



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/45UG/LAM/2016/0015

Property : Ditton Place, Brantridge Lane,
Balcombe, Haywards Heath, West
Sussex RH17 46JR

Applicant : Mr R Ulwick and Ms C Bajo (1)
Mr W Gans (2)
Mr K Sellers (3)

Applicant's
Representative : Mr Heather of Counsel
Fladgates Solicitors

Respondent : Ditton Place Management Company
Ltd

Respondents'
representative : Mr Dilworth of Counsel
Adams & Remers LLP

Type of Application : Section 24 Landlord and Tenant
Act 1987

Tribunal Members : Mrs F J Silverman Dip Fr LLM
Mr B H R Simms FRICS

Date and venue of
hearing : 24 January 2017
Chichester Magistrates Court.

Date of Order : 24 January 2017

Date of written decision : 01 February 2017

DECISION AND ORDER

ORDER

- 1 In confirmation of the order made orally at the Tribunal hearing it is ordered that GARY PICKARD of Jacksons 193 Church Road Hove East Sussex BN3 2AB is appointed as Manager of the property known as Ditton Place Brantridge Lane, Balcombe, Haywards Heath, West Sussex RH17 46JR for a term of three years with effect from and including 24 January 2017.
- 2 The Manager's terms of appointment are as set out in Appendix A. Appendices B and C contain the Manager's request for information and proposed management plan both of which were discussed with the Manager and approved during the hearing.
- 3 The Tribunal makes a partial order under s20C in that the Respondent is not permitted to add any sums relating to the costs of these proceedings to the future service charge accounts of the Applicants as named in these proceedings.
- 4 The Respondent's application for costs under Rule 13 is refused.

REASONS

- 5 This Order and Decision, confirming the result of a hearing which took place on 24 January 2017 at Chichester, is the culmination of protracted proceedings between the parties which commenced with a notice served by the Applicants on the Respondent on 29 June 2015 followed by an application made by the Applicants to the Tribunal on 11 November 2015. The history of the proceedings is recorded in the six sets of Directions which have preceded this decision but is briefly repeated below in so far as it is relevant to the parties' applications in relation to costs which engaged the majority of the Tribunal's time at the final hearing.
- 6 Prior to these proceedings the parties had been in dispute over the management of the property the main building of which is which is a Grade II* early twentieth century country mansion. Concerns had arisen over the accounting practices and requests by the Applicants for accounts for years up to and including 2012 went unheeded and have never been produced. Accounts for subsequent years were only produced after proceedings were commenced by the Applicants. No satisfactory explanation for the missing and or late accounts has been supplied. The managing agent engaged by the Respondent to carry out the Respondent's management responsibilities for the property was subject to disciplinary action from his professional body for misconduct relating to the handling of clients' money. The Applicants' complaints therefore related to lack of maintenance of the property, an absence of clarity in the accounting and misuse of service charge funds.
- 7 The Respondent agreed to the appointment of a manager under s24 on 19 October 2016, eleven days before the date scheduled for the hearing on 31

October 2016 and some 16 months after the initial notice was served upon them.

- 8 At 18.11 on 26 October 2016, two working days before the scheduled hearing on 31 October 2016, the manager selected by the Applicants and agreed by the Respondent notified the Applicants' solicitor that she was unable to continue with her nomination as manager (Supp 85.1). The Applicants' solicitor took immediate steps to attempt to clarify the situation and to arrange for the substitution of another suitable candidate as the potential manager of the property. These communications included emails, telephone conversations and a site meeting at the property with the former proposed manager and her superior Mr Bramly (see pages Supp 85.3-85.16 and witness statement of Janet Keeley).
- 9 However, on 28 October 2016 at approximately 12.15 Mr Bramly telephoned the Applicants' solicitor and informed her that the proposed appointee was unable to take up the appointment as manager for personal reasons, that he was not able to offer himself for appointment and that he was not aware of the availability of anyone else in his firm who could do so.
- 10 In the light of this information at 12.37 on that day the Applicants' solicitor informed the Respondent's solicitor of the situation and then telephoned the Tribunal office to request an adjournment.
- 11 The Tribunal refused the adjournment and directed that the hearing arranged for the following working day would proceed so that the Tribunal could inspect the property and hear evidence to assess whether circumstances existed to indicate that the requirements of s24 Landlord and Tenant Act 1987 had been satisfied.
- 12 The hearing on 31 October 2016 concluded that circumstances existed to justify the appointment of a manager under the statute and further directions were issued to assist the progress of the matter.
- 13 To enable the new manager to take up his/her appointment in time for the start of the next accounting period on 01 January 2017 the hearing was adjourned to 8 December 2016 when it was hoped that a new manager would be approved by the Tribunal.
- 14 For the reasons cited in the Directions dated 14 December 2016 the Tribunal was unable to appoint a manager at the hearing on 8 December 2016 and the matter was further adjourned to 24 January 2017 when, having interviewed the proposed manager, the Tribunal agreed to appoint Mr Pickard to the position.
- 15 The Tribunal discussed with Mr Pickard his proposed management plan and expressed their opinion on a number of matters which Mr Pickard had raised as queries the main points of which are recorded below.
- 16 From a preliminary examination of the documentation Mr Pickard thought that the total service charge percentages amounted to more than 100%. The

Tribunal said that if that proved to be the case the lessees should be recommended to take legal advice about a variation of the leases. Meanwhile, he should continue to collect sums in accordance with the current terms of the lease. Any excess over 100% should be placed in a reserve account and clearly identified as surplus. Although the lease makes provision for twice yearly service charge demands the Tribunal agreed that in the present circumstances the manager should be entitled to raise quarterly demands if necessary, the interim demands being made on 1 April and 1 October in each year. Mr Pickard was also concerned that the s20 limit on the property was very low (£3,000.12) by comparison with the anticipated cost of works to this significant building and would not even cover the cost of an annual service of the boiler with the current supplier. Mr Pickard said he was actively investigating alternative suppliers. The Tribunal reminded him of the availability of the dispensation procedures under s20ZA.

17 The Applicants made an application for a partial order under s20C preventing the Respondent from seeking to recover their legal costs from the named Applicants through the service charge. They said that substantial breaches of duty were set out in their application which justified the appointment of a manager to the property and that those complaints had never been answered by the Respondent. The Tribunal had appointed a manager, the landlord had therefore substantively lost the case and in all the circumstances it was just and equitable to allow an order to be made. On the Applicants' behalf the Tribunal was also reminded that the Respondent's consent to the appointment had been given less than a fortnight before the first hearing and some sixteen months after they had first been made aware, through the service of a notice on them, that the Applicants intended to apply for the appointment of a manager to the property. The Respondent submitted that their consent to the appointment had been given to enable resolution of the issues between the parties and did not indicate an acceptance of fault. They insisted that the grounds cited by the Applicants were residual and described the reprimand sanctioned by the RICS on the Respondent's previous managing agent as 'prejudicial and irrelevant' (an opinion which the Tribunal does not share). The Respondent's representative said that it would be unfair to prevent the Respondent, who represented the majority of the tenants, from recovering their costs in circumstances where they had been funding the service charge in the absence of contributions from the Applicants.

18 Having considered the submissions made by both parties' representatives in relation to s20C, the Tribunal finds that the Applicants were fully justified in making their application to the Tribunal in circumstances where the main complaints made by them related to unorthodox accounting practices. The Respondent had had sixteen months between service of notice by the Applicants and the first hearing date in which to answer the Applicants' complaints but had failed to do so. That failure contributed to the delay in achieving a resolution of the matter and it would not be just and equitable to impose the costs generated by that delay to be met, even in part, by the Applicants whose application to the Tribunal has been successful. The Tribunal therefore makes an order under s20C preventing the Respondent from adding any part of the costs of these proceedings to the service charge accounts of the named Applicants.

19 On behalf of the Respondent an application was made for costs under Rule 13 of the Tribunal Rules of Procedure. The Respondent's argument focussed on the delay between the original proposed manager's notification to the Applicants' solicitor of her unwillingness to accept the appointment and the Applicants' solicitor's notification of this fact to the Respondent's solicitor some 36 hours later. The timetable of these events is set out above (paragraphs 8-10). The Respondent insisted that they should have been notified of the manager's withdrawal as soon as the Applicants had received the notification themselves and that the delay in passing that information to the Respondent had been deliberate had had caused further delay in the proceedings. The Respondent accepted that they had suffered no financial loss as a result of the delayed notification. On behalf of the Applicants it was submitted that they had acted reasonably and promptly to try to resolve the situation and had notified the Respondent of the situation as soon as it became clear that it was not going to be possible to find a new appointee before the scheduled hearing date. Apart from complaining about the delayed notification the Respondents' representative did not suggest how things might have been done differently had the Respondent's solicitor received earlier notification of the withdrawal of the proposed manager. No suggestion was made as to how the Applicants' solicitor's conduct met the criteria set out in rule 13.

20 Having considered the representations made by both parties' representatives in relation to a costs order under Rule 13 the Tribunal does not find the Respondent's case to be substantiated. The Tribunal is satisfied that in the particular circumstances of the withdrawal of the proposed manager shortly before the hearing date the Applicants' solicitor acted promptly and properly to try to resolve the resulting problem and having been unable to do so then notified the Respondents' solicitor within fifteen minutes of that realisation. The Tribunal does not consider that the Applicants' solicitor's conduct was in any way unreasonable nor does it accept that any costs would have been saved if the Respondent's solicitor had received notification 36 hours earlier than it in fact did. It is, in the Tribunal's view, unlikely that an adjournment would have been granted (given that one was refused on 28 October 2016) nor that any of the subsequent hearing dates would have been rendered unnecessary largely because the first two candidates presented for appointment (and agreed by both parties) were not considered by the Tribunal to be suitable for appointment in the context of this particular property. The Respondents' application is therefore refused.

21 THE LAW

Landlord and Tenant Act 1987 s24 (as amended)
Appointment of manager by the court.

(1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a) such functions in connection with the management of the premises, or

- (b) such functions of a receiver, or both, as the tribunal thinks fit.
- (2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—
 - (a) where the tribunal is satisfied—
 - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice; and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ab) where the tribunal is satisfied—
 - (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case; or
 - (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.
 - (2A) In this section "relevant person" means a person—
 - (a) on whom a notice has been served under section 22, or
 - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
 - (2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—
 - (a) if the amount is unreasonable having regard to the items for which it is payable,
 - (b) if the items for which it is payable are of an unnecessarily high standard, or
 - (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.
 - In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).
 - (3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
 - (4) An order under this section may make provision with respect to—
 - (a) such matters relating to the exercise by the manager of his functions under the order, and
 - (b) such incidental or ancillary matters,
 - as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.
 - (5) Without prejudice to the generality of subsection (4), an order under this section

- may provide—
- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
 - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
 - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
 - (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
 - (6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
 - (7) 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 in any regulations applying to the notice under section 54(3).
 - (8) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
 - (9) A leasehold valuation 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 1925, the tribunal may by order direct that the entry shall be cancelled.
 - (9A) the court shall not vary or discharge an order under subsection (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.
 - (10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
 - (11) References in this Part to the management of any premises include references to the repair, maintenance or insurance of those premises.

Orders for costs, reimbursement of fees and interest on costs

Rule 13. Tribunal Rules of Procedure

- 13(1) The Tribunal may make an order in respect of costs only—
- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

- (i) an agricultural land and drainage case,
- (ii) a residential property case, or
- (iii) a leasehold case; or
- (c) in a land registration case.

Judge F J Silverman as Chairman

Date 01 February 2017

Note:

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.

IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

Residential Property

LANDLORD AND TENANT ACT 1987 (SECTION 24(1))

DITTON PLACE SCHOOL,
BRANTRIDGE LANE,
BALCOMBE,
HAYWARDS HEATH
RH17 6JR

Applicants: Richard Urwick (1)
Caroline Bajo (2)
Walter Gans (3)
Keith Sellers (4)

Respondent: Ditton Place Management Company Limited (Company
Number 06013296)

Premises: Ditton Place School, Brantridge Lane, Balcombe, Haywards
Heath RH17 6JR registered with title number WSX275988

MANAGEMENT ORDER

Interpretation

In this Order:

- a) “**the Act**” means the Landlord and Tenant Act 1987
- b) “**the Freehold Units**” means the freehold properties adjacent to the Premises which share its common parts facilities and services and with the following title numbers: WSX309079, WSX313625, WSX327880, WSX312026, WSX317066, WSX312448.
- c) “**Functions**” means functions in connection with the management of the Premises including any obligations and powers of either the Respondent or the Management Company under the Leases
- d) “**Landlord**” means the Respondent and any successor in title to all or part of the freehold title of the Premises
- e) “**Leases**” means the leases vested in the Lessees
- f) “**Lessee**” means a tenant of a flat at the Premises holding under a long lease as defined by section 59(3) of the Act
- g) “**Management Company**” means the Respondent and any successor in title or other person or company discharging the function of the Management Company given to it by and defined in any of the Leases
- h) “**the Manager**” means Gary Pickard , of Jacksons, 193 Church Road, Hove, East Sussex BN3 2AB
- i) “**the Premises**” means all that property known as Ditton Place School, Brantridge Lane, Balcombe, Haywards Heath RH17 6JR freehold title to which is registered under title number WSX275988
- j) “**the Respondent**” includes any successors in the freehold title of the Premises or the proprietor of any interest derived from or created out of the said freehold title and any person or company discharging the function of the Management Company named in the Leases

- k) "Tribunal" means the First Tier Tribunal (Property Chamber) Residential Property

Preamble

UPON the Applicants having applied on 11 November 2015 for the appointment of a manager under Part II of the Landlord and Tenant Act 1987

AND UPON the Respondent admitting (for the purposes of this Order) and the Tribunal being satisfied that the conditions specified in Section 24 Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a manager

IT IS ORDERED THAT:

The Manager

1. Gary Pickard of Jacksons, 193 Church Road, Hove, East Sussex BN3 2AB is appointed as the Manager of the Premises pursuant to Section 24 of the Act.
2. For the duration of his appointment the Manager shall have the power to make quarterly variable estimated demands of the Lessees and owners of the Freehold Units on 1 April, 1 July, 1 October and 1 January on account of the service charges payable for the current year in addition to any estimated contributions to any Reserve Fund and any annual balancing charges, including an initial demand on account of the current quarter at or after the date of his appointment.
3. For the duration of his appointment, the Manager shall collect all reserved rents, service charges, interest and any other monies payable under the Leases. The Manager shall also use all reasonable endeavours to collect arrears of any of the foregoing.
4. For the duration of his appointment the Manager shall carry out the management obligations of the Respondent in accordance with the provisions of the Leases and in

particular and without prejudice to the generality of the foregoing and where applicable having regard to the particular terms of the Leases:

- i. The Respondent's obligations to provide services;
 - ii. The Respondent's repair and maintenance obligations
 - iii. The Respondent's obligations to perform duties and to make payments as provided in any of the Leases; and
 - iv. The Respondent's power to grant consent.
4. The Manager is entitled to appoint the firm of Jacksons, 193 Church Road, Hove, East Sussex BN3 2AB and such solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions having regard to the level of such professional costs in relation to the resources of the Estate and he will be entitled to recover the cost thereof from the Lessees through the service charge, provided that always such costs are reasonably incurred and that the services of such a person are of a reasonable standard, within the meaning of s19 of the Landlord and Tenant Act 1985.
5. For the duration of his appointment the Manager shall have the power:
- i. In his own name or in the name of the Respondent to bring any legal proceedings for the recovery of arrears of rents, service charges, or other monies due under the Leases or to enforce the Lessees' covenants (being covenants other than for the payment of rent) under the Leases;
 - ii. To open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to 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 Leases (if any) or to powers given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank

account or accounts established for that purpose monies received on account of the reserve fund; and

- iii. To rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any Lessee owing sums of money under this Order.
- iv. To investigate and to take such action as may be appropriate to manage the service charge accounts and reserve funds including without prejudice to the generality of the foregoing to commence and pursue such claims as are appropriate in his own name or otherwise and if considered by the Manager to be appropriate to instruct accountants or auditors to audit the service charge accounts and/or reserve funds.
- v. To demand and collect the past and future estate rent charges from the owners of the Freehold Units in accordance with the terms of the Leases and the covenants entered into by the Landlord or its predecessor in title and the owners of the Freehold Units or their predecessors in title including the power and to commence and pursue such claims as are appropriate in his own name or otherwise.
- vi. To ascertain the correct proportions of the estate costs to be recovered from Lessees and owners of Freehold Units.
- vii. To grant and receive payments for lease extensions subject to the Respondent's prior approval, such approval not to be unreasonably withheld or delayed.

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

- i. The Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;
- ii. All statutory requirements, including those set out in the Landlord and Tenant Act 1985 and the Landlord and Tenant Act 1987;

- iii. The duties of managers set out in the Service Charge Residential Manager Code (“**the Code**”) as amended or revised from time to time or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to s87 of the Leasehold Reform Housing and Urban Development Act 1993; and
 - iv. The Accounts Regulations as issued by the Royal Institution of Chartered Surveyors.
7. The Manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors.
 8. For the duration of the Manager’s appointment, 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, save where the same has been lawfully delegated by the Manager in accordance with the terms of the lease.
 9. 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.
 10. Without prejudice to the generality of the foregoing hereof:
 - i. The Respondent whether by itself, its agents, servants or employees, shall use its best endeavours within 14 days of the date of this order or as soon thereafter as reasonably practicable deliver to the Manager all such accounts, books, papers, memoranda, records, computer records, minutes, correspondence, emails, facsimile correspondence and other documents as are relevant to the management of the Premises as are within its custody, power or control together with any such as are in custody power or control of any of its respective agents, servants or employees in which last case it shall respectively take all reasonable steps to procure delivery from such agents, servants or employees including

paying such fees as such agents, servants or employees may be entitled to have as a condition for the release thereof;

- ii. Within 14 days of compliance with paragraph 10(i) above the Manager shall decide in his absolute discretion which or any contracts he will assume the rights and liabilities under;
- iii. The Respondent shall whether by itself, its agents, servants or employees use its best endeavours within 14 days of the date of this order or as soon thereafter as reasonably practicable deliver to the Manager all keys to electricity, gas, water and any other utility meters located in the Premises that are within its custody power or control. To this end and in so far as they are able, the Respondent shall give the Manager full access to the electricity, gas and water meters fuse board and any other utility meters located in the Premises;
- iv. The Respondent shall whether by itself, its agents, servants or employees use its best endeavours arrange to be provided within 14 days of the date of this order or as soon thereafter as reasonably practicable full details to the Manager of all sums of money it holds in the service charge fund and any reserve fund in relation to the Premises, including copies of all relevant bank statements and shall forthwith pay such sums to the Manager. If the Respondent shall thereafter receive any such sums under the Leases it shall forthwith pay such sums to the Manager without deduction or set-off;
- v. The rights and liabilities of the Respondent as Landlord and/or as Management Company respectively arising under any contracts of insurance relating to the Premises shall from the date hereof become rights and liabilities of the Manager; and
- vi. 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 (and appendices) attached.

11. 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 personal and appropriate professional indemnity cover in the sum of at least £5,000,000 providing copies of the current cover note upon written request by any Lessee, Respondent or the Tribunal.
12. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
13. The Manager shall by 4:00 pm on the anniversary of the date of this order prepare a written report for the Tribunal on the progress of the management of the Premises during the first 12 months of this order and shall provide copies to the Lessees and the Respondent.
14. This Order shall remain in force for 3 years from the date it is made or (if earlier) any variation or discharge by the Tribunal on the application of any person interested under Section 24(9) of the Act.
15. The Respondent is directed forthwith to register this Order against its freehold estate registered under title number WSX275988.
16. The obligations contained in this Order shall bind any successor in title to the Lessees or the Respondent and the existence and terms of this Order must be disclosed to any person seeking to acquire either a Lease (whether by assignment or fresh grant) or freehold.

Permission to apply

17. The Manager may apply to the Tribunal for further directions, in accordance with s.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:

- i. Any failure by any party to comply with an obligation imposed by this Order;
- ii. For directions generally; and
- iii. 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 SERVICES**

Financial Management:

1. Prepare an annual service charge budget (consulting with the Lessees and Respondent as appropriate) administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees under the terms of the Leases and to the Respondent.
2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees in accordance with the terms of the Leases.
3. Instruct solicitors to recover any unpaid service charges and any other monies due to the Respondent under the terms of the Leases.
4. Create and maintain the service charge reserve fund in accordance with the terms of the Leases.
5. Produce for inspection, within a reasonable time following a written demand by the Lessees or the Respondent relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
6. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
7. 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 management of the Premises.

Insurance

8. Take out on behalf of the Respondent and in accordance with the terms of the Leases an insurance policy in relation to the building and the contents of the common parts of the Premises and such other liabilities as the Manager reasonably determines with a reputable insurer, and provide a copy of the cover note to all Lessees and the Respondent.
9. 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.

Repairs and Maintenance

10. 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.
11. Administer contracts entered into on behalf of the Respondent in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to such contracts.
12. Manage the common parts and service areas of the Premises, including the arrangement and supervision of maintenance.
13. Carry out regular inspections (at the Manager's discretion but not less than four per year) without use of equipment, to such of the common parts as can be inspected safely and without undue difficulty, to ascertain for the purpose of day-to-day management only the general condition of those common parts.

Major Works

14.
 - i. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange for the supervision of major works which are required to be carried out to the Premises (such as extensive interior or exterior redecoration or repairs required to be carried out under the terms of the Leases or other major works

where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and Respondent and supervise the works in question).

- ii. In particular to undertake as soon as practicable a full health and safety review and an assessment of the electrical supply to the Premises. This will include, but not be limited to a fire risk assessment, a water assessment, a lightning conductor test, a gas safety certificate and a service of the boiler and the carrying out of any recommendations made as a result of these assessments and tests to ensure compliance.

Administration and Communication

15. Deal promptly with all reasonable enquiries raised by the Lessees or the Respondent, including routine management enquiries from the Lessees, the Respondent or their solicitors.
16. Provide the Lessees and the Respondent with telephone, fax, postal and email contact details and complaints procedure.
17. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

Utilities

18. To undertake a review of all services delivered and, where appropriate, rectify and re-apportion the costs of delivering these services in accordance with the terms of the Leases and the covenants entered into between the Landlord or its predecessor in title and the owners of the Freehold Units or their predecessors in title.
19. This includes, but will not be limited to, moving the external lighting and water onto a new supply so that the costs of the external lighting are borne fairly.

Fees

Set up fee: £3,500 plus vat (plus additional hourly rate charge if required) as set out in Appendix 1 to this Schedule;

Annual fee: £8,500 plus vat and disbursements as set out in Appendix 1 to this schedule;

Additional fees: as set out in Appendix 2 to this schedule

IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

Residential Property

LANDLORD AND TENANT ACT 1987 (SECTION 24(1))

DITTON PLACE SCHOOL, BRANTRIDGE LANE, BALCOMBE, HAYWARDS
HEATH RH17 6JR

Appendix 1 and Appendix 2 to Management Order

**Appendix 1
Set up fee**

£ 3,500 plus vat

To cover work in connection with the “setting up” of a new management together with reasonable charges for support staff, accountants etc. as may be required in connection with the setting up of a property including examining the history of the property and historical accounts on the strict understanding that accounts can only be prepared on the basis of information supplied, **provided that** should the work entailed exceed the specified fee when calculated on the basis of hourly rates as set out in clause 4 of Appendix 2 the Manager may charge for such additional time at the hourly rates set out in clause 4 of Appendix 2

Standard fee for service charge administration

**£ 8,500 plus vat and disbursements per annum
To cover**

Property Management of a regular nature:

The Manager shall be entitled to review and increase the said fee in each year in accordance with clause 5 of Appendix 2 below during the continuance of the appointment and upon each anniversary thereof unless directed otherwise by the tribunal

To include:

- i. Collect service charges to include preparation and sending of initial demand(s) at the frequency required in accordance with the terms of the lease or this Order to include reminder and second reminder.
- ii. Pay for general maintenance out of maintenance charges/rents paid or received for this purpose.

- iii. Produce annual estimates of expenditure and reserves.
- iv. Administer funds and obtain records in relation to same and to hold such funds within properly constituted accounts according to legislation.
- v. Produce to the appointed Accountant income and expenditure details together with all supporting documents including bank statements for the preparation of annual accounts and circulate the annual accounts when prepared by the appointed Accountant to the Leaseholders/Tenants, owners of the Freehold Units, Residents Association, and Respondent – as appropriate.
- vi. Administer building and other insurances and retain any commissions received in respect of same to be deducted at source.
- vii. Manage maintenance contracts in respect of such matters as lifts and boilers.
- viii. Inspect the common parts six times per annum (any additional inspections or visits which the Manager considers necessary or reasonably required being charged at the hourly rate set out in clause 4 of Appendix 2 to this schedule) on the strict understanding that such inspections are not intended to result in the preparation of any schedules of dilapidations or works to the building. Such inspections shall be limited to visual inspections only of the common parts of the building effected from convenient safe positions.
- ix. Deal with reasonable enquiries from Lessees but not to the extent of becoming engaged in extensive correspondence.
- x. Deal with repairs to the common parts, plant, fixtures and fittings up to a maximum cost of £1,000.00 any one event subject to the requirements of s20 LTA 1985 (as amended).
- xi. Maintain tenancy records.

Appendix 2

Fees for additional services

- 1. In so far as not covered by the Set Up Fee or Standard Fee set out in Appendix 1, management of a non-regular or non-recurring nature including acting in a Surveyor's capacity including but not limited to:
 - i. Revising estimates of service charge expenditure if required more frequently than on an annual basis

- ii. instructing or dealing with a Building Surveyor, Solicitor or Lessees or Lessees Association or Grant Applications or representations to a Local Authority beyond reasonable correspondence and responding to pre-contract enquiries
- iii. Giving evidence at Court on recovery of unpaid rents or other charges or in connection with the property generally to include evidence to a Leasehold Valuation Tribunal and the time expended in preparing any submission or evidence to any person or firm rightly requiring same.
- iv. Advising on rating, planning, improvements, the making of applications for grants, dealing with insurance claims (other than notifying insurers of claims and forwarding estimates in respect of same) and valuations.
- v. Preparing replacement cost/re-building cost assessments for insurance purposes.
- vi. Receiving and considering leaseholders/tenants applications for alterations.
- vii. Giving advice in connection with assignments, sub-letting and change of use.
- viii. Making submissions to Rent Assessment Committees/Leasehold Valuation Tribunals.
- ix. Preparing schedules of dilapidations.
- x. Arranging lettings, tenancy renewals, negotiating rent reviews and negotiating premiums for lease variations.
- xi. Preparing agreements and checking inventories.
- xii. Copying documents to include insurance policies and accounts.
- xiii. For time expended in working with and employing specialist advisors, Surveyors, Engineers, Solicitors or other Consultants (in so far as not covered by the fee payable under clause 3 below).
- xiv. Any correspondence or time engaged after the process as detailed in paragraph (i) of Appendix 1 has been concluded shall be chargeable by the Manager subject to any determination as to reasonableness and subject to the Manager taking reasonable steps to recover any charges from the defaulting lessee although the Manager shall not be obliged to engage Solicitors for this purpose or to enter into litigation.
- xv. Attending any 'special meetings' or meetings outside of normal business hours and any attendance at the property in excess of those attendances included within the standard fee or any other fee.
- xvi. Responding to Solicitors enquiries of Managing Agents relevant to the proposed sale of a Flat/Property and correspondence at any time beyond the level of what is

considered reasonable in the circumstances.

- xvii. Any other functions or services provided under the terms of this Order which are not covered by the Set Up Fee or Standard Fee or any other specific fee in the Order including its schedule and appendices

- the Manager shall charge hourly rates in accordance with paragraph 4 (below) unless otherwise stated

2. On transfer of a leasehold property to a new lessee or closing existing file and preparing new file and corresponding with solicitors and introduction – hourly rate fees in accordance with paragraph 4 (below).

3. Instructing surveyors architects or other appropriate persons in the preparation of specifications or schedules of work ,obtaining tenders and contract administration for works, fees at the rate of 5% plus VAT and disbursements on any works over £1,000.00 but excluding the fees of any architect, surveyor or other appropriate person instructed in the preparation of specification and schedule of works, such fees to include where required, the preparation and service of any notices pursuant to Section 20 of the LTA 1985 (as amended).

4. The hourly rate shall be £95.00 plus VAT for the Manager or a Principal, £75.00 plus VAT for an Associate and £60.00 plus VAT for a manager. Disbursements shall be paid in addition.

5. All fees herein or any of them may be reviewed annually by the Manager. In default of agreement with the Lessees and Owners of the Freehold Units, the Manager shall be at liberty upon the giving of 14 days written notice to increase the fees by 10% or in line with the relevant annual level of increase in the RPI since the date the previous fees payable were set, whichever is the higher.

Appendix B
SCHEDULE OF INFORMATION REQUIRED
FROM PREVIOUS MANAGING AGENTS

1. Copy lease for all flats (or if all of the leases are in identical form a single lease will be sufficient).
2. Details of the lessees, their correspondence addresses together with contact telephone numbers, if possible, and email addresses.
3. Details of any under-lettings with the name of the tenant(s) and contact details if possible together with the names of the letting agents – if applicable.
4. Copy or original of notice of under-letting (if required pursuant to the lease) for each under-letting.
5. Details of any guaranteed works (dry rot treatment, rising/penetrating damp treatments, roof coverings etc.).
6. Details of any contractually maintained systems including fire alarm & emergency lighting systems, door entryphone systems, television aerial installations, communal boilers, fire extinguisher maintenance contracts, estate maintenance contracts etc. together with copy contracts.
7. Copies of the last five years accounts.
8. Copies of all employers' liability certificates (there is an obligation to maintain these records for a period of 60 years).
9. Details of lessees current maintenance charge positions (i.e. arrears/credits, date and amount of most recent maintenance charge demand).
10. Details of reserve fund balances and details of any arrears of contributions to same.
11. Details of any ongoing contracts such as cleaning, lift or boiler servicing.
12. Details of any works proposed and already programmed including copies of all relevant Section 20 Notices (Landlord & Tenant Act 1985 (as amended)).
13. Copies or originals of all Section 20 Notices relating to previously performed relevant works.
14. Details of any outstanding urgent works.
15. A fully made copy of the current insurance schedule and policy together with the name of the Broker (if applicable).
16. The date when the exterior of the property was last decorated and similarly in relation to the internal common parts.

17.
 - A) Details of any ongoing insurance claims.
 - B) A copy of the most recent insurance valuation for the building.
18. The common parts Risk Assessment.
19.
 - A) The common parts Asbestos Survey.
 - B) Asbestos Risk Assessment & Method Statement.
 - C) Regulatory Reform (Fire Safety) Order 2005 – Fire Risk Assessment.
 - D) The most recent “Periodic Examination” of the common way electrical wiring installation.
 - E) A tree management survey and risk assessment.
 - F) A planned maintenance programme (if any).
 - G) Any other relevant surveys or reports.
20. An up to date closing account.
21. The name of the Accountant responsible for the preparation/certification of the service charge accounts.
22. Cheque for credit balances made payable to Jacksons.

Appendix C
MANAGEMENT PLAN

DITTON PLACE, BRANTRIDGE LANE, BALCOMBE, HAYWARDS HEATH,
RH17 6JR

1. Contact Lessees

Write to all lessees to confirm my appointment as soon as possible after the appointment and assuming that the appointment is made.

2. Apportionments

Develop and finalise a draft "estimated expenditure analysis" to ensure that the percentages utilised properly reflect the lease and transfer document requirements including further investigation and clarification of the contributions apparently made voluntarily by two properties on the estate where it is suggested that there appears to be no legal requirement so to do. Where required, if at all, engage a Chartered Surveyor and/or other appropriate specialist advisors experienced in such matters to advise on the apportionment of liability and seek to have this agreed with the lessees.

3. Collection in Excess of 100%

Ideally, I would hope that the Tribunal can give directions to correct the percentages in order to remove the 0.1% in excess of 100%. In the alternative if I am unable to find any specific reason why there is an additional 0.1% and subject to any directions that may be given by the Tribunal, I would look to apportion the 0.1% collected in excess of 100% proportionately among the contributing properties which appears to be the most equitable solution pending further investigations.

4. Contractor Details and Statutory Reports

Obtain from the former managing agents full details of lessees, contractors, etc all in accordance with the attached schedule. In particular, identify the existence of the undernoted

- a) A current report pursuant to the Regulatory Reform (Fire Safety) Order 2005.
- b) An asbestos test and report.
- c) A comprehensive health & safety risk assessment for the building and the estate.
- d) A "common parts" electrical installation test.
- e) A risk assessment of the estate trees and management plan in accordance with The Occupiers Liability Act 1957 (as amended) and The Health & Safety at Work Act 1974.
- f) A current gas safety test certificate (where applicable).
- g) Any other relevant reports, copy or original contracts for the supply of goods and services.

It would be my intention to review all suppliers contracts in order to ensure that all appropriate liability insurance is in place, that contractors have generic health & safety policies and that appropriate site specific risk assessments are included. Where necessary I shall obtain further competitive estimates. It would be my intention to see that the lessees receive reasonable value for money including in connection with the supply of gas and oil.

5. Specialist Assistance

In the event of any of the appropriate reports as specified in 3 (above) or any other relevant reports not being available these will be commissioned and acted upon accordingly.

- a) Commission a chartered building surveyor to prepare a specification and schedule of works in general redecoration and repair of the exterior of the building and in all probability, subject to any discussions with the lessees, instruct Ross Pocock BSc (Hons), MRICS of Infinity Surveying.
- b) Arrange for the inspection of the lightning conductor(s) and the installation of any additional conductors or upgrading that may be required.
- c) I note from the lease for unit 1 that the service charge demands are to be raised by 2No. equal half-yearly payments based on an annual budget with the demands to be raised on 1st January and 1st July. Given, if appointed, that my appointment will not commence until at least 24th January 2017 and that, even if instructed promptly after I am appointed, it is unlikely that a specification and schedule of works in external redecoration and repair will be available for at least a month and other matters may also affect the calculation of an annual budget I would like to seek the Tribunal's directions at the time of the hearing for my appointment to allow the raising of quarterly service charge demands. I feel that proceeding in this way will avoid the potential over-estimating that may occur if I am obliged to set a budget too quickly for the whole year. I am anxious in that regard to avoid or minimise any over-estimating.

6. Funding (Service Charges)

I understand that no funds are likely to be forthcoming from the previous year and I would prefer, in any event, to commence with a nil balance, subject to the directions of the Tribunal, from 1st January 2017.

It is clear from the bundle and as also expressed by the court that there is considerable concern over the accounting for the service charges for the accounting years to the year ending December 2015. It would also appear that documents prior to the appointment of Clifford Dann are either missing or lost and the rectification of the accounts for previous periods will certainly require the employment of a specialist accountant at some considerable cost. Whether this would be economic or not cannot be established at this time however I would be happy to agree with the Tribunal an initial budget for this and I have allowed within my setting up fee £1,000 for the purpose of liaising with specialist accountants or at my hourly rate should this be insufficient plus the fees of the specialist accountants. I would reiterate however that I am concerned at the cost of carrying out this exercise and understand that the Tribunal may wish to make further directions.

I propose to have a meeting with the residents as soon as possible to explain my appointment and discuss with them the budget and the proposed major works. I would then anticipate holding a further meeting on or about the March quarter day to ensure that the residents are properly informed.

At this juncture it is difficult to foresee what additional works may arise however I am conscious of the desirability to phase works whenever this is possible and that although service charges for an estate of this size and complexity are unlikely to be low I shall endeavour to maintain at the lowest reasonable level.

I am conscious, although the figure will vary as to which part of the estate works are being carried out at, that the maximum expenditure on the principal 2no. buildings without serving section 20 notices is £3,000.12 which is a very small sum indeed for

such a significant building. This presents particular problems in the servicing of the extensive plant and plant room and I would appreciate the Tribunal's directions as to whether or not the servicing of the boilers actually constitutes "works" within the meaning of section 20 of the Landlord & Tenant Act 1985 (as amended). Initially, subject to the terms of the current contract, it would be my intention to obtain further quotations for the annual servicing alone (ie excluding any "works") to see whether or not the servicing costs can be brought below the section 20 threshold.

I understand that there are also concerns as to whether or not the lease deals adequately with the apportionment of fuel costs. I confirm that I shall engage the necessary consultants to advise in such matters to ensure as far as possible that service charges are properly calculated and applied.

7. Insurance

My firm utilises the services of Bluefin Insurance Services which is one of the largest independent brokerage firms in the UK. It is not clear when the building was last valued for reinstatement purposes and I would propose to commission such a valuation as quickly as possible to include cover for plant and review the sum insured accordingly. Currently my firm receives a commission being a percentage of the broker's commission however in this case to avoid any potential conflict of interest I would arrange to ensure that any monies received were paid as income into the estate in relevant proportions. I would instead apply an hourly rate for insurance claim handling but not simply for the supply of claim forms and return of same when completed to the insurers/brokers.

8. Arrears

Service charge arrears will be dealt with in accordance with the terms of the lease and the timeframes as stipulated therein. All service charge demands will comply with the various requirements and I am aware that such should be raised in my own name.

9. Long Term Maintenance Plan

Whilst I believe such plans are desirable I am conscious that my appointment may be for as long as three years or perhaps as short as two years. A long term maintenance plan is very easily discarded and not inexpensive to produce. Whilst I am happy to employ a surveyor to carry out this function the fees would be at the cost of the service charge account. I would prefer therefore to re-visit this matter at the commencement of the second year following a general assessment during the first year.

10. Reserves

I appreciate entirely the desirability of reserves where the lease permits and again would seek to implement such following the expiry of the first year and after appropriate discussion with the lessees.

END