



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

**Case Reference** : **CHI/21UC/LAM/2013/0017**

**Property** : **Greystoke, 22 Carlisle Road,  
Eastbourne, East Sussex, BN20 7EN**

**Applicant** : **(1) Mrs N Hopkinson  
(2) Mr T Menezes  
& Ms S Godden  
(3) Mrs P Kirtley**

**Representative** : **In person**

**Respondent** : **Mr A B Burton**

**Representative** : **In person**

**Type of Application** : **Appointment of a Manager, s24 LTA  
87**

**Tribunal Members** : **Judge D Dovar  
Mr A O Mackay FRICS  
Mr P A Gammon MBE BA**

**Date and venue of  
Hearing** : **5<sup>th</sup> March 2014, Eastbourne**

**Date of Decision** : **28<sup>th</sup> March 2014**

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**DECISION**

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## **Introduction**

1. This is an application for the appointment of a new manager of the Property pursuant to s24 of the Landlord and Tenant Act 1987. The Respondent freeholder, who resides at the Property, currently manages through the offices of his wife, Mrs Burton.
2. Mr Menezes presented the application on behalf of the Applicants and Mr Burton represented himself. Ms Godden and Mrs Hopkinson attended as did the proposed manager, Mr Pope. Mrs Burton, the current manager did not attend and the Tribunal were informed that she had a migraine.
3. The Property comprises three flats with garages at the rear held on separate leases. The First and Second Applicant hold long leases of flats (albeit that the lease of Flat 3 is in Mr Menezes sole name), Mrs Kirtley, the Third Applicant did not attend the hearing and holds a lease of one of the garages only.
4. Mr Burton is the freeholder of the Property. He also resides at Flat 2 with his wife. There is no lease for Flat 2, occupation is under the freehold title.
5. Mr Burton took an initial objection to the participation as Applicants of Ms Godden and Mrs Kirtley on the basis that neither had a lease of a residential flat. The Tribunal does not consider that anything turns on this point. An application of this nature only requires one long residential leaseholder and as Mr Burton did not suggest that either Mrs

Hopkinson or Mr Menezes were not such leaseholders, the application is properly brought.

6. Despite Mr Burton professing difficulty with presenting the application, the Tribunal were impressed with his ability to deal with and understand the relevant issues; not least his very technical preliminary point which demonstrated that he had a good grasp of the workings of the 1987 Act.
7. Mr Burton clarified with the Tribunal at the outset of the hearing that although his submissions sought a determination of breach of covenant by the leaseholders, he was not pursuing that at this hearing. The Tribunal was grateful for that indication as the Tribunal was of the view that without a proper application it would not have jurisdiction to deal with those issues.
8. On the morning of the hearing, the Tribunal inspected the Property in the company of Mr Menezes, Ms Godden, Mrs Hopkinson and the proposed new manager Mr Pope. Overall the Property was in need of external redecoration and repair. It was clear that some of the windows were rotten, there were cracks in the brickwork and it could be seen that some tiles had slipped on the roof. There was also evidence of water staining on the brickwork and the guttering system was in need of clearance. The right side return had a metal fire escape which was in a precarious state of repair and had tape blocking entrance. The Tribunal were shown the interiors of Flat 1 and Flat 3. The leaseholders had kept them in good condition, but Flat 1 had been the subject of water ingress in the main bedroom and bathroom as well as the spare bedroom. Flat 3

suffered from a damp patch in the living room and recently the roof to a bay window had collapsed.

## **Part II Landlord and Tenant Act 1987**

9. Part II of the 1987 Act permits tenants to apply to the Tribunal for the appointment of a manager. In general it applies to tenants of long residential leases (s21). There is an exclusion in cases where there is a resident landlord (s21(3)). In such a case, the exclusion does not apply if 'at least one half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 applies'.
10. Part 2 of the 1954 Act applies to premises which are occupied by the tenant for the purpose of a business (s23).
11. Before making an application, at least one tenant must serve on the landlord a notice under section 22 of the 1987 Act. There are a number of details that the Act says must be included in that notice, which include, the name of the tenant, a statement of intention to apply for an order under s24, the grounds for seeking such an order, and where possible of remedy, a requirement that the matters giving rise to the application are remedied within a reasonable time.
12. Section 24 then provides the basis upon which the Tribunal can make an order. Firstly, the Tribunal must be satisfied that the s22 notice has been given. Secondly, it must be satisfied that there has been a relevant breach (such as a breach of lease, or other obligation) or that

unreasonable service charges have been made or are proposed or are likely to be made. Finally, the Tribunal must be satisfied that it is 'just and convenient' to make an order. In considering this last point, the Tribunal will take into account the present management of the building and the future intentions of those presently managing and their suitability to manage as well as the suitability of the proposed manager and their future intentions.

### **Preliminary issue**

13. Mr Burton raised a preliminary issue on the entitlement of the applicants to bring the application. This was based on an assertion that as Mr Menezes worked from home, his lease was a business lease for the purposes of Part 2 of the Landlord and Tenant Act 1954. If correct, this was that it would bring the number of residential flats below the threshold necessary for making an application under section 24 in a case where there was a resident landlord (section 21).
14. The Tribunal heard from both Mr Burton and Mr Menezes on this issue. Mr Burton relied on hearing Mr Menezes on the telephone frequently during the day. He also relied on a document headed 'financial services register' as evidence that Mr Menezes used the flat for work. That document bore no address and the Tribunal failed to see how it assisted Mr Burton.
15. Mr Menezes did not deny that he did some work from home, however, he claimed it was more in the way of paperwork. He explained that he never had clients at his flat and indeed when the Tribunal inspected his

flat, it was clearly residential. Mr Menezes stated that his firm has a registered office in Hove and Moorgate and the majority of business was at either of these offices or visiting clients. He did not see clients at home and in his professional capacity he never gave out his home telephone number. He carried out some paperwork and studying at home.

16. The Tribunal considers that the commercial use of the flat by Mr Menezes is purely ancillary to his residential use and therefore the flat is not occupied for the purpose of a business. It does not fall within the 1954 Act and therefore Mr Burton's preliminary objection fails.

### **Notice**

17. The Applicants relied on a notice served under s22 of the 1987 Act dated 16<sup>th</sup> October 2013.
18. Mr Burton raised a number of challenges to the validity of the notice. These were:
  - a. A failure to adhere to regulations, in particular a failure to ensure that separate parts were on separate pages;
  - b. Mrs Kirtley was named as a tenant on the notice but she does not hold a residential lease;
  - c. Insufficient time was given to remedy the breaches complained of.

19. Mr Burton was unable to point to any legislation which required the notice to be on separate pages. The Tribunal considers that Mr Burton may have confused suggested precedents for such a notice with statutory requirements. The Tribunal does not consider that there is a requirement to set out the various parts of the notice on separate pages and therefore this does not invalidate the notice.
20. The fact that Mrs Kirtley is not a resident or a leaseholder of residential premises does not detract from the fact that Mrs Hopkinson and Mr Menezes clearly are and signed the notice as well. Accordingly, it was served by appropriate tenants and the notice is not invalidated for the inclusion of Mrs Kirtley.
21. Finally, Mr Burton was given 14 days to give an undertaking that he would appoint independent managing agents. The Applicants said that this would remedy the various breaches identified. Mr Burton may have interpreted this as requiring an actual appointment within 14 days. However, in any event, he said that he could not give such an undertaking or make such an appointment as he could not afford to; in that he would not be able to pay for the services of a managing agent at the rates they charged. The Tribunal considers that 14 days was more than reasonable for such an undertaking to be given, particularly given that Mr Burton was not required to actually hand over management within a set period of time. As it turns out, Mr Burton considered handing over management, however, he did not do so on financial grounds. Accordingly the period of time given was reasonable and did not invalidate the notice.

22. In his written submissions, Mr Burton raised other points on the notice, however these related to substantive challenges to the grounds upon which the Applicants relied and so were not relevant to the validity of the notice itself.

### **Breach**

23. The Applicants clarified that they were relying on s24 (2) (ab) for the relevant breach, namely that Mrs Burton (and/or Mr Burton) had demanded unreasonable service charges and or intended to make such demands in the future.
24. The Tribunal were taken to a previous decision of the Leasehold Valuation Tribunal between the parties dated 7<sup>th</sup> January 2013 (CHI/21UC/LSC/2012/0124 and 0125). In that decision, the LVT determined that unreasonable service charges had been made on a number of items, including annual charges for Mrs Burton's services as managing agent (see paragraphs 29, 33 and 36).
25. Mr Burton did not accept that determination. He had sought to appeal but was refused permission. He had sought to judicially review the refusal to give permission, but could not afford to do so. At the hearing he strenuously argued that the decision was wrong and refused to acknowledge the determination. He also claimed that the combination of the refusal of permission and his impecuniosity meant that his rights under Article 6 of the European Convention on Human Right were being violated.



26. The Tribunal is satisfied that grounds under s24 (2) (ab) are made out based on the previous Tribunal's determination. That determination stands and this Tribunal is entitled to rely on it. Mr Burton challenged the basis of those determinations, however, this Tribunal is not able to reopen and investigate the determination which has been made by the previous Tribunal. To do so would be to permit an appeal by the back door and this Tribunal does not have jurisdiction to entertain such arguments.

27. Further the Tribunal does not consider that Mr Burton's article 6 rights have been violated in that he was given the opportunity to have his rights determined by an impartial tribunal and he was given access to and utilised an appeal process. The fact that he cannot afford to judicially review the refusal of permission to appeal is not a violation of his rights.

### **Just and convenient**

28. The final consideration is whether it is just and convenient to make an order.

#### *Present Management*

29. The Tribunal's initial concern with the present management was with regard to funding. The leases of Flats 1 and 3 provide for costs to be recovered when incurred. They do not provide for payments on account. Mr Burton rightly, in the Tribunal's view, pointed out that this entitled him to levy demands from time to time once he had contracted to have works done. There was no requirement that he had actually paid for the

works before demanding and collecting the sums from the leaseholders. To that limited extent, the Tribunal agrees that under the terms of the long leases, the Landlord is entitled to recover sums from the tenants when the landlord incurs costs (i.e. when there is a liability to pay them).

30. Another concern that the Tribunal had was with regard to the manner in which service charge funds were held. Whilst Mr Burton accepted that there was no separate service charge account, he justified this on the basis that he (or his wife) never held service charge sums. Either the sums paid were a reimbursement of sums already paid or they directed the tenants to make payment directly to the relevant contractor.
31. The next issues raised by the Applicants was the failure to repair or maintain the Property adequately over the years. The Applicants pointed out that the maintenance of the Property was the responsibility of the freeholder and that there had been no maintenance since 1999 externally and since 2002 on the interior.
32. They alleged that a flurry of section 20 notices served in August 2013 had only been prompted by this application. Although there was one section 20 notice prior to this application, that was in relation to the garages. The notices relating to the Property were issued in August 2013. They were concerned that the failure to maintain the Property had meant that greater costs had been incurred as the Property had been allowed to deteriorate. They also raised concerns over Mr Burton's priorities in that he was preferring works to the driveway over necessary works to the fabric of the building.

33. Mr Burton accepted that there had been a lull in maintenance, but blamed the tenants for this, in particular Mrs Hopkinson and her attempts to have him committed which had made him ill. During the period of his incapacity, he said that Mrs Burton had not tried to take over management of building. However he asserted that no maintenance was necessary from 2009 and none was needed until 2011.
34. Mr Burton also relied on a refurbishment in 2000 which was carried out successfully under his management and in which the tenants paid from time to time.
35. The recent statutory consultation for major works covered a complete refurbishment of the exterior, repairs to woodwork, the eaves, and a replacement fire escape. After that the hallway and stairway were to be brought up in line with modern fire regulations, and re carpeted. He accepted the works should have been commenced a little earlier, but denied that they were prompted by this application. The Applicants complained that they had not received a schedule of the proposed works. Mr Burton's view was that it was for his information only and he was not obliged to give it to the tenants.
36. The priority was for the garages, then the driveway as works on the exterior of the Property could not start until that had been done and the weather was better and in any case, all the good contractors were booked up for several months.
37. When asked about the condition of the roof, Mr Burton stated that there was no urgency as tiles had been slipping off for the over 20 years. To

carry out an inspection would incur costs as scaffolding would be needed and it was not a priority based on its history.

38. As for the suitability of Mrs Burton, the Tribunal were told that she used to manage a multi-million pound property empire for her father which comprised commercial private residential nursing homes. Whilst she had no formal qualifications, she had learnt “the hard way”. She had failed to provide a summary of tenants rights for the first few years, as she had no training for residential management.
39. Of particular concern to the Tribunal was the stance taken by Mr Burton (and therefore presumably by his wife, Mrs Burton) to the previous Tribunal determination. He steadfastly refused to accept it. Therefore not only had he reissued demands for the years which were the subject of determination of the LVT which included the sums which were held not to be payable, but he intended to make the same charges in the future. It was clear that Mr Burton and Mrs Burton had decided to ignore the clear determination of the Tribunal. On that basis alone, this Tribunal has grave concerns over whether Mr or Mrs Burton are suitable to manage the Property.

*Mr Pope – Proposed Manager*

40. Mr Pope outlined his qualifications and experience. He had been a residential property manager for 25 years, and had a broad portfolio of flats management. He managed just over 40 odd properties, 25% are typical converted Victorian properties, ranging from eight units to four, he accepted he did not manage any three unit properties, but did not

think that there was much if any difference between a four unit and a three unit property.

41. His view of the leases was that they were unusual in that they implied retrospective demands which would make it difficult to raise money in advance, create problems. He would establish a budget each financial year agreed with client and then issue under terms. If Mr Burton was right about his construction of the lease, it would still cause problems as he would need to have funds in hand before instructing contractors. As the Tribunal has indicated above, its view is that the lease does permit recovery before actual payment, but only after liability for the cost has been incurred.
42. He had not appreciated that there was no lease for Flat 2 and after some consideration could see that Mr Burton, as freeholder, was primarily liable to ensure that the Property was maintained and should fund the same. It was therefore possible for him to recover funds from Mr Burton as well as the other leaseholders.
43. He was unsure about his personal insurance cover and would check the position with his employer Stredder Pearce.
44. He saw that given the history of the Property, it would be difficult to manage the relationship between the parties and the financial side was a major concern, he would want £5,000 to start with. This was something that the Applicants said they would be prepared to fund. He would also want £400 per unit per annum. This was higher than on other units, but

he justified it on the basis that there were a smaller number of units, a difficult lease and a history of non cooperation.

45. Mr Burton's main concern was cost. He stated that he could not afford the additional costs (both annual fee and additional sums for major works). He accepted that they were competent, but thought they were too expensive. Particularly when his wife was prepared to carry out the work for around £500 per annum. He was also concerned that they would only instruct large expensive contractors to carry out works. Mr Pope assured Mr Burton that he did not only deal with large expensive contractors but would try to get the right contractor to fit the Property and the budgets of the occupants.
46. Mr Burton raised an addition objection which was that the appointment of a new manager would cause further delay in the works. Mr Pope said he would want to see the proposed schedule of works and ensure that he was happy with what was proposed but would try and keep any delay to a minimum.

*Conclusion on just and convenient*

47. The Tribunal determines that it is just and convenient to appoint a new manager. Whilst Mr Burton (and/or Mrs Burton) have demonstrated in the past that they could carry out works to the Property at a low cost, events have moved on in the decade since then and the particular matters that have convinced the Tribunal that it is just and convenient to appoint a new manager are:

- a. The refusal of Mr Burton (and/or Mrs Burton) to adhere to the previous determination of the Tribunal. Not only does Mr Burton continue to strenuously reject that determination but he (and/or Mrs Burton) continue to seek costs which have already been determined to be unrecoverable. The Tribunal does not consider that a person who refuses to adhere to Tribunal determination is likely to be a suitable manager of residential premises;
- b. The failure by Mr Burton to acknowledge the need to repair the roof. The Tribunal was surprised at Mr Burton's comment that there was no need to repair the roof as 'tiles have been falling off for years.' Mr Burton took exception to the suggestion that this might mean that he, as landlord, was in breach of his repairing obligation. Further, given the recent collapse of the bay window to Flat 3, the damp stain on their living room wall, the water staining on the exterior brickwork and the fact that slipped tiles were observable from ground level, the Tribunal does not consider that Mr Burton (and/or Mrs Burton) have the necessary experience to property manage the Property;
- c. The Tribunal also considers that it is likely that the present round of section 20 notices was prompted by this application. There is too much of a coincidence in timing and Mr Burton was unable to give any other explanation;

d. Whilst the Tribunal had some reservations about Mr Pope, on balance it is just and convenient to appoint him as manager of the Property on the terms of the order which accompany this determination. Mr Burton's predominant objection was cost. He claimed that if appointed, he would not be able to pay and would lose his home. The Tribunal notes that Mr Burton is not simply an occupier of Flat 2, but is the freeholder. He chose to purchase the freehold of the building with the responsibility that comes with it. The balance lies in favour of the Property being properly maintained and administered, something which is not happening at present. Accordingly whatever financial hardship Mr Burton may experience by the appointment of a manager that consideration is far outweighed by the need to maintain the building and for him to meet his obligations as freeholder.

### **Section 20C / Costs**

48. The Applicants made an application under section 20C to prevent Mr Burton from adding the costs of this application to the service charge account. The basis for that application was the history of disputes between the parties, the comment by the previous Tribunal that a manager should be appointed, Mr Burton's refusal to appoint a new manager and that by his own admissions he refuses to abide the determination of the previous Tribunal. The Tribunal considers that an order should be made. The Applicants have given Mr Burton ample opportunity to appoint a manager before making this application, it was also the recommendation of the previous Tribunal.



49. Mr Burton made an application under Rule 13 of the Tribunal (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) as the Applicants had not followed the directions in any respect and not shown any breach of covenant. He further asserted that they should not have brought this application. Finally he relied on the fact that in his counter notice to the s22 notice, he had offered to meet them to discuss the issue and said he was prepared to accept an external appointment on the basis that they paid the extra costs; he said they ignored him completely. The Tribunal does not consider that an order for costs should be made; not least because the Applicants have been successful in their application and they have achieved an outcome better than Mr Burton's offer.

### **Conclusion**

50. The Tribunal makes a management order in the terms accompanying this determination.
51. Further the Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 preventing the freeholder from adding any or all of the costs of these proceedings to the service charges.
52. The Tribunal makes no order under Rule 13.

Judge D Dovar



## **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.



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**Applicant** : **(1) Mrs N Hopkinson  
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**Respondent** : **Mr A B Burton**

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**Type of Application** : **Appointment of a Manager, s24 LTA 87**

**Tribunal Members** : **Judge D Dovar  
Mr A O Mackay FRICS  
Mr P A Gammon MBE BA**

**Date and venue of  
Hearing** : **5<sup>th</sup> March 2014, Eastbourne**

**Date of Order** : **28<sup>th</sup> March 2014**

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**MANAGEMENT ORDER**

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1. In this order:
  - A. "The property" includes all those parts of the property known as Greystoke, 22 Carlisle Road, Eastbourne, East Sussex, BN20 7EN.
  - B. "The landlord" means Mr A B Burton or in the event of the vesting of the reversion of the residential under-leases of the property in another, the landlord's successors in title.
  - C. "The manager" means Nicholas Pope of Stredder Pearce.

It is hereby ordered as follows:

2. In accordance with s.24(1) of the Landlord and Tenant Act 1987 the manager shall be appointed to carry out the functions of a receiver and manager of the property.
3. The order shall continue for a period of two years from the date of this order.
4. That 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 and/or under-leases by which the flats at the property are demised by the landlord and in particular with regard to repair, decoration, provision of services to and insurance of the property.
  - (c) The duties of manager set out in the Service Charge Residential Management Code (2009) ("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 of the  
Leasehold Reform Housing and Urban Development Act 1993.



.....  
Judge D Doar

Chairman

28<sup>th</sup> March 2014

## **DIRECTIONS**

1. That from the date of 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 or under-lessee of the property, the landlord or the Tribunal.
2. That not later than three 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).
3. The rights and liabilities of the landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the property shall from 28<sup>th</sup> April 2014 become rights and liabilities of the manager.
4. That the manager shall account forthwith to the landlord 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 landlord's covenants contained in the said leases.
5. That he 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.
6. That at the expiry of three 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 4pm on 28<sup>th</sup> July 2014.

7. That the manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited to) the following events:
- (a) any failure by any party to comply with paragraph 2 of these directions and/or;
  - (b) (if so advised) upon the service of the report in paragraph 6 of these directions, and/or;
  - (c) in the event that there are insufficient sums held by him to pay the manager's remuneration.

## **SCHEDULE OF FUNCTIONS AND SERVICES**

### **A. SERVICE CHARGE**

- 1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the under-lessees as per the percentage share of under the terms of their under-lease.
- 1.2 Demand and collect rents, service charges, insurance premiums and any other payments due from the lessees in the manner laid out in the terms of the lease, save that for the avoidance of doubt and whether or not provided for in the lease:
  - 1.2.1 the manager shall be entitled to collect service charge contributions in advance from the leaseholders by:
    - 1.2.1.1 compiling a budget of estimated expenditure on 25<sup>th</sup> March each year (or as soon as practicable thereafter) and providing a copy of the same to the tenants and the occupier of Flat 2; and



1.2.1.2 Making demands for payment on account of those estimated costs to be payable in two equal instalments on 25<sup>th</sup> March and 29<sup>th</sup> September each year, upon which the sums specified therein shall be payable within 14 days.

1.2.2 for so long as there is no specific provision for service charges to be recovered from the occupier of Flat 2, on a like basis with Flats 1 and 3, the manager shall be entitled to recover a proportion of all expenditure from the occupier of Flat 2 (including both under the terms of the lease and in advance as set out in paragraph 1.2.1 above); such proportion to be calculated by dividing the rateable value of Flat 2 by the total rateable value of the three flats comprising the building. For the avoidance of doubt 'rateable value' means the rateable value last entered into the valuation list for the property.

1.3 Instruct solicitors to recover unpaid rents and service charges and any other monies due to the landlord upon the landlord's instructions.

1.4 Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the property within the service charge budget.

1.5 Ensure that the buildings are insured for their reinstatement value with an insurance company of repute.

## B. ACCOUNTS

2.1 Prepare and submit to the landlord an annual statement of account detailing all monies received and expended on its behalf. The accounts to be certified by an external auditor in accordance with the guidance on accounting and reporting as issued by the Institute of Chartered Accountants of England and Wales (ICAEW).

2.2 Produce for inspection, receipts or other evidence of expenditure.

- 2.3 All monies collected on the landlord's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, with funds being held in an account specifically for this property and no others. Any reserve fund monies to be held in a separate client account with interest accruing to the tenants.

#### C. MAINTENANCE

- 3.1 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 building.
- 3.2 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 landlord and the under-lessees.
- 3.3 The setting up of a planned maintenance programme to allow for the periodic re-decorations of the exterior and interior common parts are and other.
- 3.4 In respect of any works, the cost of which, is £2,500 or more, the works should be supervised by a Chartered Building Surveyor or other similarly qualified surveyor.

#### D. FEES

- 4.1 Fees for the above mentioned management services would be a basic fee of £400 per annum per unit for the flats within the property. Those services to include the services set out in paragraph 2.4 of the Service Charge Residential Management Code (2009) published by the RICS.
- 4.2 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 informing them of the works and supervising the works) will be subject to a charge of 10% of the cost (subject to a minimum fee of £250.00). This is in

respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.

- 4.3 If required to act in the capacity of Company Secretary an additional fee of £250 per annum will be charged.
- 4.4 An additional charge for dealing with solicitors enquires on transfer will be made on a time related basis payable by the outgoing lessee.
- 4.5 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- 4.6 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 4.1 above, are to be charged for on a fee basis to be agreed.

#### E. COMPLAINTS PROCEDURE

- 5.1 The manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the institution on request.



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**Type of Application** : **Application for permission to appeal**

**Tribunal Member(s)** : **Judge D Dovar  
Mr A O Mackay FRICS  
Mr P A Gammon MBE BA**

**Date of Decision** : **3rd June 2014**

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DECISION

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## **DECISION OF THE TRIBUNAL**

1. The Tribunal has considered the Respondent's request for permission to appeal dated 12<sup>th</sup> May 2014 and determines that:
  - a. It will not review its decision, and
  - b. Permission is refused
  
2. In accordance with Section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.
  
3. The Tribunal has also considered the Respondent's application for a stay of its decision and management order and refuses the same.

## **REASONS FOR THE DECISION**

4. The reason for the decision is that the Tribunal has considered and taken into account all of the points now raised by the Respondent, when reaching its original decision.
  
5. The original Tribunal's decision was based on the evidence before it and the Respondent has raised no legal arguments in support of the application for permission to appeal.
  
6. The Tribunal refuses to stay the effect of its decision and its management order as it does not consider that the Respondent's proposed appeal has any merit.

7. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (assuming that further application for permission to appeal is made), the Tribunal has set out its comments on the specific points raised by the Respondent in the application for permission to appeal, in the appendix attached.

A handwritten signature in black ink, appearing to read 'D. Dovar', with a long, sweeping horizontal stroke at the end.

Judge D Dovar  
Chairman

## APPENDIX TO THE DECISION REFUSING PERMISSION TO APPEAL

For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the Tribunal records below its comments on the grounds of appeal. References in square brackets are to those paragraphs in the main body of the original Tribunal decision.

### **Specific comments on the grounds of appeal**

#### Ground 1

Failure of Applicants to comply with directions.

1. The Respondent complains that the Applicants failed to comply with the Tribunal directions in that they did not identify any breaches of covenant.
2. The Tribunal does not consider that it was necessary for them to do so. Section 24 of the 1987 Act does not exclusively require the identification of a breach of covenant. It sets out a number of grounds, only one of which need be proved. In this case, the relevant ground was the levying by the Respondent of an unreasonably service charge. [23]
3. The Tribunal therefore did not consider that the failure to identify any breach of covenant merited the application being dismissed.

#### Ground 2

Exclusion of Part 2 of the 1987 Act as Mr Menezes works from home

4. The Respondent asserted that as Mr Menezes worked from home, his flat was not to be considered residential and therefore the 1987 Act had no application.
5. The Tribunal heard the evidence and submissions from the parties and inspected the premises (the Respondent chose not to attend the inspection). On the basis of those factors, it was clear to the Tribunal that any work that Mr Menezes carried out from his home was ancillary to residential use and therefore this objection by the Respondent failed. [13-16]
6. The Tribunal does not consider that the additional information included in this application on this issue should be taken into account, given that it could have been produced at the hearing and no proper reason for not providing it then has been given. In any event, it would not make any difference to its conclusion.

#### Ground 3

Just and Convenient

7. The Respondent has raised numerous new issues on appeal in relation to whether it was just and convenient to appoint a new manager. He has provided no proper reason why he was not able to raise these before. In any event, none of them overcome the basis for making the order namely that:
  - a. The Tribunal considered that the Respondent's wilful refusal to abide the previous Tribunal decision was sufficient grounds in itself to warrant an order under section 24. The Tribunal was also concerned about the lack of maintenance. [39, 47]; and
  - b. The Respondent also challenged the proposed manager. At the hearing, the Respondent's principle issue with the proposed manager was costs. Balancing the competing considerations, the Tribunal considered that the Respondent's refusal to abide the Tribunal's decision and failure to properly maintain the Property outweighed his concerns over the increased costs of having a manager appointed. [47]