



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

Case Reference	: CHI/18UE/LVM/2019/0002
Property	: Strathmore Victoria Road Barnstaple Devon EX32 9HP
Applicant	: Matthew Norris
Respondent	: Ruby Jeffrey
Type of Application	: Variation of Appointment of Manager; Section 24 Landlord and Tenant Act 1987 (the Act) Application for an order under section 20C of the Landlord and Tenant Act 1985 (the 1985 Act)
Tribunal Members	: Judge C A Rai
Date of Decision	: 7 May 2019

DECISION

Summary of Decision

1. The Tribunal determines that it is just and convenient to appoint a Manager and makes an order appointing Rupert Hambly MRICS of Peninsula Management SW Ltd (Company Number 10984751) The Elms Estate Office, Bishops Tawton, Barnstaple, Devon EX32 0EJ for a term of three years from the date of its Order a copy of which is attached to this decision.
2. The Tribunal makes an order under section 20C of the Act that all costs which are, or might be incurred by the landlord, the Respondent, in connection with these proceedings are not relevant cost to be taken into account in determining the amount of service charges payable by the tenant. The reasons for its decision are set out below.

Background

- 3.** The Applicant applied to the Tribunal on 29 January 2019 to vary the existing order dated 15 March 2016 by which Rupert Hambly MRICS (the existing manager) had been appointed to manage the Property. That order expired on 14 March 2019. He also applied for an order under section 20C of the 1985 Act
- 4.** After the existing order was made the Applicant and the owners of Flats 2 & 3 had collectively instructed a solicitor to contact the Respondent but that solicitor was unable to engage with the Respondent. The Applicant told the Tribunal that he, together with the other lessees of Flats within the Property, had intended to negotiate terms for the purchase of the freehold but had been unable to do so.
- 5.** Directions dated 15 February were issued by Dallas Banfield FRICS which directed that the Application would be determined without a hearing, unless either party objected, and which also set out the time limits within which the Respondent could reply and that the Applicant must provide a bundle of relevant documents to enable Tribunal to make a determination.
- 6.** Subsequently the Tribunal received nothing from the Respondent but the Applicant provided bundles of relevant documents.

The Applicant's case

- 7.** The Applicant seeks to reappoint the existing manager for a further term of three years. Since his appointment on 15 March 2016 Mr Hambly has successfully discharged his duties in establishing a clear management structure and setting a proportionate service charge issuing annual budgets insuring the Property and broadly dealing with maintenance issues as and when these have arisen.
- 8.** The Applicant's attempts to contact with the Respondent have not succeeded. The Applicant has made several offers to purchase the freehold of the Property but has received no response.
- 9.** The Applicant believes that unless an active management order is kept in place the Property will fall back into disrepair and possibly become uninsurable. This will also cause a deterioration in the value of the Property including the individual flats.
- 10.** At least three of the four flats, Flats 1, 2 and 4, are subject to mortgages which contain conditions requiring that the building is insured.
- 11.** Outstanding maintenance issues have been identified by the current manager Rupert Hambly. Mr Hambly's business has expanded since 2016 when the existing order was made and is now known as Peninsula Management SW Ltd.

12. The Applicant applied for a variation of the existing order to appoint Mr Hambly for a further three years and to document the change of his business name.
13. Mr Hambly has provided the Applicant with written confirmation that he is prepared to continue with management, subject to receiving written confirmation of his appointment. He has provided the Applicant and the Tribunal with a copy of his 2019 contract, details of the proposed charges for 2019 to 2020, and with a copy of the schedule to his professional indemnity policy which evidences insurance between 13 March 2018 and 13 March 2019.
14. With regard to the Section 20C application the Applicant referred the Tribunal to the reasons the original application for the appointment of a manager had been made in 2016; he has also included within the bundle a copy of the notice served on the Respondent prior to that application which notice identified all of the grounds relied upon prior when the original application was made.

The Law

15. Section 24 of the Act sets out the Tribunal’s jurisdiction to appoint a Manager in relation to premises to which that part of the Act applies. An extract of the section is set out below.

24. Appointment of manager by [a . . . tribunal]

(1) [The appropriate 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) [The appropriate 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) . . .
 - (iii) 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;
- [(aba) where the tribunal is satisfied—
 - (i) that unreasonable variable administration 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;]
 - [(abb) where the tribunal is satisfied—
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this **Act**, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;]

(ac) where [the tribunal] is satisfied—

(i) that [any relevant person] has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under [section 87](#) of the Leasehold Reform, Housing and Urban Development **Act** 1993 (codes of management practice), and

(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.

[(2ZA) 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).]

[(2B) In subsection (2)(aba) “variable administration charge” has the meaning given by paragraph 1 of [Schedule 11](#) to the Commonhold and Leasehold Reform **Act** 2002.]

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

[(9A) The [tribunal] shall not vary or discharge an order under 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.].....

16. Section 20C of the 1985 Act enables a tribunal to make an order that the costs incurred by the landlord in proceedings before it cannot be recovered from tenants as part of the service charge.
17. The Property is a building which has been converted into four self-contained flats and is subject to Part II of the Act.
18. Under section 24(9) the First tier tribunal, on the application of any person interested may vary or discharge an order which has been made under this section.

Reasons for the Decision

19. On the basis of the evidence in the Application and bundle and in the absence of dissenting comments been received from the landlord and other lessees of the Property, the Tribunal is satisfied that it is just and convenient that Rupert Hambly of Peninsula Management SW Ltd be appointed for a further term of three years from the date of this Decision.
20. Attached to this decision is an order which sets out the terms of the appointment. The Tribunal requires that Mr Hambly provide it with a copy of an updated schedule of his indemnity insurance policy within 14 days of the receipt of a copy of this decision.
21. Given the failure of any engagement with the proceedings on the part of the freeholder and in reliance on the confirmation contained in the application that the Applicant and other lessees have been unable to contact her, the Tribunal makes an order under section 20C of the 1985 Act that all costs incurred in relation to these proceedings are not to be regarded as relevant costs and cannot be taken into account in the determination of service charges payable by any tenant.
22. Having noted what the Applicant has disclosed in the bundler in relation to the efforts made to try to purchase the freehold it draws his

attention to sections 25 – 34 of the Act which relate to compulsory acquisition of landlords interest by qualifying tenants.

Judge C A Rai

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 which application must:-
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. 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
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.



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(RESIDENTIAL PROPERTY)**

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Property : Strathmore Victoria Road Barnstaple Devon
EX32 9HP
Applicant : Matthew Norris
Respondent : Ruby Jeffrey
Application : Section 24 Landlord and Tenant Act 1987
Application for the appointment of a
Manager

**ORDER FOR THE APPOINTMENT OF RUPERT HAMBLY MRICS
AS MANAGER**

UPON reviewing the evidence

IT IS ORDERED THAT

1. Rupert Hambly MRICS of Peninsula Management SW Ltd (Company Number 109847510) The Elms Estate Office Bishops Tawton Devon EX32 0EJ (“The Manager”) be appointed pursuant to Section 24 of the Landlord and Tenant Act 1987, as amended by the Commonhold and Leasehold Reform Act 2002 (“the Act”) as Manger of Strathmore Victoria Road Barnstaple Devon EX32 9HP for a term of three years commencing on the date of this Order.

2. The Manager shall manage the Property and carry out such functions of a receiver in accordance with:-
 - a. the respective obligations of the Landlord and the Lessees under the Leases by which each of the four flats within the Property is demised and
 - b. the terms of the draft Management Contract attached to the bundle of documents produced by the Applicant to the Tribunal in 2019.
3. The following powers are, without limitation to the generality of this Order, expressly conferred on the Manager:
 - a. The power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his powers and duties.
 - b. The power, in his own name, acting on behalf of the Landlord to bring, defend, or continue any action or other legal proceedings in connection with the Leases or the Property.
 - c. The power to receive, consider, refuse or grant or otherwise deal with applications for consents or licences and like matters as the Lessees may require under the terms of their Leases
 - d. the power to enforce the Landlord's and the Lessee's covenants under the Leases.
4. The Lessees and their servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his duties and powers under this Order and shall not interfere with the exercise of any of his said duties and powers.
5. The Manager shall be entitled to collect the ground rents and receive all sums payable by way of service charges or otherwise arising under the said Leases.
6. The Lessees shall pay into the Manager's client account their proportionate share of any pre-estimate of the costs of the works inclusive of VAT and consultancy fees as may be demanded by the Manager in writing together with any further costs that the Manager may incur in discharging his functions under this Order. All such sums shall be paid within two weeks of the written demand by the Manager.
7. The Manager shall apply the monies receivable by him first in the discharge of such sums as the landlord properly requires in order to meet the expenditure and shall apply the remaining monies received by him (other than those representing his costs and expenses hereby specified in paragraph 12) towards the costs of the performance of the landlord's covenants contained in the leases for which he is responsible within the terms of this Order and undertaking any other functions of management that it was envisaged that the landlord would undertake.
8. In the event that it is necessary for the Manager to commence legal proceedings for the recovery of sums due under this Order, or in the event that any proceedings are brought against the Manager, the Manager shall be at liberty to apply to the Tribunal for appropriate directions.

9. It is hereby stated that the Manager shall have no obligation under this Order to enter into any financial expenditure unless he is fully in funds to discharge the obligations.
10. All the Lessees are ordered to provide the Manager and such contractors, consultants and agents as he may retain, such access to their respective apartments and the Property as may be reasonably required for the purposes of carrying out his functions.
11. The Manager shall maintain appropriate indemnity insurance for the duration of his appointment and provide reasonable evidence of such cover upon request being made by a lessee or the lessor of the Property but not more than once in any period of twelve months.
12. The Manager shall be entitled to remuneration (which shall be recoverable as part of the service charges) in accordance with the terms of the draft Contract for the management of leasehold property attached which shall include a basic annual fee of £240 plus VAT per flat plus reasonable additional fees itemised therein.
13. The Manager shall make arrangements for the insurance of the Property forthwith and maintain such insurance throughout the period of his appointment.
14. The Manager shall be entitled to seek professional advice where appropriate and as is permitted under the terms of the Leases.
15. During the period of his appointment the Manager shall comply with all statutory requirements, within the Landlord and Tenant Act 1985 and the Act, as amended by the Commonhold and Leasehold Reform Act, and the current edition of the Service Charge Residential Management Code (“the 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 insofar as these are not inconsistent with the terms of the Draft Management Contract referred to in paragraph 2.b above.
16. The Manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors.

Judge Cindy A. Rai

7 May 2019