



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

Case reference HMCTS Code	:	CAM/31UH/LAM/2022/0005 V: CVP REMOTE
Property	:	Royal Mews, Station Street, Ashby- de-la-Zouch LE65 2GJ
Applicants	:	Susan and Donald Hollywood of 19 Royal Mews and 10 other apartment owners
Respondent	:	Dunkin Rushton Limited
Type of application	:	Appointment of Manager
Tribunal member(s)	:	Regional Judge Wayte Mr Gerard Smith MRICS
Date of decision	:	5 December 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. The tribunal was referred to a hearing bundle prepared by the applicants' representative Mrs Hollywood and subsequent documentation produced by both parties in respect of the draft management order. References to the page numbers in the bundle are contained in square brackets.

The tribunal has decided that:

- (1) In accordance with section 24(1) of the Landlord and Tenant Act 1987, Jonathan Hubbard of Wards Chartered Surveyors, 20 Station Road, Hinckley, Leicestershire LE10 1AW ('the Manager') is appointed as manager of the property at Royal Mews, Station Street, Ashby-de-la-**

Zouch, LE65 2GJ, freehold title number LT197071 and LT207337 ("the Property") from 1 January 2023.

- (2) The order shall continue to 31 December 2025. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.**
- (3) The Manager shall manage the Property in accordance with:
 - (a) The Management Order attached to this decision;**
 - (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 or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.****
- (4) 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.**
- (5) 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.**
- (6) The respondent shall reimburse Mrs Hollywood the tribunal fees of £300 within 28 days of the date this decision is sent to the parties.**

The application and hearing

1. On 9 August 2022 the applicants made an application for the tribunal to appoint a manager under section 24 of the Landlord and Tenant Act 1987 ("the Act"). The applicants sought the order due to the alleged failure of the freeholder to comply with relevant landlord and tenant legislation and the RICS Service Charge Residential Management Code ("the Code").
2. Directions were given on 25 August 2022. The following issues were identified for determination:

- Did the contents of the section 22 notice comply with the statutory requirements?
 - Has the applicant satisfied the tribunal of any grounds for making an order as specified in section 24(2) of the Act?
 - Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should the appointment be made?
 - Is it just and convenient to make a management order?
 - Should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the respondents' costs that may be recoverable through the service charge?
3. The directions required the respondent to send a copy of the application to the other leaseholders and ask them to contact the tribunal should they wish to be joined to the proceedings. On 2 September 2022, Knights confirmed that they had been appointed to represent the respondent and that the application had been sent to the other leaseholders the previous day. None of the other leaseholders contacted the tribunal either to support or object to the application.
 4. The applicants proposed Jonathan Hubbard as the manager and provided their case to the respondent in accordance with the directions. On 10 October 2022, Knights confirmed that the respondent would not oppose the appointment or the term of 5 years requested. They also confirmed that the respondent would not seek to recover their costs of the proceedings through the service charge. Some issues remained as to the terms of the management order, to be discussed at the hearing.
 5. The application was heard by Cloud Video Platform (CVP) on 24 November 2022. Mrs Hollywood represented the applicants and some of the other applicants also attended the hearing, together with Mr Hubbard, as required by the directions. The respondent was represented by Mr Linnane of LPC Law Ltd.

Background

6. Royal Mews is a development of 55 apartments, built around 2007 by D'Zign UK Limited. The respondent bought the freehold in December 2011. Since then, management has been by the respondent itself and until recently all the service charge money was paid into the company's account and not treated as a statutory trust in accordance with section 42 of the Landlord and Tenant Act 1987. The applicants' concerns grew with an increase in service charges, starting with the management fee

charged by the respondent and a lack of information in respect of a NHBC claim and fire safety issues, particularly following the Grenfell tragedy.

7. A group of leaseholders got together in 2021 and they realised that incorrect service charges had been demanded by the respondent for a number of years. Further details of the applicants' concerns were set out in the witness statements of Susan Hollywood, Lianne Tunnicliffe and Bruce Whittingham [290-378].
8. After a failure to address their concerns in correspondence, following a meeting with the respondent on 3 November 2021, the leaseholders of 13 apartments served a Preliminary Notice on 16 May 2022. Further details of that notice and the respondent's response are set out below.

Statutory Framework

9. Under section 24(2) of the Act, the tribunal may appoint a manager under section 24 in various circumstances. These include where the tribunal is satisfied that:
 - unreasonable service charges have been made, or are proposed or likely to be made; or
 - there has been a failure to comply with a duty imposed by or by virtue of section 42 of the 1987 Act; or
 - any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice); and
 - it is just and convenient to make the order in all the circumstances of the case.

Section 22 notice

10. Before an application for an order under section 24 is made, section 22 of the Act requires the service of a notice which must, amongst other requirements, set out steps for remedying any matters relied upon which are capable of remedy and give a reasonable period for those steps to be taken.
11. As set out above, a preliminary notice was served on 16 May 2022. The three main concerns were unreasonable service charges, a breach of section 42 and breach of the Code of practice. The notice gave the respondent one month to rectify their behaviour.

12. A response was received from Knights on 17 June 2022. The letter confirmed that the respondent accepted issues had arisen which may have given rise to concerns but indicated that it was committed to remedying any perceived errors and/or oversights on its part. In particular, the letter confirmed that a separate account had been opened for the reserves of £47, 220.13 and a second account would be opened for day to day running of the service charge account. At that stage, the respondent indicated that an application for the Appointment of a Manager would be premature.
13. The respondent subsequently sent Mrs Hollywood a bundle of papers intended to support the service charge summary for 2021. A further query was not responded to and having received a fresh demand which did not appear to confirm that any monies would be placed in a separate account, the applicants decided to issue their application. As stated above, that application is not contested by the respondent, save in respect of certain provisions in the management order.
14. In all the circumstances and in the absence of any objection by the respondent, the tribunal is satisfied that the notice met the requirements of the Act.

Grounds under the Act

15. As stated above, the applicants relied on a number of grounds. First, unreasonable service charges. There has been no separate application under section 27A of the Landlord and Tenant Act 1985 but the letter from Knights in response to the section 22 notice accepted that incorrect service charges had been applied to some apartments, that not all correspondence had been replied to or disclosure given and that reconciliation of the service charge accounts was appropriate. In the circumstances and taking into account the failure to properly separate service charge expenditure from the respondent's general company account, the tribunal considers this ground is made out, at least to the extent admitted by the respondent.
16. Again, the respondent conceded that it has not operated the service charge account strictly in accordance with section 42 of the Landlord and Tenant Act 1985. Section 42A of the 1985 Act, requiring service charges to be held in a designated account, has not been brought into force but the respondent admits that the monies have not been held as separate funds from company accounts and, until June this year, there had been no investments of funds in accordance with the general law of trusts. Again, the tribunal considers this ground is made out.
17. Finally, lack of compliance with the RICS Management Code. Again, this was not challenged by the respondent and the tribunal agrees that the lack of proper service charge accounts is of particular concern,

bearing in mind the total number of apartments. The tribunal therefore also considers that this ground has been proven.

18. In the circumstances, the tribunal determines that there are grounds for appointing a manager.

The proposed manager

19. The applicants proposed Jonathan Hubbard, a Director of Wards Chartered Surveyors. He set out his personal experience and the portfolio currently managed by Wards in a letter to the tribunal dated 20 September 2022, together with his management plan for the property and a copy of the firm's indemnity insurance [274-289].
20. At the hearing, Mr Hubbard confirmed that he had visited the property recently. He has not been given access to the roof but generally the property appeared to be in good condition. He had not been appointed as a manager under section 24 before but understood that the appointment was by the tribunal and that he needed to work with both the leaseholders and the freeholder in accordance with the lease and the management order.
21. Mr Linnane had no questions for the manager and the respondent had previously indicated that they would not oppose his appointment.
22. In the circumstances the tribunal considered that Mr Draper would be a suitable appointee as manager.

Just and convenient

23. In addition to proving grounds under section 24, the tribunal has to be satisfied that it is just and convenient to make an order appointing a manager in all the circumstances of the case.
24. It appears to the tribunal that the respondent has been a little casual in respect of its management of the property, in particular by failing to separate service charge payment and expenditure from company funds. There also appears to be a lack of familiarity with the Code and statutory protection for leaseholders. That approach and the mistake in relation to the amount of service charges due from certain apartments is likely to have resulted in a shortfall to the service charge account, although without a reconciliation it is not possible to confirm the actual amount.
25. The property has 55 apartments and is getting to the stage where maintenance is likely to be required. A section 20 notice consulting on major fire safety works was issued in January 2022 but no progress has been made following that initial notice. While the building is under 11 metres and therefore not a major cause of concern, any necessary

works should be attended to without further delay and will require professional management.

26. In all the circumstances of the case the tribunal considers that it is just and convenient to make an order appointing Mr Jonathan Hubbard of Wards as the manager of the property. As this will be Mr Hubbard's first appointment, the tribunal considers that a period of three years is appropriate, to terminate at the service charge year end in 2025. As stated in the summary of the decision, an application may be made by the manager to extend that period or otherwise vary the order, for example by substituting a different manager. That said, the tribunal would hope that provided both the freeholder and leaseholders are satisfied with the management provided by Mr Hubbard and his company, Wards could in due course be appointed by the respondent without the formal involvement of the tribunal.

The Management Order

27. Both parties had submitted a draft Management Order, based on the tribunal's template, with a number of issues outstanding at the hearing.
28. Firstly, paragraph 5 of the tribunal's template is intended to contain a summary of the reasons for the order. Perhaps understandably, the applicants sought to set out their concerns in full, while the respondent sought to make their case that the leaseholders had not suffered financially and that the respondent had genuinely sought to deal with relevant and/or reasonable requests. The tribunal explained that the purpose of paragraph 5 was to alert the manager to the problems identified by the tribunal to ensure that they were not repeated. In those circumstances the tribunal would amend the detail in paragraph 5 to reflect the findings summarised above and use more objective language than that proposed by the parties.
29. The second area of dispute was in relation to paragraph 6, which is intended to include any powers that go beyond routine management. Again, there was too much detail proposed by the applicants, confusing this paragraph with the provisions in respect of the landlord's disclosure. The respondent sought to include an instruction to proceed with the works set out in the section 20 notice. At the hearing, the tribunal pointed out that the manager would need to satisfy themselves that the works were appropriate and that service charges were payable in respect of them. In particular, the applicants had pointed out that the leases may mean that the leaseholders directly affected by the works were responsible for a greater share of the costs; for example, the wooden decking on the roof which apparently requires removal may be within the demise of the particular apartment. The tribunal has therefore amended paragraph 6 to limit it to consideration of the fire safety issues/works which should be prioritised at this development and the collection of any unpaid service charges. There is no need to be

more specific about managerial duties as they are all contained in the standard provisions in paragraphs 7 – 14.

30. The applicants had proposed that the manager be given responsibility for approvals and permissions, despite the fact that the draft template indicates that would be rare and should be agreed by the landlord. The respondent opposed that provision. At the hearing, Mrs Hollywood explained that there had been delays in the response to pre-contract enquiries by the respondent but agreed that was in relation to details of the service charge. In the circumstances, the tribunal has deleted the paragraph in respect of approvals and permissions but included the paragraph confirming that the manager will be responsible for responding to pre-contract enquiries in respect of service charge issues (for which he is entitled to be paid an additional charge by the relevant leaseholder as set out below).
31. The tribunal had previously requested further information about Mr Hubbard's proposed charges and expressed some concern at the hearing that they were too low. In particular, the draft order proposed £135 plus VAT per apartment for the whole 5 years sought. Mr Hubbard confirmed that the charge would be reviewed annually in the light of the Retail Prices Index and provided a modest list of additional charges for items falling outside day to day management. The order has therefore been amended to include those provisions.
32. Originally, the proposal by the applicants was that the manager would not collect the ground rent, although the respondent had requested that service in their draft order. Although there would be an additional charge of 10% of the ground rent for this service, the tribunal explained that it was a sensible addition and asked the applicants to think again. They confirmed after the hearing that they agreed it would be sensible for the manager to collect the ground rent and the order has been amended accordingly.
33. Finally, the directions to the landlord were amended to provide for some information and funds to be sent to the manager before the appointment starts, due to the absence of the director with knowledge of this property from 8 December for one calendar month and the need to renew the insurance by mid-January 2023.

Costs, Section 20C and the reimbursement of fees

34. The applicants included an application for an order under section 20C, restricting the ability of the respondent to include his costs as part of the service charge, which the respondent did not dispute. Given the circumstances of the case and for the avoidance of doubt, the tribunal considers that it is just and equitable for an order to be made in favour of the applicants.
35. Shortly before the hearing, Mrs Hollywood also made an application under Rule 13 of the Tribunal Procedure Rules 2013 for an order for

costs based on the alleged unreasonable behaviour of the respondent. At the hearing, she also made an application for the reimbursement of the tribunal fees in accordance with the tribunal's general discretion in Rule 13(2). The respondent objected to both those applications.

36. The tribunal confirmed that any application for costs based on the alleged unreasonable behaviour of the respondent in the proceedings must be made in writing after the decision has been sent to the parties (and within 28 days). That said, the tribunal did not consider that there had been any unreasonable conduct within the proceedings and reminded the applicants that *Willow Court Management Ltd v Alexander* [2016] UKUT 290 (LC) set a high bar for such applications.

37. The refund of fees is a different matter and can take into account all the circumstances of the case, including the need to issue proceedings in the light of the respondent's failure to address the applicants' concerns about their management of the property. In the circumstances the tribunal considers this is an appropriate case to order that the respondent reimburse Mrs Hollywood £300 in respect of the application and hearing fees which were paid by her. That amount should be paid within 28 days of the date this decision is sent to the parties.

Name: Judge Wayte

Date: 5 December 2022

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).