

11954

		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/00AP/LVM/2016/0022
Property	:	Northwood Hall, Hornsey Lane, London N6 5PG
Applicant	:	Mr B Maunder Taylor – The Manager
Respondent	:	(1) Triplark Limited (2) The leaseholders of the flats at Northwood Hall
Type of Application	:	Variation of order for appointment of a manager
Tribunal Members	:	Judge Dickie
Date of Decision	:	27 January 2017

DECISION

1. The tribunal has received an application from the Manager of the property appointed pursuant to s.24 of the Landlord and Tenant Act 1987. He seeks a variation of Paragraph 1(1) of the Order for his appointment dated 14 September 2016 to read as follows, with the variation sought shown in bold type:

*The power to provide an estimated budget of service charge expenditure at, before or immediately after the commencement of a financial year and use that estimate as the basis for the yearly sum specified in Part 4 of the Second Schedule on which to base the equal quarterly instalments to be paid in advance by the Lessee, **(on 1 July, 1 October, 1 January and 1 April in each year)** and the power to revise that figure during the financial year, applying that revised figure to future quarterly demands, if found to be necessary in light of actual expenditure.*

2. An issue has arisen in that the lease provides for four quarterly payments to be

made on the usual Quarter Days (Clause 4(2)(b)) but, because the financial year begins on 1 July, those payments are effectively quarterly in arrears because the first Quarter Day following the beginning of the financial year is 29 September.

3. The parties have had the opportunity to make representations, and I have considered those of Mr Bower (1/13 Northwood Hall) and of Ms Calvert of the Northwood Hall Residents' Association. I consider it appropriate to ensure the order provides absolute clarity for the residents and adequate financial arrangements for the management of the property, and that accordingly I should grant the application to vary in the terms sought.
4. The original order also contained a small number of typographical errors, which are hereby corrected by variation of the order.
5. Clause 1(f)(v) (now renumbered to 1(g)) provides for an indemnity for the Manager's costs and adverse costs out of the service charge account. After giving notice to the parties I consider it appropriate, in order to make it absolutely clear to the parties, to add thereafter a reciprocal obligation to pay service charges in respect of such costs as follows: "and such costs and adverse costs shall be payable by the Lessees as a service charge according the provisions of the Leases and this Order".
6. I therefore order the variation of the order as attached.

Name: F. Dickie

Date: 27 January 2017

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

CASE REFERENCE: LON/ooAP/LAM/2016/0016

IN THE MATTER OF SECTION 24 (1) OF THE LANDLORD AND TENANT ACT 1987

AND IN THE MATTER OF

NORTHWOOD HALL, HORNSEY LANE, LONDON N6 5PG

B E T W E E N:

***MR R & MRS A SAUNDERS AND OTHERS
(including Triplark in its capacity as a tenant)***

Applicant

AND

NORTHWOOD HALL RTM COMPANY LIMITED (1)

TRIPLARK LIMITED in its capacity as Head Landlord (2)

***NORTHUMBERLAND AND DURHAM PROPERTY TRUST LIMITED
in its capacity as Freeholder (3)***

***Those Leaseholders added as Respondents
including Northwood Hall Residents Association (4)***

Respondents

**FINAL ORDER APPOINTING A MANAGER
VARIED 27 JANUARY 2017**

Interpretation:

In this Order:

- (a) “Leases” means the long leases vested in the Lessees of the Flats including, where the context permits, the headlease that is vested in Triplark Limited in respect of the Flats that are not under-let on long leases and such flats are referred to herein as “the Retained Flats”;
- (b) “Lessee” means a tenant of a dwelling holding under a long lease as defined by Section 59(3) of the Landlord and Tenant Act 1987 (“the Act”) and shall include Triplark Limited in respect of the Retained Flats;
- (c) “LTA 1987” means the Landlord and Tenant Act 1987 as modified and varied from time to time;

- (d) “the Manager” means Mr Bruce Maunder Taylor of Maunder Taylor, Chartered Surveyors;
- (e) “the Premises” all that property known as Northwood Hall Hornsey London N6 5PG including the 194 Flats and appurtenant property known as Northwood Hall excluding the car park coloured in yellow and hatched on the attached plan of Title number AGL167712;
- (f) “the RTM Company” is the Northwood Hall RTM Company Limited being the entity that was seised of the management function of the Premises further to the acquisition of that function from Triplark Limited in 2011 pursuant to the right to management provisions of the Commonhold & Leasehold Reform Act 2002 which function has not been exercisable since the Interim Management Order dated 24 June 2016;
- (g) “Triplark Limited” is the registered proprietor of the headlease of the Premises as is registered under Title Number NGL329551 and also the tenant for the purpose of s21 of the 1987 Act in respect of 30 flats within the Premises (in which capacity it is an Applicant);
- (h) “Canonbury” is Investment Technology Limited trading as Canonbury Management, the former management agent of the Premises retained by the RTM Company.
- (i) For the avoidance of doubt, and for the purposes of Part III of the 1987 Act, s.29(3), the First-Tier Tribunal orders the appointment of the Manager for reasons which do NOT include any act or omission on the part of Triplark Limited.

Preamble

UPON the Tribunal having ordered the appointment of the Manager on 26 June 2016 as interim manager and made a decision dated 26 August 2016 to appoint him as Manager for a period of 3 years on terms to be determined,

AND UPON s.105(4) of the 2002 Act having effect,

Order

The Tribunal ORDERS the Manager's appointment on the following terms:

The Manager

1. The appointment of the Manager, Mr Bruce Maunder Taylor, FRICS, MAE as manager (including such functions of Receivers as are specified herein) of the Premises pursuant to S.24 of the Act for a period of 3 years which shall continue until 13 September 2019 and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of Triplark Limited and in particular

- (a) To receive all service charges, interest and any other monies payable under the Leases save for the rents reserved by the Leases and any arrears due thereunder
- (b) The power and duty to carry out the management functions of Triplark Limited contained in the Leases (the same having been exercisable by the RTM Company upon it acquiring the right to manage the Premises and having ceased to be exercisable by the RTM Company upon the interim management order dated 24 June 2016 taking effect) and in particular and without prejudice to the foregoing:
- i. the obligations to provide services;
 - ii. the lessor's repairing and maintenance obligations; provided also that the standard of any such work shall have regard to the age, character and prospective life of the premises and the locality in which it is situated.
 - iii. a comprehensive review of the old heating and communal hot water system and equipment, the project to renew the same and the incomplete new heating and communal hot water system and equipment and the determination, following such consultation as the Manager deems appropriate and constructive, of the best means of achieving a functioning, disrepair free, heating and communal hot water system taking account of all the circumstances, including the project and running costs, performance and the appearance of the Premises.
- (c) Triplark Limited's power to grant consents under the Leases shall be exercisable by the Manager (save that the Manager may not give consents for alterations or consents pursuant to the anti-alienation provisions in the Leases the powers and duties to do so shall be retained by Triplark Limited).
- (d) The power in his own name to delegate to other employees of Maunder Taylor, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.
- (e) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- (f) The power in his own name to investigate, obtain advice upon and bring, defend or continue any legal action or other legal proceedings in connection with the Leases of the Premises and/or work carried out to the Premises pursuant to the Leases or in contemplation of obligations and/or rights to recover costs under the Leases including but not limited to:
- i. proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases;

- ii. proceedings against any Lessee in respect of access to their demised premises and/or the completion of works pursuant to the Leases;
 - iii. proceedings against Canonbury in respect of services provided and not provided by Canonbury when acting as managing agent; and
 - iv. proceedings against any professional or contractor who was retained to and/or provided services or carried out work to or connected with the Premises pursuant to the Leases or in contemplation the obligations and/or rights under the same; and
 - v. proceedings to obtain information and/or documentation that is or may be relevant to any other proceedings or legal action he has power to bring, defend or continue.
- (g) The Manager shall be entitled to an indemnity for his own costs reasonably incurred and for any adverse costs order out of the service charge account, and such costs and adverse costs shall be payable by the Lessees as a service charge according the provisions of the Leases and this Order.
- (h) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- (i) The power to seek recovery of any payment or payments made from the service charge account prior to the making of this Order, or during the period from the making of the Order to the full hand over of all management matter, which in the Manager's opinion is or are not payable from the service charge account, excessive or unreasonable.
- (j) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to their 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 as soon as and as far as is reasonably practical deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the lease (if any) or to power 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. Nothing in this provision shall prevent the Manager applying any individual lessee's contribution to the reserve fund held from time to time to other unpaid elements of the Service Charge Contributions due from the same lessee when reasonably necessary to enable the Manager to comply with his other duties under this Order.
- (k) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any of the Respondents or any Lessee owing sums of money under his Lease.

(l) 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 Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondents.

(m) The power to provide an estimated budget of service charge expenditure at, before or immediately after the commencement of a financial year and use that estimate as the basis for the yearly sum specified in Part 4 of the Second Schedule on which to base the equal quarterly instalments to be paid in advance by the Lessee (on 1 July, 1 October, 1 January and 1 April in each year) and the power to revise that figure during the financial year, applying that revised figure to future quarterly demands, if found to be necessary in light of actual expenditure.

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

(a) all statutory requirements;

(b) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;

(c) the respective obligations of all parties – landlord and tenant – under the Leases and Transfers and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and

(d) the duties of manager set out in the Service Charge Residential Management Code (the “Code”) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to S.87 of the Leasehold Reform, Housing and Urban Development Act 1993.

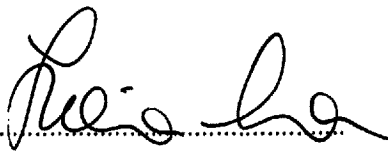
3. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.

4. From the date of this Order, neither the RTM Company nor Triplark Limited shall, whether by itself nor any agent, servant or employee, demand any further payments of services charges, administration charges or any other monies from the Lessees at the Premises (save for ground rents). The exclusive right to recover such sums shall vest in the Manager from and including the date of this Order.

5. The RTM Company, Triplark Limited, Freeholder and the Lessees and any agents or servants, thereof including in particular Canonbury, shall give reasonable assistance and cooperation to the Manager in pursuance of their duties and powers under this Order and shall not obstruct or attempt to obstruct with the exercise of any of their said duties and powers.

6. Without prejudice to the generality of the foregoing hereof:
- (a) Triplark Limited shall permit the Manager and assist him as he reasonably requires to serve upon Lessees any Notices under S.146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.
 - (b) The rights and liabilities of the RTM Company, Triplark Limited and the Freeholder as an RTM Company and a Landlord respectfully arising under any contracts of insurance to the Premises shall continue as rights and liabilities of the Manager.
 - (c) 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 attached.
7. 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 appropriate professional indemnity cover in the sum of at least £5,000,000 providing copies of the current cover note upon request by any Lessee, any of the Respondents or the Tribunal.
8. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
9. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leaseholder interest (whether by assignment or fresh grant) or freehold.
10. The Manager's fees and charges payable under the terms of this order and his costs of their recovery may, following the expiry of the period of his appointment, be recovered as a service charge under the Leases on his behalf.

Signed.....



Dated.....

27 January 2017

SCHEDULE**FUNCTIONS AND SERVICES****Financial Management:**

1. Prepare an annual service charge budget administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the percentage share under the terms of the Leases.
2. Demand and collect service charges, and any other payments due from the Lessees. Instruct solicitors to recover any monies due under the Leases related to matters within the scope of the management order.
3. Maintain the existing reserve funds and continue with prudent provision for the same.
4. Produce for inspection (but not more than once in each year) 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).
5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
6. 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 financial management of the Premises.

Insurance:

7. Take out in the Manager's own name in accordance with the terms of the Leases an insurance policy in relation to the buildings and the contents of the common parts of the Premises with a reputable insurer, and provide a copy of the cover note to all Lessees, Triplark Limited and the Third Respondents, on request.
8. 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

9. 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.

10. Administer contracts entered into on behalf of the RTM Company and Lessees in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.
11. Manage the Premises, including the arrangement and supervision of maintenance in accordance with the Lease.

Administration and Communication

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

Fees

15. Fees for the above mentioned management services (with the exception of supervision of major works) would be a fee of £58,200 plus VAT per annum for the Premises for the remainder of this financial year and for the following financial year. Thereafter the fee shall be reviewed annually in line with inflation calculated by reference to the Consumer Prices Index.
 16. An additional charge shall be made in relation to the arrangement and supervision of major works (including the preparation and service of any statutory consultation notices) on the basis of a fee of 2% of the cost of the works plus VAT, reduced to a reasonable charge for the Manager's involvement with the current major works part performed and in progress.
 17. An additional charge shall be made in relation to the arrangement, claims handling and brokerage of insurances for the Premises, public liability, engineering and employee cover on the basis of a fee of 15% of the insurance premium.
 18. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £150 plus VAT payable by the outgoing Lessee. Such enquiries to be as to service charges and other matters relating to the management of the Premises and not, for the avoidance of doubt, to be concerned with the consents to assign, which shall be dealt with exclusively by Triplark Limited.
- 19 . The undertaking of further tasks which fall outside those duties described above are to be charged separately at a present hourly rate ranging from £125 plus VAT for a qualified member of staff but, if the matter requires the Manager's personal attention, at present hourly rates of £300 plus VAT for Bruce Maunder Taylor.

Land Registry
Official copy of
title plan

Title number **AGL167712**
Ordnance Survey map reference **TQ2987NW**
Scale **1:1250**
Administrative area **Haringey**



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