



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

**Case Reference** : LON/00AL/LAM/2015/0025

**Property** : Oxley Gardens (Elizabeth Fry Place,  
Edith Cavell Way, Cairns Mews)  
Shooters Hill Road, London SE18

**Applicant** : Mr James Glogg, Lessee of Flat 89  
Elizabeth Fry Place, London SE18

**Representative** : In person

**Respondent** : (1) Oxley  
Gardens Management  
Company  
(2) Oxley  
Gardens Residents  
Association

**Representative** : Mr Rupert Cohen of Counsel

**Type of Application** : Application under s24 Landlord  
and Tenant Act 1987, Appointment  
of a manager

**Tribunal Members** : Judge E Samupfonda  
Mr M Taylor FRICS

**Date and venue of  
Hearing** : 26 February 2016  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 14 March 2016

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the Notice under section 22 (1) of the Landlord and Tenant Act 1987 ("the Act") is invalid.
- (2) The tribunal declines to make an Order for the appointment of a manager under section 24 of the Act.
- (3) The tribunal declines to make an Order under section 20C of the Landlord and Tenant Act 1985.

### **(4) The application**

1. The Applicant, Mr Glogg seeks an order appointing Mr Richard Benson, Senior Operations Director, Kinleigh Folkard and Hayward Group (KFH) as a manager of the above named property pursuant to s.24 of the Landlord and Tenant Act 1987 (the Act).
2. A case management conference was held on 27 October 2015 and directions for the future conduct of this case were given. The Directions did not make provision for an inspection and neither party requested it and the tribunal did not consider that one was necessary.

### **The background**

3. The tribunal was informed that the second Respondent is the freehold owner of Oxley Gardens, the subject of this application which consist of 38 houses, two blocks of flats, 10 separate flats which are managed independently of the Respondents, 41 houses managed by social housing, a water tower and a playground. The First Respondent manages the two blocks of flats known as Elizabeth Fry Place and Edith Cavell Way. The Applicant's flat No. 89 is situated in Elizabeth Fry Place ("the Block") and there are 48 flats in the Applicant's Block but only eight units in the segment where the Applicant's flat is contained. The tribunal did not consider that an inspection would be helpful given the nature of the complaints raised in the Notice under s22 of the Act.
4. The Applicant holds a long lease of Flat 89 dated 21<sup>st</sup> January 2002.
5. The Applicant sent a preliminary notice (the Notice) dated 16 October 2015 to the Respondent pursuant to s22 of the Act. The Notice gave grounds for the appointment of a manager as follows:-
  - (a) Breaches of covenants in the lease,

- (b) The landlord is in breach of the RICS code of Practice
- (c) Unreasonable service charges
- (d) That the circumstances exist which make it just and convenient to appoint a manager.

### **The hearing**

6. The hearing of the application took place on 26 February 2016. The Applicant, Mr Glogg represented himself. He was accompanied by a number of supporting fellow leaseholders. Mr Benson, the proposed manager also attended the hearing. Mr R Cohen of Counsel represented the Respondents. Ms Melanie Christodoulou, solicitor and Ms Della Averley, one of the Respondents' Company Directors, accompanied him.
7. At the start of the hearing Mr Glogg submitted a list of names of leaseholders from Elizabeth Fry and Edith Cavell, which he said demonstrated that there was support for his application. Mr Cohen invited the tribunal to disregard the list as the named persons had not applied to be joined in the application and the Respondent had not given prior notice of the petition.
8. The tribunal decided that it would admit the petition. The tribunal agreed that it was submitted very late and without sufficient notice to the Respondents. However, the tribunal considered that the petition was essentially a list of names of leaseholders, which indicated a support for the application and confirmed that Mr Glogg was not acting without some support and that there were others who were also concerned. The tribunal explained to the parties that it would not accept any evidence from any named person on the list and that it would give due weight to the list in its deliberations. The tribunal concluded that in those circumstances no injustice or prejudice would be caused to the Respondents by admitting it as simply a list of names in support of the application.

### **The issues for determination**

9. Essentially the application raised four issues before the tribunal, namely; the validity of the preliminary notice under s22 of the Act, the need for a management order under section 24 of the Act and the suitability of Mr Benson, the Applicant's proposed manager to fulfil the role of manager of the Building and whether the tribunal should make an Order under s20C of the Landlord and Tenant Act 1985 to limit the Respondent's costs incurred in these proceedings from being recovered through the service charge.

## **The Validity of the s22 Notice**

10. Mr Glogg confirmed that he sought an Order for the appointment of a manager in respect of Oxley Gardens, which comprises Elizabeth Fry Place and Edith Cavell Way. He acknowledged that the notice did not give the Respondents an opportunity to remedy the breaches and stated that no purpose would have been served by giving the Respondents reasonable notice to remedy the breaches as they had had ample time before the application was made and failed to do so.
11. Mr Cohen's case was that the Notice was invalid because it was defective as no period for remedy is given in respect of many of the purported breaches/incidents of non-compliance with the RICS Service Charge Residential Management Code. He added that the application was issued on the same day, many of the breaches were historic and some required time to remedy and insufficient time has been allowed.

## **The tribunal's decision**

12. The tribunal decided that the notice is invalid. Section 22 of the Act provides that before an application for an order under section 24 is made, a notice under this section must be issued and it outlines the necessary requirements that the notice must contain. Section 22 (2) (b) provides that a notice under this section must state " that the tenant intends to make an application for an order under section 24 to be made.....but (if paragraph (d) is applicable ) that he will not do so if the [requirement specified in pursuance of that paragraph is complied with]. Section 22(d) requires that where those matters are capable of being remedied by [any person on whom the notice is served, require him] within such reasonable period as is specified in the notice, to take such steps for the purposes of remedying them as are so specified in the notice, to take such steps for the purpose of remedying them as are so specified." The Notice in this application is dated 16 October 2015. The tribunal observed that although a number of the alleged breaches were historic, the tribunal was of the view that the alleged breach of failing to carry out the external decorations was capable of remedy and as such the Notice should have specified a reasonable period for the Respondents to remedy that breach. The tribunal rejected the contention that the first Respondents had had ample time to remedy the breach because the tribunal was informed that it took over direct management responsibilities for managing the two blocks of flats on 1 June 2014.
13. As the notice did not give any time at all for remedying a breach that is capable of being remedied, the tribunal determines that the Notice is, prima facie invalid as it failed to comply with the requirements of sections 22 (2) (b) and d) of the Act.

14. The tribunal then considered whether to exercise its discretion under section 24 (7) of the Act which provides that “In a case where an application for an order under this section was preceded by the service of a notice under section 22 [the tribunal] may, if it thinks fit, make such an order notwithstanding- (a) that any period specified in the notice in pursuance of subsection 2(d) of that section was not a reasonable period or (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or any regulations applying to the notice under s54(3).”
15. For the same reasons set out above the tribunal declined to exercise its jurisdiction under section 24(7) (a) of the Act.
16. Notwithstanding the tribunal’s determinations in respect of the validity of the s22 Notice, the tribunal observed that Mr Glogg had gone to great lengths to bring this application and there were a number of issues of legitimate concern raised. The tribunal considered that it might assist the parties if it went on to indicate whether it would have appointed a manager. The tribunal does not intend to rehearse all the evidence and issues but to set out in general terms the salient parts of the evidence.
17. **The need for a Management Order under section 24 of the Act**
18. Mr Glogg submitted a large bundle of documents in support of his application. The tribunal did not consider it necessary to repeat the very detailed chronology of events going back a number of years. Rather, the tribunal focussed on the salient points as outlined in the s22 Notice and bore in mind the documentary evidence that had been submitted. The tribunal was also aware from Mr Glogg’s statement that he raised other matters, which he considered, amounted to be other circumstances that exist which make it just and convenient to appoint a manager. Essentially, these matters were his examples of the Respondents’ conduct, which he considered to be unreasonable and in breach of the terms of the lease and primarily attributed to the two Directors behaviour. He listed around 20 grounds in support of his application which broadly fall under the following heads: Breach of covenants of the lease, Unreasonable service charges, Breach of RICS Codes and Accounts not audited.
19. Mr Cohen submitted a skeleton argument in which he outlined the Respondents’ case. Essentially the Respondents deny all of the alleged breaches of covenants with the exception of the failure to decorate the external parts of the Block not less than once in every third year as required by Clause 6 of Part IV of the lease. With regards to unreasonable service charges, the allegations related to a number of items of disrepair that were historic and had been remedied. Also included in this complaint were issues relating to the appointment and remuneration of the Respondents’ Directors, which Mr Cohen submitted were matters of company law and not within the tribunal’s

jurisdiction. With regard to the alleged breaches of the RICS Code, Mr Cohen said that the complaints related to the breakdown in communication and the majority of incidents complained of pre-dated the Respondents taking over the management responsibilities. The only breaches that were admitted were that the Respondent sent out an email to the leaseholders that disclosed all the lessees email addresses and this had been remedied and the decorations of the external parts was under consideration. It was therefore denied that it was just and convenient to make the order. Mr Cohen submitted that an order under s24 was a personal appointment and that a company could not be appointed as a court official. He therefore submitted that Mr Benson was not suitable in the light of his evidence that he could not accept a personal appointment.

20. He added that if the tribunal was minded to make an Order, it should be limited to the part of Elizabeth Fry Place in which Mr Glogg's flat was located as that, in his submission constituted the "Building" within the meaning of section 21 (2) of the Act. Therefore the order should be limited to managing eight units forming that section of the Building.

#### **The Suitability of the Proposed Manager**

21. Mr Benson as the proposed manager gave evidence. He outlined his qualifications and experience and the set up at Kinleigh Folkard Hayward (KFH). He explained that he had carried out a brief inspection of the estate prior to submitting the tender for management of Oxley Gardens. He confirmed that the tender was based on managing Oxley Gardens and that if the tribunal were minded to make an order limiting the building to be managed to the 8 units as suggested by Mr Cohen, this would not be ideal and the tender would have to be revised. He added he could not accept a personal appointment as he would not be insured and would be in breach of his employment contract. He also confirmed that a draft of the terms of appointment had not been prepared for his consideration and any terms ordered by the tribunal would have to be approved by KFH.

#### **The tribunal's decisions**

22. The tribunal was satisfied that a statutory ground for appointing a manager had been met. The First Respondent admitted that it was in breach of its obligation in clause 6 of Part IV to the lease, which requires it to decorate the external parts of the Block not less than once every three years. Establishing that a breach has occurred is only one aspect for consideration, an Applicant must also go onto persuade the tribunal that it is just and convenient to make the order in all the circumstances of the case.
23. It is the tribunal's view that a decision of the tribunal to strip a landlord of its right to manage the Building is a draconian measure of the last

resort and therefore it should not be invoked lightly. Whilst the tribunal found that there were two admitted breaches, it was not satisfied that it was just and convenient to make the order. The admitted breach of disclosing the email addresses of leaseholders has been remedied and the failure to decorate was under active consideration. Many of the other breaches complained of were historical in nature and were resolved. The tribunal did not have jurisdiction to consider the remuneration and appointment of the Directors.

24. The tribunal was reassured to hear that it was the intention of the first Respondent to call a meeting as soon as possible to try and resolve the issues of the external decorations and any other matters of concern if raised including the possibility of appointing a managing agent if the tribunal did not do so. It was also stated that a resident has the right to call a meeting provided they can demonstrate sufficient support.
25. Mr Cohen referred the tribunal to the Court of Appeal case of **Maunder Taylor v Blaquiére [2002] EWCA Civ 1633** in which it was held that the purpose of Part 11 of the Act was to make provision for the appointment of a manager who would carry out duties required by the court or tribunal. Accordingly, he argued that the company KFH could not be appointed to manage the Building.
26. Mr Benson gave his evidence in a candid and straightforward manner. The tribunal found him to be a credible witness who did his best to assist the tribunal in its functions. In the light of his evidence that he could not be personally appointed, the tribunal was bound to follow the Court of Appeal decision cited above that the manager's functions were those of a court appointed official and since a company cannot act in that capacity the tribunal concluded that Mr Benson would not have been a suitable person to be appointed as manager.
27. In the light of the tribunal's decision not to appoint a manager, the tribunal did not consider it necessary to address Mr Cohen's submissions as to the extent of the premises over which a manager maybe granted powers to manage. However it noted the Court of Appeal decision of **Cowsand Fort Management Ltd v Stafford & Others [2008] 3 All ER 357** in which it was held that "an order appointing a manager to carry out functions "in relation to" the premises may extend to the amenity land and other land within the buildings or their curtilages."
28. By way of observation, it was apparent to the tribunal that the majority of concerns raised called into question the manner in which the two Directors managed. There was no evidence before the tribunal demonstrating whether they have got the necessary professional management qualification or skills to undertake the day-to-day management functions of a significant estate as this. Furthermore it is anticipated that external decorations will be carried out and thus, there

is a pressing need to ensure that the contract is professionally managed in order to avoid potential pitfalls such as compliance with the statutory requirements. In addition there was no information provided as to what management Codes if any they followed. The tribunal would urge the Respondents to consider carefully whether it might be appropriate to appoint an external managing agent.

**Application under section 20C**

29. In the application form, Mr Glogg made an application that the costs incurred in these proceedings should not be recovered through the service charge. Although the Respondents indicated in their statement in response that their submissions would be made at the hearing, they did not do so. Nevertheless, taking into account all of the circumstances, the tribunal determines that it is just and equitable that the costs incurred by the Respondents in these proceedings are NOT or is it /TO BE??? Regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

**Name:** Judge E Samupfonda      **Date:** 14 March 2016