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CAM/11UC/LVM/2011/0002



**HM Courts
& Tribunals
Service**

**Leasehold Valuation Tribunal
Case Number: CAM/11UC/LVM/2011/0002**

Property : 2 & 4 Harding Road
Chesham
Bucks
HP5 3BB

Applicants : Mrs. D. Byrne (flat 2)
Miss J. Robinson (flat 4)

Respondents : Lynden House Right to Manage Co Ltd.
("the RTM" Co.)
H & D Property Services Limited
Ms. J. Foskett (flat 5)
Mr. Taylor (flat 6)
Mr. S. Cholerton (flat 7)
Mr. J. White and Miss Marchbanks (flat 8)

Case number : CAM/11UC/LAM/2010/0003

Date of Application : 20th July 2010

Type of Application : Application for an appointment of a
Manager and Variation of the lease
pursuant to sections 24 and 35 of the
Landlord and Tenant Act 1987

Date of Hearing : 19th December 2011

Venue : Chartridge Conference Centre,
Chesham,
Bucks
HP5 2TU

Tribunal :

Mrs. Joanne Oxlade
Ms. Marina Krisko BSc. (Est Man) FRICS
Mr. Adarsh Kapur

Lawyer Chairman
Surveyor Member
Non-Legal Member

Attendees :

Applicant

Miss J. Robinson
Mrs. D. Byrne
Mr. Raif Ademoglu (witness)

Respondent

Mr. Cholerton

Mr. Keith Thompson FRICS

DECISION AND REASONS

For the reasons given below, we confirm the continuation of Mr. Keith Thompson's appointment as both Manager and Receiver of 2-4 Harding Road, which appointments commenced on 24th January 2011, on the terms and subject to the Directions set out at Appendix A of this decision

REASONS

Background

1. 2-4 Harding Road, Chesham is a 2-storey block of 6 flats, numbered 2, 4, 5, 6, 7, and 8. The left hand side of the building (in which Mrs. Byrne lives on the ground floor at flat 2 and Ms. Robinson lives on the first floor at flat 4) is called "Beechcroft House" and the right hand side (in which flats 5, 6, 7, and 8 are located) is called "Lynden House". Communal gardens wrap around the building and there is a car parking area to the left of building, closest to Beechcroft House.
2. In 2004 Lynden House Right to Manage Co Ltd ("the company") took over management of the building, and Mr. S. Cholerton was appointed Director of the company. The Memorandum of Association provided that the company would manage Beechcroft and Lyndon House, which included maintaining, repairing, and insuring.
3. In May 2010, the Applicants learned that the RTM Co had failed to renew the buildings insurance for Beechcroft House, having taken a decision to insure only Lynden House. On enquiry, the Applicants were told that the decision had been made in August 2009, and that they had been notified by letter dated 30th August 2009. They dispute receiving this correspondence, which was said to have been hand delivered. In correspondence dated 24th February 2010 Mr. Cholerton said that he intended to step down as Director of the RTM Co., but that a vote had already been taken that the 2 houses should be managed

- separately and that the company would continue to maintain and insure Lynden House only.
4. The Applicants hurriedly arranged insurance cover for flats 2 and 4 and in due course issued an application for the appointment of a Manager pursuant to section 24(1) of the Landlord and Tenant Act 1987, as set out in Appendix B, so that they (or any other person appointed) could take over management of the whole building.
 5. On 18th October 2010 the application came before the Tribunal for hearing. We concluded on the evidence before us that the RTM Co. was in breach of the obligations owed to the Lessees of the flats: we found as a fact that (a) the company failed to arrange building insurance as required by clause 3(3) of the lease in 2010 and (b) had failed to maintain the main structure of the building as required by clause 3(4), which disrepair was apparent from our inspection of the building and the Improvement Notice which had been served in July 2010. We found as a fact that the RTM Co. (through its Director) had evinced a clear intention not to insure flats 2 and 4, known as Beechcroft in the future, nor to do any maintenance to Beechcroft in future. The past conduct of the RTM Co. disregarded the covenants under the lease and the objects of the Memorandum of the company, and made a clear statement of a continuing breach. Further, we concluded that it was just and convenient to make an Order to appoint a Manager and that all of the statutory requirements had been satisfied.
 6. However, we were unable to proceed to make an immediate appointment for two reasons:
 - (a) several individuals had been proposed by the Applicants in the role of Manager, but none was in attendance at the hearing. As the Manager is appointed by the Tribunal from the candidates preferred by the Applicants, he or she would need to attend to satisfy us that he or she should be appointed
 - (b) the lease relating to flat 2 made provision for the lessee of flat 2 to pay 1/24th of the service charge - although the fraction payable by flat 4 was 1/6th. As there are 6 flats in the building, it seemed likely that (although the flats are not equal in size) it was intended that each flat should be liable to pay 1/6th of the service charges. We did not consider that we could proceed to appoint a Manager in circumstances where the ability to recover 100% of the service charges could not be enforced. There was no certainty that the error had not also been made in respect of the other leases, and so the position needed to be checked.
 7. The application was therefore listed for hearing of both applications (appointment of Manager and variation of lease) on 21st January 2011, and any party wishing to seek costs was required to attend.

8. On 21st January 2011 the applications were heard. We appointed Mr. Keith Thompson FRICS as Manager and Receiver, in accordance with the terms and subject to the Directions set out in Appendix A. We ordered that there be a variation of the service charge fractions payable by Flat 2, from 1/24th to 1/6th, and we made ancillary costs orders.
9. Mr. Thompson set to work on the building, but was unable to make any progress until June 2011, when he could first demand service charges under the lease. All Lessees paid in accordance with the demands, save Ms. Robinson, the Lessee of flat 4. Correspondence was referred to the LVT, in which Ms. Robinson complained that Mr. Thompson's focus was on exterior decorating, rather than the more fundamental problems with the building. Mr. Thompson said that he wished to resign, as he could not continue to work in view of Ms. Robinson's non-payment and behaviour. In the meantime, the RTM Co. issued an application under section 24(9) of the 1987 to terminate the appointment of Mr. Thompson, reinstate the RTM Co. as Manager of Lynton House, and proposed that Beechcroft House should be managed separately. Mr. Cholerton said that the RTM Co. had altered its memorandum and articles of association so that it could manage only Lynton House.
10. On 10th November 2011 directions were made requiring the RTM Co to
(a) file a copy of the current Memorandum and Articles of Association, as certified by Companies House, and a statement from Companies House which shows the identity and address of the current Directors and Company Secretary,
(b) expert evidence that Lynton House was "part of a building", and specifically address whether the services were separate, and
(c) a management plan to show how it would liaise with the persons managing Beechcroft House, including making payment to those managing Beechcroft of a proper proportion of their costs.
11. Further, Ms. Robinson was directed to file a statement as to how she would manage the premises/Beechcroft, and a management plan to show how she would liaise with the persons managing Lynton House, including recovering payment towards the cost of managing Beechcroft of a proper proportion of their costs. Finally, that Mr. Thompson set out a statement of what service charges were received by him, and what his fees had been.
12. Correspondence was received from all Lessees expressing their respective views of how they would like the premises managed.

Hearing

13. Mr. Thompson attended together with the parties listed above, and Mr. Ademoglu as a witness.

14. At the commencement of the hearing, we set out what appeared to be the current options available to the Tribunal for future management of the building:
 - (a) Mr. Thompson to continue as Manager,
 - (b) the RTM Co. managing Lynton House alone, or both Lynton and Beechcroft House,
 - (c) Ms. Robinson and Ms. Byne managing the premises together
 - (d) appoint Alan Draper from Common Ground Estate & Property Management Limited, as proposed by Ms. Robinson
 - (e) discharge all Orders and let the Lessees/freeholder resolve the matter.
15. We observed that the lease plan showed that the drains serving the flats were common to both Beechcroft and Lynton House, and so despite Mr. Cholerton's belief that the services were all separate, this appeared not to be the case. Further, contrary to the Directions made, the RTM Co. had not filed expert evidence to show that this was the case. In those circumstances the Tribunal did not have jurisdiction to appoint the RTM Co. to manage Lynton House only. Mr. Cholerton was therefore asked to consider whether the RTM Co would wish to re-consider its position.
16. Further, we said that we would not appoint Mr. Draper, who was proposed as the Manger by Ms. Robinson. Not only was he not present at the hearing, but no c.v. had been filed setting out his qualifications and credentials, and we would not consider appointing someone who would not attend the hearing for free. Ms. Robinson said that she had posted the c.v. last week, and that Mr. Draper might be available for a conference call. However, we would not consider a Manager whom we could not interview, and whom others could not see and question.
17. We also indicated that our preliminary view was that a person independent of all parties should be appointed, and not a Lessee. We therefore proposed that we should interview all persons who put themselves forward.
18. Having heard from all parties, and in light of Mr. Thompson's willingness to continue to Manage, we confirmed his existing appointment to which all Lessees who were present, agreed.

Practical Matters

Improvement Notice

19. We have identified as a priority the remedial works specified to cure the deficiencies detailed in the improvement notice dated 19th July 2010 (Appendix E), which set the deadline for remedial action as 31st December 2010. Mr. Thompson thought that the remedial works detailed in the notice could take place without the need for scaffolding

- which would help to keep costs down - although it may require a “cherry picker”. He pointed out that the roof felt referred to in paragraph 1 of the notice was close to edge of the roof, not the whole roof. He would make sure that an inspection of the roof was done from ground floor level at least, as Ms. Robinson was concerned with missing tiles/ridge tiles, damp around the chimney breast, and moss on the roof. He said that the latter might be unsightly, but of itself does not cause a problem. He would give consideration to the cost of replacing the existing wooden fascia boards with upvc, the latter being more expensive but easier to maintain and so cheaper in the long-term.
20. Mr. Thompson said that though we are now mid-winter, he could see no reason why these works could not be progressed. He has some money on account, and would issue a further demand for £250 plus vat on 25th December 2011, as permitted under the terms of the lease. Providing all of the service charges are paid (including Ms. Robinson’s arrears of £250 plus vat) he should have sufficient funds to start and complete these items. We reminded him that these demands would need to be compliant with section 21B of the 1985 Act and sections 47 and 48 of the 1987 Act.
21. We have explicitly authorized Mr. Thompson to take legal action against any Lessee for non-payment of service charges, and that he need not revert to us for our permission to do so. He should waste no time about doing so. Any legal costs arising from such action would be charged to the service charge account, which would be a necessary expense, but in the long run a waste of funds - which could otherwise be used to sort out the building.
22. We have made it clear to the Lessees that the obligation to pay service charges on account, is set out in the lease (clause 4 (c)). This obligation would not prevent any Lessee from challenging the reasonableness and payability of service charges at a later stage, if a problem arose as to the quality of the work, the necessity for it, or cost.
23. We have said that in view of the improvement notice and the pressing need to get the works done, we would not require Mr. Thompson to undertake a consultation procedure. Further, that we would not anticipate that any problems would be met by him making an application for dispensation pursuant to section 20ZA of the 1985 Act after the event. This is subject to him ensuring that three quotes are obtained for each item of work, which shall be provided by him to all Lessees.
24. Mr. Thompson said that by 1st March 2012 he would report back to the Tribunal to advise if all Lessees had paid their service charges, and to state what works had been done and what was in hand.

Health and Safety/Fire/Asbestos

25. It does not appear that any assessments have been made of Health and Safety/Fire/Asbestos at all. These must be done, and Mr. Thompson thought should be capable of being done for £200 or so.

Cavity Wall Insulation

26. Ms. Robinson raised the question of cavity insulation, which had been listed as a deficiency in the improvement notice, but which was not specified as requiring remedial action. Mr. Thompson was willing to look into this. We indicated that under the terms of the lease this would amount to an improvement, and so not recoverable as a service charge. However, if all Lessees agreed for it to be done, and paid for it outside the service charge provisions, then it would benefit all of them and could be done. To be of any benefit at all, it would have to be done to the whole building.

Insurance

27. Ms. Byrne advised that she had insured Beechcroft House for about £320 p.a., with Intasure, and the current policy expires on 16th May 2012. Although she has received demands from the freeholder for service charges to include insurance, she had not been supplied with a copy of the insurance policy and if the freeholder had insured both parts this contradicted the freeholder's position stated in correspondence 2 years ago that they would not insure Beechcroft. In light of the history, Ms. Byrne and Ms. Robinson had no alternative but to continue to insure Beechcroft. Mr. Cholerton said that the freeholder had insured Lynton, but could not say about Beechcroft.
28. It is unsatisfactory for two sets of insurers to be insuring the building. Mr. Thompson agreed to look into this. He would (as a precaution) demand service charges on 25th December 2011 for the works referred to above, and an additional sum payable on 1st February 2012 by which time he would have sorted out whether or not he needed to insure or not. It was not clear if the Lessees of Lynton had already paid monies to the freeholder to cover the cost of next years' insurance. However, the Order appointing the manager makes it clear that he is responsible to arrange insurance – accordingly, the Manager will do so, and demands made by him for payment to cover the insurance must be paid.
29. Ms. Byrne agreed to supply a copy of the Intasure policy to Mr. Thompson, and Mr. Cholerton agreed to supply the copy provided by the freeholder.

Service Charges

30. For the sake of clarity, we make clear that the Lessees can anticipate that a demand for service charges will be made by Mr. Thompson on 25th December 2011. We have agreed that he can demand £500 plus vat for each flat, payable as follows: £250 plus vat payable on 25th December 2011; £250 plus vat payable on 1st February 2012. The sum first payable will cover the costs to be incurred in complying with the improvement notice; the second sum will be incurred in complying with the obligation to insure.

Future Contact

31. At the hearing we carefully explained to the Lessees that Mr. Thompson is appointed by and answerable to the Tribunal, not the Lessees. Any problems are to be set out in correspondence, and sent to the Panel Office. They will be scrutinized by the Chairman, who will - where appropriate - raise matters with the other member of the Tribunal and Mr. Thompson. For the moment Mr. Thompson is not expected to liaise with the Lessees (save to demand service charges, provide copies of estimates/quotes and to gain access). Any issue as to the quality of the works or reasonableness, can form the basis of an application under section 27A of the 1985 Act made by a Lessee, once the works have been done. The Contractors employed by Mr. Thompson are answerable to him alone, and will not be instructed by the Lessees. We wish to make it clear that Mr. Thomson alone is responsible for moving this matter forward, and the Lessees remedy is to raise matters with the Tribunal.

Lease Variation

32. Ms. Byrne says that no progress has been made on varying the terms of her lease to reflect the fraction of 1/24th to 1/6th as Ordered by the Tribunal on 26th January 2011. Mr. Thompson's email on this was sent to Ms. Robinson not Mrs. Byrne, and the matter has stalled. Ms Byrne says that the Freeholder has indicated that he intends to charge £800, which sum seems excessive when (a) it is the freeholder's own defective drafting which has caused the need for rectification, and (b) the matter can be resolved by simple deed. In the event that the matter stalls, we remind Ms. Byrne that she can make an application to us for compensation for varying her lease, and so we have powers to make Orders to meet the justice of the situation. Once again, Mr. Thompson has said that he intends to progress this.

The Future

33. We anticipate that well before June 2012 Mr. Thompson will have gathered in all the service charges demanded, that the remedial works in the improvement notice will have been done, Ms. Byrne's lease will be rectified, the insurance for the whole building will be reflected in one

policy, health and safety/fire/asbestos reports will be in and that if all the Lessees want cavity wall insulation done, it will be arranged.

34. By 1st June 2012 Mr. Thompson is to file a short progress report with the Tribunal and parties, setting out the next 6 months, and an indication of what service charges will be demanded on 24th June 2012.

A handwritten signature in black ink, appearing to read 'Joanne Oxlade', written over a horizontal dotted line.

Joanne Oxlade
(Chairman)

19th December 2011

Appendix A

Property : **2 & 4 Harding Road
Chesham
Bucks
HP5 3BB**

Applicants : **Miss J. Robinson
Mrs. D. Byrne**

Respondents : **Lynden House Right to Manage Co Ltd.
("the RTM" Company)
H & D Property Services Limited
Lessee Flat 6, c/o Potter and Ford
Ms. C. Sittingfleet
Mr. S. Cholerton
Mr. J. White and Miss Marchbanks**

Case number : **CAM/11UC/LAM/2010/0003**

Date of Application : **20th July 2010**

Type of Application : **An order to appoint a Manager
of the property pursuant to section 24
Landlord and Tenant Act 1987 ("the
Act")**

Date of Hearing : **21st January 2011**

Venue : **Missenden Abbey,
Great Missenden,
Bucks**

Tribunal :

Mrs. Joanne Oxlade	Lawyer Chairman
Ms. Marina Krisko BSc. (Est Man) FRICS	Surveyor Member
Mr. Adarsh Kapur	Non-Legal Member

ORDER

1. In this Management Order, the Directions, the Schedule of Rights, Functions, and Services attached to this Management Order the following expressions shall have the meanings set out below:

- (a) "the property" shall mean and include the building, gardens, amenity space, drives, pathways, road, parking spaces, landscaped areas, bin stores, common parts and all other parts of the property known as and situated at 2 & 4 Harding Road, Chesham, Bucks, HP5 3BB
- (b) "the building" shall mean the 2-storey building comprising flats 2, 4, 5, 6, 7 & 8 Harding Road also known as Lynden House and Beechcroft House, as referred to in the leases of the premises
- (c) "the Landlord" shall mean H & D Property Services Limited, a Respondent to the application, or in the event of the vesting of the reversion of the residential leases of the property in another, the Landlord's successor in title
- (d) "the leases" shall mean the long leases and/or under-leases of the flats in the property and "Lease" shall be construed accordingly
- (e) "the tenants" shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and the "Tenant" shall be construed accordingly
- (f) "the Applicants" shall mean Mrs. D. Byrne and Miss J. Robinson
- (g) "the Manager" shall mean Keith Thompson FRICS, of Thompson Wilson, 42 High Street, Princes Risborough, Bucks, HP27 0AX.

2. It is hereby ordered that:

- (a) in accordance with section 24(1) of the Landlord and Tenant Act 1987 the Manager shall be appointed as receiver and manager of the property with effect from 24th January 2011
- (b) the order in paragraph 2(a) herein shall continue until 23rd January 2014
- (c) the Manager shall manage the Property in accordance with:
 - (i) the Directions and Schedule of rights, functions, and services attached to the Management Order
 - (ii) the respective obligations of the Landlord under the Leases by which the flats at the property are demised by the Landlord, subject to the terms of this Management Order in so far as those terms effectively vary or supplement the terms of the Leases. In each and every respect in which the terms of this Management Order differ from or are in conflict with the terms of the Leases, the terms of this Management Order shall take precedence.

3. Liberty to Apply

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Joanne Oxlade
(Chairman)

24th January 2011

Appendix B

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 2 & 4 Harding Road
Chesham
Bucks
HP5 3BB

Applicants : Miss J. Robinson
Mrs. D. Byrne

Respondents : Lynden House Right to Manage Co Ltd.
("the RTM" Company)
H & D Property Services Limited
Lessee Flat 6, c/o Potter and Ford
Ms. C. Sittingfleet
Mr. S. Cholerton
Mr. J. White and Miss Marchbanks

Case number : CAM/11UC/LAM/2010/0003

Date of Application : 20th July 2010

Type of Application : An order to appoint a Manager
of the property pursuant to section 24
Landlord and Tenant Act 1987 ("the
Act")

Date of Hearing : 21st January 2011

Venue : Missenden Abbey,
Great Missenden,
Bucks

Tribunal :

<p>Mrs. Joanne Oxlade Ms. Marina Krisko BSc. (Est Man) FRICS Mr. Adarsh Kapur</p>	<p>Lawyer Chairman Surveyor Member Non-Legal Member</p>
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DIRECTIONS

1. The functions and duties of the Manager shall be:
 - (a) to effect a repair of the building (as defined in the lease and referred to in paragraph 1 of the Order dated 21st January 2011), so to restore it to sound structural condition,
 - (b) to ensure that the hazards identified in the Improvement notice dated 19th July 2010 are remedied,
 - (c) to establish and carry out a pattern of cyclical maintenance,
 - (d) to arrange building insurance cover for the whole building,
 - (e) to make or progress any relevant insurance claim in respect of the building
 - (f) to gather in service charges in accordance with the lease
 - (g) to take any necessary general management functions as appear necessary to achieve (a)-(g)
2. That from the date of appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of £2,000,000 and shall provide copies of the current cover note upon request being made by the Tenants, the Landlord or the Tribunal.
3. That the Manager in the performance of his functions and duties, and in the exercise of his powers under this Management Order, shall exercise all the reasonable skill, care and diligence to be expect 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 duties and the exercise of the said powers and shall indemnify the Landlord in respect of any loss occasions by any negligent act or omission of himself, his servants, or Agents.
4. That the Landlord and its servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties, and powers under this Management Order and shall not interfere or attempt to interfere with the exercise of any of his rights, duties, or powers save by due process of law.
5. That the Landlord shall deliver to the Manager forthwith copies of all specifications, tenders, planning permission and any other consents, permission, documents, and instruments which the Landlord has, or which come into the power, control or custody of the Landlord after the date of this Management Order concerning or arising out of ay major works, extensions, rebuilding or other constructional matters at the Property or which are in the power, control, custody of any of the Landlord's servants or agents, in which last case it shall take all reasonable steps to procure such delivery from its servants or agents.
6. That the rights and liabilities of the Landlord and/or the former managing agent arising under any contracts or insurance, and/or any contract for the provision of any service to the property shall upon a

date 4 weeks from the date on which Management Order takes effects become rights and liabilities of the Manager.

7. That the Manager shall be entitled to remuneration of his fees and reasonable costs, including legal, accountancy, and any other professional service costs in accordance with the Schedule of Functions and Service attached.
8. That the Manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the 1987 Act, with particular regard (but not limited to) the following events:
 - (a) a failure by any party to comply with any of these directions and/or
 - (b) in the event that there are insufficient sums held by him to pay the manager's remuneration.

SCHEDULE OF RIGHTS, FUNCTIONS AND SERVICES

A. Service Charges

- 1.1. The Manager shall have the right to demand and receive from the Tenants as the proprietors of any flats in the building and their successors in title to any flats in the building, contributions to the cost of the performance of his functions and duties in such reasonable and proper proportions to be determined by the Manager in accordance with clause 4(c) of the Lease, and (where the lease allows by paragraph 4(b)) to include payments in advance which shall reasonably be required.
- 1.2 The Manager shall have the power in his own name on behalf of the Landlord to bring and defend any action or other legal proceedings in connection with his functions and duties including but not limited to proceedings against any Tenants in respect of moneys due under the Leases.
- 1.3 In the event that the Tenants shall be in breach of their obligations as provided in this Management Order, the Manager shall be entitled to recover from any such Tenant on a full indemnity basis any costs, fees, charges, expenses and/or disbursements incurred or occasioned by him in the appointment of any Solicitors, Counsel, Surveyors, or any other professional reasonably retained by the Manager for the purpose of enforcing such covenants or obligations whether or not the Manager brings any proceedings in Court or before any Tribunal.
- 1.4 The Manager shall place, supervise, and administer contracts and check demands for payment for goods, services, and equipment supplied for the purpose of his functions and duties

- 1.5 The Manager shall have the power to appoint Solicitors, Accountants, Architects, Surveyors, and such other professionally qualified persons as may reasonably be required to assist him in the performance of his functions.
- 1.6 The Manager shall have the power to appoint any agent or servant to carry out such functions or obligations which the Manager is unable to perform himself or which can be more conveniently done by an agent or servant and he power to dismiss such agent or servant.
- 1.7 The Manager shall have the power to open and operate bank accounts in his own name in relation to the performance of his functions and duties and to invest moneys received pursuant to his appointment in any manner specified in parts I and II of the First Schedule of the Trustee Investment Act 1961 and to hold those funds received from the Tenants of the Flats in the Property pursuant to section 42 of the 1987 Act.
- 1.8 The Manager shall have the power to claim in the bankruptcy, insolvency, sequestration, or liquidation of any Tenant owing moneys due under this Order.
- 1.9 This Manager shall have the power to borrow all sums reasonably required by the Manager for the performance of his functions and duties and the exercise of his powers under this Management Order in event of there being:
 - (a) arrears or other shortfalls of contributions due from the Tenants; or
 - (b) arrears or other shortfalls of other sums due from the Tenants, such borrowing to be secured (if necessary) on the interest of the Respondents and/or Applicant Tenant, or anyone of them, in the Property or any part thereof.

PROVIDED THAT the Manager shall not secure any such borrowing without the prior written consent of the Respondents or Applicant Tenant (such consent not to be unreasonably withheld or delays) or in the default of that consent or those consents, without further order of the Tribunal.

B. Accounts

- 2.1. The Manager shall prepare and submit to the Tenants an annual statement of account detailing all monies received and expended on their behalf. The accounts may be certified by an external auditor if required by the Manager.
- 2.2. The Manager shall upon request produce for inspection receipts or other evidence of expenditure.

- 2.3. All monies collected for the purpose of the Manager's functions and duties will be accounted for in accordance with the Accounts Regulations as issued by the RICS subject to the Manager receiving interest on the monies whilst they are in his client account. Any reserve fund monies to be held in a separate client account with interest accruing to the Landlord.

C. Maintenance

- 3.1 In regard to Major Works which need to be carried out to the Property the Manager will (where necessary) prepare a specification of works, obtain competitive tenders, serve relevant notices on Lessees informing them of the works and supervising the works.

D. Fees

- 4.1. The Manager's fees will be calculated in accordance with the statement of terms and conditions dated 14th September 2010 (a copy of which is attached)
- 4.2. The Manager shall be entitled to recover from the Tenants all costs, fees, expenses, and disbursements properly and reasonably incurred in employing any Solicitors, Counsel, Surveyors, Architects, Accountants or any other professional.
- 4.3. VAT to be payable on fees quoted above, where appropriate, at the rate prevailing at the date of invoicing.

E. Complaints Procedure

- 5.1.1 The Manager shall operate a complaints procedure in accordance with the requirements of the RICS. Details of the procedure are available from the Institution upon request.

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Joanne Oxlade
(Chairman)

24th January 2011

Appendix C

24. Landlord and Tenant Act 1987

“(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)

- (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;

(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”

35. Landlord and Tenant Act 1987

"(1) Any party to a long lease of a flat may make an application to the court for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

(a) the repair or maintenance of—

(i) the flat in question, or

(ii) the building containing the flat, or

(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease.

(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision

include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure".

APPENDIX D

The variation approved by the Tribunal is as follows:

"Clause 4 of the lease shall be varied, so that the Lessee's covenant to pay the Lessor $1/24^{\text{th}}$ of the costs incurred by the him in performing the covenants set out in Clause 3 hereof, shall be varied to $1/6^{\text{th}}$ of the costs incurred by him in performing the covenants set out in clause 3".

APPENDIX E

See attached improvement notice dated 19th July 2010

Improvement Notice
Housing Act 2004
Section 12

Schedule 2 - Category 2 Hazards

Residential Property on which Category 2 hazard exists

2 and 4 Harding Road, Chesham HP5 3BB

The premises requiring remedial action in relation to the hazard (if different)

2 and 4 Harding Road, Chesham HP5 3BB

Nature of the hazards and the deficiencies giving rise to the hazard

	Hazard	Deficiencies
1	Damp & Mould	Leaking gutters Un-insulated cavities Disrepair to fascia boards
2	Structural collapse and falling elements	Unsecure downpipe Disrepair to porch roof Cracking to external walls to stairwell

Remedial Action to be taken to remove or reduce the hazard

1. Overhaul the eavesgutters and downpipes and carry out works to ensure that they are clear of blockages and debris, free from leaks and securely fixed. Renew any sections of roofing felt found to be defective to ensure that rainwater discharges correctly into eavesgutters from all parts of the roof. On completion, leave gutters in a sound and watertight condition.
2. Inspect the fascia boards front and rear and carry out any necessary repairs to ensure they are in a sound condition. Re-decorate to prevent further deterioration.
3. Renew the flat roof covering to the front porch.
4. Arrange for monitoring of external cracking to the stairwell structure to flat 4.

Timescales

The remedial action must be started no later than 1 December 2010 and be completed by 31 December 2010

Statement of reasons for decision to take enforcement action

Details of residential premises:-

2 and 4 Harding Road,
Chesham
HP5 3BB

The Chiltern District Council

("the Authority")

hereby give this statement of the reasons for their decision to take enforcement action ("the relevant action") in respect of the above premises under section[s] [5(2)] and [7(2)] of the Housing Act 2004 ("the Act") namely:-

To serve an Improvement Notice under section 12 of the Housing Act 2004.

The reasons why the Authority have decided to take the relevant action rather than any other kind (or kinds) of enforcement action under the provisions of sections 5(2) or 7(2) of the Act are as follows:-

The options available to the Council are to serve an Improvement Notice, a Prohibition Order or a Hazard Awareness Notice.

Informal action to date has failed to secure the necessary improvements therefore a Hazard Awareness Notice is not considered to be appropriate.

A Prohibition Order is not considered to be appropriate as the hazards do not present a sufficiently serious risk that the building (or part of it) should not be occupied.

Accordingly, an Improvement Notice is the best course of action to ensure that the repairs are carried out in order to reduce the hazards identified.

Dated 19 July 2010

Signed



Designation† Head of Health and Housing

The officer appointed for this purpose

† Insert title of proper officer