or lack of partiality (or any prior connection between the Manager and the landlord that might of itself create a reasonable perception of bias), would rarely be sufficient ground for refusing to make/extend an order. In this case the Manager would struggle to effectively perform his duties on a day to day basis, if hampered by an overriding concern that he should not speak to, or meet with lessees, unless all the lessees of the Property were present. Particularly given that some of the lessees spend periods of the year abroad. Provided the purpose and content of any meetings with individual or groups of lessees are explained (as appears to have happened) the Manager should use his own discretion as to how the building and his relationship with the lessees, will be managed. It is not for any individual lessee to direct the management. There are sufficient remedies available for the lessees to ensure that their own rights are protected.

Manager rushes into unnecessary litigation

67. No evidence has been provided by the Respondents to show that the Manager could have taken an informal approach that would have resolved the three disputes referred to in paragraph 16. The Manager states that his approach is to first attempt to resolve issues by suggesting a resolution but if that fails, he is required to refer the matter to the Tribunal.
68. The Tribunal finds that performance of the Managers duties has not proved straightforward, not least because relations between the lessees and the landlord's former managers had become toxic. The Manager has had to manage challenging decisions in an environment that remains highly charged and confrontational. It is not surprising that to fulfil his duties the Manager has needed to refer a few entrenched disputes to the Tribunal for determination. Indeed, had the Manager failed to use the mechanism provided by legislation for addressing the lessees' breaches of covenant a valid criticism of him could have been made.
69. The Tribunal also notes that the Tribunal, in determining the s27A application against the 3rd Respondent, commented at paragraph 26 of the decision that it had some sympathy with the Manager who was clearly seeking to carry out his functions properly, particularly in seeking to carry out the essential works outlined in Mr Day's report. Although the Tribunal also found that it was not reasonable to demand substantial sums without proper consultation, it declined to make an order under section 20C of the 1985 Act, having found that the Manager had acted reasonably in all matters save for the amount of the reserve fund sought.

Counsel's submissions on the application and the Orchard Court case

70. Counsel for the 3rd Respondent made a number of points concerning the need for the Manager to justify the extension and the factors the Tribunal should and should not take into account under section 24 (9A) and with regard to the judgement in the Orchard Court case.
71. The Tribunal's position is that it does not need to consider whether the threshold criteria in section 24(2) are satisfied, but is entitled to take into account any factor that it deems relevant to the application. It is not obliged to consider whether the effect of not making the order might lead to a recurrence of the circumstances which led to the order being made, where the application is not made by a 'relevant person', but as that is clearly a relevant factor, the Tribunal does take it into account. The Tribunal has also considered whether it is just and convenient to grant the variation.

72. Counsel makes a number of points concerning the lack of benefit to the lessees of making and extending a management order which just adds an unnecessary layer of jurisdiction and legal challenge and also questions whether the matters highlighted in the Manager's statement are sufficient to justify the need for a Tribunal appointed Manager. This ignores the fact that the 2018 Order was made because the Property was not being effectively managed and since then, no proposals have been made by, or behalf of the freehold landlord, for the future management of the Property. The statutory scheme for Tribunal appointed Managers may give rise to jurisdictional and legal challenges that would not be in play had the landlord appointed competent managing agents to manage the Property, but unfortunately for all parties, that is not the ball park we are in.

Tribunal's determination

73. The Tribunal finds for the reasons set out above that the Manager has effectively managed the Property in accordance with the powers granted by the 2018 Order and is satisfied that it is just and convenient to vary the 2018 Order to extend the period of the Managers appointment to the 31 May 2023.
74. In making its decision the Tribunal has taken account of the submissions of the parties and the following factors:
- (i) The term date coincides with the end of the Service Charge year which allows for a smooth transfer from the Manager on expiry of the order and also gives continuity of management while the programme of major works is advanced to the point of commencement.
 - (ii) The application has the support of the majority of lessees.
 - (iii) The Landlord acting through the fixed charge receivers has not objected to the application or made any proposals for regaining the right to manage the Property.
 - (iv) The lessees who do not support the application have not made any proposals for alternative management arrangements.
 - (v) Failure to grant the extension would result in the management of the Property reverting to the freeholder acting through its fixed charge receivers. That would present real uncertainty for the lessees that the Property would be effectively managed and risk a recurrence of the circumstances that led to the 2018 order being made.

75. Finally, the Tribunal takes this opportunity to vary several the other terms of the Management Order (as set out below) to show the revised annual fee and reflect current good practise. The parties should therefore consider all the terms of the varied Management Order.

Name: Deputy Regional Judge Barlow

Date: 23 July 2020

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

There are two outstanding matters namely, the 3rd Respondents application for an order under section 20C of the 1985 Act and Paragraph 5A of Schedule 11 to the 2002, within the Reply prepared by Counsel.

No submissions have been made in support of this application and the Manager has not has an opportunity to make representations.

1. No later than 31 July 2020 the 3rd Respondent shall provide to the Applicant and the Tribunal submissions in support of these applications.
2. No later than 14 August 2020 the Applicant must provide any submissions in reply to the section 20C and Paragraph 5A applications.
3. Unless either party requests an oral hearing within the next 28 days, the Tribunal will deal with these outstanding applications without an oral hearing.

MANAGEMENT ORDER

Interpretation:

In this Order:

- (a) “Common Parts” means any garden area, postal boxes, refuse store, cycle store, security gates, lifts, 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.
- (b) “Leases” means the long leases vested in the Lessees of the flats and the leases vested in the tenants of the commercial units.
- (c) “Lessee” means a tenant of a flat or a commercial unit.
- (d) “the Manager” means Mr Michael Maunder Taylor of Maunder Taylor, Chartered Surveyors.
- (e) “the Premises” all that property known as 1 Palace Gate, London W8 5LS including the five flats, two commercial units, and basement office.
- (f) “the Respondent” includes any successors in title of the freehold estate registered under Title Number BGL5964 or any interest created out of the said freehold title.

Preamble

UPON the First-Tier Tribunal having been satisfied on 26 July 2018, that the conditions specified in S.24 Landlord and Tenant Act 1987 were met on the making of the Management Order, such that it was just and convenient to appoint a Manager.

AND UPON the Applicant having applied for a variation of the Management Order dated 26 July 2018, to extend the term of the appointment of a Manager to 31 May 2023.

AND UPON the First-Tier Tribunal being satisfied that it is just and convenient to extend the term of the appointment.

IT IS ORDERED THAT

The Manager

1. The appointment of Mr Michael Maunder Taylor MSc MRICS FIRPM as Manager (including such functions of Receiver as are specified herein) of the Premises pursuant to S.24 of the Act shall continue for a period from the date of this order until 31 May 2023 (“the end date”) and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Respondent and in particular:

- (a) To receive 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) For the avoidance of doubt, the current service charge financial year shall continue to 31 May and thereafter as running from 1 June to 31 May in each year this Order is in place.
- (c) 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 (save that the Manager may not give consent for alterations in respect of any lease of a flat in the Premises, such matters being retained by the Respondent).
 - (iv) The power to grant consent to the assignment of the residential leases if required.
- (d) The power to delegate to other employees of Maunder Taylor, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of their functions.
- (e) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- (f) The power in his own name or on behalf of the Respondent to bring, defend or continue any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases and to make any arrangement or compromise on behalf of the Respondent. The Manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account.
- (g) The power to commence proceedings or such other enforcement action as is necessary to recover sums due from the Respondent pursuant to Paragraphs 1 (c) of this Order.
- (h) The power 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.

(i) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to their appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to S.42 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 lease (if any) or the power 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.

(j) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent or any Lessee owing sums of money under his Lease.

(k) The power to borrow 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, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e., on the leasehold interest of any Lessee, and the freehold of the Premises in respect of the Respondent) PROVIDED THAT the Manager shall not secure any borrowing as aforesaid without the consent of the defaulting party (not to be unreasonably withheld), or in default of that consent, without further Order of the First-Tier Tribunal.

2. The Manager shall manage the Premises in accordance with:

(a) the Directions of the Tribunal and the Schedule of Functions and Duties attached to this Order;

(b) the respective obligations of all parties, landlord and tenants, under the Leases and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and

(c) the duties of Managers 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 S.87 of the Leasehold Reform, Housing and Urban Development Act 1993.

3. That not 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 landlords shall transfer to the Manager all the accounts, books, records and funds (including without limitation, service charge reserve fund).

4. 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.

5. From the date of this Order, the Respondent shall not, whether by itself or any agent, servant or employee, demand any further payments of services charges, administration charges or any other monies from the Lessees (including any commercial tenant) at the Premises, such functions having been transferred to the Manager from and including the date of the Tribunal's decision.
6. The Respondent and 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.
7. Without prejudice to the generality of the foregoing hereof:
 - (a) The Respondent shall permit the Manager and assist him as they reasonably require to serve upon Lessees any Notices under S.146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.
 - (b) The rights and liabilities of the Respondent as Landlord arising under any contracts of insurance to the Premises shall continue as rights and liabilities of the Manager.
 - (c) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.
8. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be expected of a Manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure he has appropriate professional indemnity cover in the sum of at least £5,000,000 providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.
9. The Manager shall act fairly and impartially in their dealings in respect of the Premises.
10. The Manager is directed to register a restriction in Land Registry standard form N against the Respondent's estate registered under Title Number BGL5964 in the following words: "No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by Mr. Michael Maunder Taylor".
11. 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 leaseholder interest (whether by assignment or fresh grant) or freehold.

12. At expiry of 12 months from the date of this Order the Manager shall prepare a brief written report for the Tribunal on the progress of the management of the property up to that date and shall submit the same to the Tribunal by no later than 31 July 2021, providing a copy to the lessees and the Respondent at the same time.

Liberty to apply

13. The Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with S.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:

- a. Any failure by any party to comply with an obligation imposed by this Order;
- b. For directions generally;
- c. Directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.

SCHEDULE

FUNCTIONS AND DUTIES

Financial Management:

1. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the terms of the Leases.
2. Instruct solicitors to recover any unpaid service charges and any other monies due to the Respondent.
3. 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 service charge contributions and insurance contributions arising under the Leases shall be paid.
4. **Create a reserve fund.**
5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
6. All monies collected will be accounted for in accordance with the regulations of the Royal Institution of Chartered Surveyors.

7. Produce for inspection (but not more than once a year) within a reasonable time following written demand by the Lessees or Respondent, relevant receipts or other evidence of expenditure and provide VAT invoices (if any).

8. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises.

Insurance:

9. Take out in the Manager's name in accordance with the terms of the Leases an insurance policy in relation to the buildings and contents of the common parts of the Premises with a reputable insurer, and provide a copy of the cover note to all Lessees and the Respondent on request.

10. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

Maintenance

11. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary. Deal with all maintenance relating to the services and structure of the Property.

12. Administer contracts entered into on behalf of the Respondent and Lessees in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.

13. Manage the common parts and service areas of the Premises, including the arrangement and supervision of maintenance.

14. Carry out regular inspections (at the Managers' discretion but not less than four per year) without use of equipment, to such of the common parts of the Premises as can safely be inspected without undue difficulty to ascertain for the purpose of day-to-day management only, the general condition of the common parts.

Major Works

15. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Premises (such as interior or exterior redecoration or repairs required to be carried out under the terms of the Leases or other major works and where necessary prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and supervise the works).

16. In particular to undertake as soon as practicable a full health and safety review, an assessment of the electrical supply to the Premises, and to ensure that the ventilation duct serving the restaurant is cleaned annually at the cost of the tenant of the restaurant unit.

Administration and Communication

17. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquires from the Lessees or their solicitors.

18. Provide the Lessees with telephone, fax, postal and email contact details and complaints procedure.

19. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

Complaints Procedure

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

Fees

21. Fees for the above mentioned management services (with the exception of supervision of major works) would be a fee of £7,880 plus VAT per annum. Thereafter the fee shall be reviewed annually in line with inflation.

18. An additional charge shall be made in relation to the arrangement and supervision of major works (including the preparation and service of any statutory consultation notices) on the basis of a fee of 2% of the cost of the works plus VAT.

19. An additional charge shall be made in relation to the arrangement, claims handling and brokerage of insurances for the Premises, public liability, engineering and employee cover on the basis of a fee of 20% of the insurance premium.

20. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £150 plus VAT payable by the outgoing Lessee.

21. The undertaking of further tasks which fall outside those duties described above are to be charged separately at a present hourly rate ranging from £125 plus VAT for a qualified member of staff, if the matter requires the Manager's personal attention, at a present hourly rate of £200 plus VAT for Mr. Michael Maunder Taylor.

22. The recovery of outstanding service charge monies shall give rise to an administration charge payable by the defaulting Lessee of £30 for each letter written after the first.

End of Appointment

23. No later than 28 days before the end date, the Manager shall:
- (a) apply to the Tribunal for directions as to the disposal of any unexpended monies; and
 - (b) include with that application a brief written report on the progress and outcome of the management of the Property up to that date (“a Final Report”).
24. By no later than 28 days after the application referred to in the preceding paragraph is determined by the Tribunal, the Manager shall:
- (a) reimburse any unexpended monies in accordance with the Tribunal’s directions;
 - (b) prepare final closing accounts and send copies of the accounts to the lessees and the landlord, who may raise queries on them within 14 days;
 - (c) answer any such queries within a further 14 days.

Disputes

25. In the event of a dispute regarding the payability of any sum payable under this Order, rather than under a lease (including remuneration payable to the Manager and litigation costs incurred by the Manager), the landlord, a lessee, or the Manager, may apply to the Tribunal seeking determination as to whether the sum in dispute is payable and, if so, in what amount.
26. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager’s appointment, the Manager, a lessee, or the landlord may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom; and in what amount.