

12273



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

**Case Reference** : LON/00AW/LAM/2017/0012

**Property** : 135 Ladbroke Grove, London W11  
1PN

**Applicant** : Alison Mooney (present Manager)

**Representative** : Mr Adrian Carr, Counsel

**Landlord Respondent** : Queensbridge Investments Limited

**Leaseholder Respondents** : Sophie Lodge, Puja Davda, Konrad Heskell and Sara Arora

**Representative** : Mrs Amy Just, Counsel  
(representing only the Leaseholder Respondents)

**Type of Application** : Variation of appointment of manager

**Tribunal Members** : Judge P Korn (chairman)  
Miss M Krisko FRICS

**Date and venue of Hearing** : 12<sup>th</sup> July 2017 at 10 Alfred Place,  
London WC1E 7LR

**Date of Decision** : 17<sup>th</sup> July 2017

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**DECISION**

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## **Decision of the Tribunal**

The existing management order is varied so that the order (as varied) now reads as set out in Appendix 2 to this decision. In particular, it should be noted that the order is extended until 31<sup>st</sup> July 2018 and that the Manager's fee for the extension period is set at £2,500 + VAT.

## **The application**

1. By an order dated 30<sup>th</sup> April 2015 the Tribunal appointed the Applicant as Manager in relation to the Property.
2. The Applicant now seeks a variation of her appointment. Her application was received by the Tribunal on 13<sup>th</sup> April and, in view of the then imminent expiry of the original order, the Tribunal initially agreed to an interim extension to 31<sup>st</sup> July 2017. The Applicant seeks an extension for a further year, up to 31<sup>st</sup> July 2018, and she also seeks certain other variations to the order.
3. The relevant legal provisions are set out in Appendix 1 to this decision.

## **Landlord Respondent's position**

4. The Landlord Respondent has not submitted a statement of case in response to the application. Initially it stated that it would not oppose the application, subject to two proposed variations of its own. The first proposed variation was to vary paragraph 1(d) of the existing order so as to provide that the manager shall account to the landlord quarterly for rents received, rather than annually, and neither the Applicant nor the Leaseholder Respondents oppose this proposed variation.
5. The second proposed variation was to remove paragraph 11 of the existing order. Paragraph 11 reads as follows:-

“The Manager is directed to register a restriction in Land Registry standard Form N against the Respondent's freehold estate registered under title number LN144645 in the following words:

*“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by Ms Alison Mooney of Westbury Residential Limited, Suite 2 De Walden Court, 85 New Cavendish Street, London W1W 6XD.”*

6. The rationale for the second proposed variation is expressed by the Landlord Respondent in an email dated 29<sup>th</sup> March 2017 by reference to specific paragraphs contained in a decision of the Upper Tribunal in the case of *Octagon Overseas Limited and Canary Riverside Estate Management Limited (2016) UKUT 0470 (LC)*. The proposed variation is opposed by the Leaseholder Respondents, whilst the Applicant is neutral on the point. The arguments will be discussed later in this decision.
7. On 28<sup>th</sup> June 2017 (and possibly also earlier) the Landlord Respondent proposed to the Applicant that she withdraw her application and that she simply be appointed by the Landlord Respondent as its managing agent. The Applicant indicated in an email dated 28<sup>th</sup> June 2017 that she was prepared to do so, but by a letter dated 30<sup>th</sup> June 2017 the Leaseholder Respondents' solicitors indicated that the Leaseholder Respondents would be unlikely to consent to the withdrawal. By a letter dated 5<sup>th</sup> July 2017 the Applicant's solicitors wrote to the Landlord Respondent stating that upon further consideration the Applicant had decided to proceed with the application. In response, also on 5<sup>th</sup> July, the Landlord Respondent emailed the Applicant's solicitors expressing incredulity and stating (a) that the Landlord Respondent was now objecting to the application and (b) that the Applicant's late change of mind left it in a very difficult position with no time to prepare for or to attend the hearing.
8. The Tribunal will work on the assumption, notwithstanding the objections expressed by the Landlord Respondent to the Applicant having continued with her application, that in the alternative (i.e. if the extension is granted) the Landlord Respondent still wishes to amend paragraph 1(d) of the existing order as detailed above and to delete paragraph 11 of the existing order.

### **Applicant's case**

9. The Applicant considers that she needs an extension of the existing order to deal with the completion of the current major works, the snagging items arising out of those works and the finalising of the accounts.
10. The accounting year will end on 31<sup>st</sup> December but then there will be a fair amount of work needed in order to finalise the accounts. Whilst there might be an argument that she could manage with an extension of slightly less than a year – for example to 30<sup>th</sup> April 2018 – the Applicant would prefer to have a whole further year. She would charge £2,500 + VAT for the year (or £2,250 + VAT for the period to 30<sup>th</sup> April 2018, or £1,800 + VAT for the period to 31<sup>st</sup> January 2018).
11. As noted above, the Applicant does not oppose the Landlord Respondent's requested amendment to paragraph 1(d) of the existing order but does oppose the deletion of paragraph 11 of the existing order. She also proposes (in addition to the extension of the term and the change to the fee) the following minor changes to the existing order:-

- (i) in sub-paragraphs 7(a), 7(c), 7(d) and 7(e) changing “by 29<sup>th</sup> May 2015” to “within 72 hours of a request made in writing by the Manager (which includes a request made by email)”;
- (ii) referring to the Landlord Respondent as the First Respondent and the Leaseholder Respondents as the Second Respondents; and
- (iii) various small consequential and uncontroversial drafting amendments.

### **Alison Mooney’s evidence**

12. Alison Mooney has made a written witness statement. At the hearing she explained why she had changed her mind about withdrawing the application. She said, as recorded in her witness statement, that she had suffered harassment from the partner of one of the leaseholders. It was sufficiently serious that she considered resigning as Manager. However, when the other leaseholders became aware that she was considering resigning they sent her a very supportive note urging her to stay. In addition, the harassment has recently become less severe and so she is prepared to continue after all.
13. She said that to have the order extended for a whole further year would enable her to look at fire and other safety issues in more detail after dealing with the snagging in relation to the current major works. The snagging period is due to end on 11<sup>th</sup> January 2018.
14. There have been huge problems due to decades of neglect, and this has led to leaseholders and the landlord being presented with very large bills for major works. Despite this, people having broadly been paying promptly. In relation to the accounts, realistically the earliest that she could finalise these is mid to end March 2018.
15. In answer to questions from Mrs Just, Counsel for the Leaseholder Respondents, she accepted that it was possible that some of the major works – such as cleaning the staircase – had not yet been fully completed, although there was then a general discussion as to whether the outstanding works perhaps constituted snagging items in any event or at least were not necessarily more time-consuming to resolve than classic snagging items.

### **Leaseholder Respondents’ position**

16. Regarding the Landlord Respondent’s request for paragraph 11 of the existing order to be deleted, Mrs Just for the Leaseholder Respondents suggested that there was no application before the Tribunal in relation to that request and therefore that there might be a jurisdictional issue.
17. Regarding the need for an extension and the length of the proposed extension, Mrs Just said that the Property had suffered from major neglect and that the

Landlord Respondent's serious failings were apparent from the decision of the Tribunal Panel which sat on the original case. The Leaseholder Respondents felt that there was some uncertainty regarding the extent to which the major works had been completed and therefore that it was important to allow the Applicant a full further year in which to make sure that the works, the snagging and the accounts are all properly dealt with. Given the history, the importance of having someone with the powers of a manager to drive the process forward, and the Applicant's success to date in turning the management of the Property around, the Leaseholder Respondents (in particular Ms Davda and Ms Arora, who were present at the hearing) were very concerned that if the extension was too short then all the good work that has been done by the Applicant – at great expense to the leaseholders – could be undone.

### **Tribunal's analysis**

18. The Landlord Respondent has expressed concern about the Applicant changing her mind as to whether to continue with the application and has suggested that its lack of time to prepare for the hearing and its inability to attend or be represented at the hearing is prejudicial to its position. We do not accept the validity of this argument. As noted by Mr Carr for the Applicant, the Applicant's double change of mind happened very late on in these proceedings, namely at the end of June and the beginning of July. The Tribunal's directions clearly stated that any Respondent opposing the extension had to provide a statement of case by 31<sup>st</sup> May 2017. Not only did the Landlord Respondent not do so by 31<sup>st</sup> May 2017 but it did not do so at any stage thereafter. Moreover, on 26<sup>th</sup> March 2017 it emailed the Applicant agreeing to a further year's extension to her appointment as manager. Whilst it is true that in that same email it requested the two amendments to the order already referred to, one of these has not been opposed by the other parties and the other is one in respect of which the Landlord Respondent has already argued its case. Therefore, it is not accepted that this is a valid objection.
19. Regarding the principle of the proposed variations, section 24(9) of the Landlord and Tenant Act 1987 ("**the Act**") gives the Tribunal the power to vary an order for the appointment of a manager on the application of any person interested. The Applicant is the existing manager and is clearly a "person interested". Under section 24(9A) of the Act the Tribunal may not vary an order unless satisfied that the variation will not result in a recurrence of the circumstances which led to the order being made and that it is just and convenient in all the circumstances of the case to vary the order.
20. The order was made for reasons which are well documented but which include many years of neglect and a failure on the part of the Landlord Respondent to comply with its management responsibilities. The evidence before us indicates that the Applicant has achieved the not inconsiderable feat of effecting very significant improvements to the Property in a manner which has impressed not only the leaseholders but also the landlord. It is true that she has had some difficulties with the partner of one of the leaseholders, but in our view the evidence indicates that the fault appears to lie with that leaseholder's partner, not with the Applicant. The Applicant is in the process of completing a set of major works and it is in our view clearly beneficial to all parties for her to be given time to complete these works (including snagging) using her powers as manager and to

sign off the accounts. To allow her to do this would self-evidently not result in (or make more likely) a recurrence of the circumstances which caused the order to be made and would – equally self-evidently – be just and convenient in all the circumstances of the case.

21. As to how long an extension to grant, the Applicant seeks a year, as do the Leaseholder Respondents. The Landlord Respondent agreed in writing to an extension of a year on 29<sup>th</sup> March 2017, albeit that it probably meant one year from the expiry of the original order rather than from the expiry of the temporary extension. The Landlord Respondent appears now to be opposing the extension, but it has not presented any proper reasons and it failed to make any written submissions on this point by the Tribunal's clear deadline of 31<sup>st</sup> May 2017 or indeed at all. Taking into account what the Applicant has achieved so far, with the strong support of nearly all of the Leaseholder Respondents and the slightly more tacit support of the Landlord Respondent, and what remains to be achieved, in our view it is important to allow the Applicant time to complete the current works and to sign off the accounts, as well as to allow her some leeway to attend to matters which need addressing but which have had to be put to one side due to the scale of the works which had to be dealt with as an absolute priority following so many years of neglect.
22. In the circumstances, we consider it entirely appropriate to allow the length of extension sought, namely to 31<sup>st</sup> July 2018. The proposed fee of £2,500 + VAT for the period to 31<sup>st</sup> July 2018 has been agreed to by the Leaseholder Respondents, or at the very least by those present at the hearing, and we consider it to be reasonable in the circumstances. We have not received any alternative submissions on fee rates, and the fee rate will therefore be set at £2,500 + VAT.
23. Regarding the Landlord Respondent's request for paragraph 1(d) to be amended so as to provide that the Manager will account to the landlord quarterly for rents received, rather than annually, this has not been opposed by either the Manager or the Leaseholder Respondents and in our view it is a reasonable variation. Accordingly, we will make this amendment.
24. Regarding paragraph 11 of the existing order (*the direction to place a restriction in Form N against the Landlord Respondent's freehold title*), the Landlord Respondent wants it deleted and the Leaseholder Respondents want it retained. As a preliminary point, Mrs Justice for the Leaseholder Respondents has argued that there is a possible jurisdictional issue as the Landlord Respondent has not made an actual application in respect of this proposed deletion. We do not accept this. Once an application for a variation has been made by "any person interested" (under sub-section 24(9)) then, in our view, an application exists and the Tribunal has jurisdiction to consider any variations proposed as part of the same proceedings by any interested person. It would be artificial to expect any party proposing a further or an alternative variation to make a fresh formal application in respect of that proposed variation and we consider it highly unlikely that this is what Parliament intended.
25. As regards the substantive issue in relation to the retention or otherwise of paragraph 11, the Landlord Respondent has referred us to certain paragraphs of the Upper Tribunal's decision in *Octagon* by way of arguing its position. In that

case there was some evidence that a similar restriction would be contrary to the landlord's borrowing requirements. In addition, the Upper Tribunal commented that it was not clear what the purpose was of preventing the landlord from disposing of its interest or why it would be appropriate to do so where there was no evidence that the landlord was liable to contribute to the service charge.

26. Mrs Just for the Leaseholder Respondents has argued in response to the Landlord Respondent's comments on paragraph 11 (a) that the Landlord Respondent is registered in Jersey, (b) that under the terms of the existing order it is liable itself to pay 25% of the service charge relating to overall building costs to the Manager and (c) that there is no evidence in this case that the restriction is contrary to the landlord's borrowing requirements.
27. In our view, the fact that the Landlord Respondent is registered in Jersey is not relevant to the need or otherwise to retain the restriction contained in paragraph 11. The main thrust of the Leaseholder Respondents' overall argument is that they are worried about the freehold being transferred to a third party with no knowledge of the obligation to contribute 25% of that part of the service charge which relates to overall building costs, and the question of where the Landlord Respondent is based is irrelevant to this particular concern. However, we agree with the Leaseholder Respondents' other two points. The Upper Tribunal stated in *Octagon* that it was not clear in that case what the purpose was of preventing the landlord from disposing of its interest or why it would be appropriate to do so where there was no evidence that the landlord was liable to contribute to the service charge, but in our case the purpose is clear and it is the case that the landlord is liable to contribute to the service charge. That contribution is 25% (in relation to overall building costs), which is a significant proportion of the service charge, and in our view retaining the restriction is a reasonable and proportionate way of protecting the Leaseholder Respondents from the risk of a significant service charge shortfall which could arise if a purchaser of the freehold were to take without notice of the obligation to contribute. In addition, no evidence has been presented to us to indicate that the restriction is actually contrary to the landlord's borrowing requirements.
28. For the above reasons, the restriction contained in paragraph 11 will be retained.
29. The Applicant has also proposed a change to the time limit for the provision of certain information contained in paragraph 7 of the order. The existing deadline is 29<sup>th</sup> May 2015, which was obviously set to cover the initial handover of management information. At the hearing, the Applicant accepted that there may not be any further information to be handed over at this stage, but she nevertheless wanted to retain the obligation to hand over information in case there is any further missing information. The proposal is for any information to be handed over within 72 hours. Whilst there should be either no – or minimal further information – to be handed over at this stage, we accept that it makes sense to retain such an obligation on the part of the Landlord Respondent if there is in fact any outstanding information. In our view, though, 72 hours is too tight a deadline, and we consider 7 days to be more appropriate.
30. The other minor drafting changes proposed by the Applicant are uncontroversial in our view and are agreed.

## **Cost applications**

31. There were no cost applications.

**Name:** Judge P Korn

**Date:** 17<sup>th</sup> July 2017

## **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## **Appendix 1 – relevant legislation**

### **Landlord and Tenant Act 1987**

#### **Section 24**

- (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 ...
- (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.



**Appendix 2 – Management Order as varied**

**CASE NO LON/00AW/LAM/2017/0012**

**IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

**IN THE MATTER OF SECTION 24(9) OF THE LANDLORD AND TENANT ACT 1987  
AND IN THE MATTER OF 135 LADBROKE GROVE, LONDON W11 1PN**

**BETWEEN:**

**ALISON MOONEY**

Applicant

- and -

**(1) QUEENSBRIDGE INVESTMENTS LIMITED**

First Respondent

- and -

**(2) SOPHIE LODGE**

**(3) PUJA CHANDRA DAVDA**

**(4) KONRAD PATRICIO HESKEL**

**(5) SARA ARORA**

Second to Fifth Respondents

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**MANAGEMENT ORDER**

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***Interpretation:***

In this order

- (a) "Commercial Tenant" means the tenant of the ground and lower ground floors of the Premises currently demised pursuant to the terms of a lease dated 18 January 2012 and registered under Title Number BGL87897 including any successors in title
- (b) "Common Parts" means any garden area, postal boxes, refuse store, cycle store, security gates, lifts, paths, halls, staircases and other access ways and areas (if any) within the Premises that are provided by the First Respondent for common use by the Lessees or persons expressly or by implication authorised by them

- (c) "Functions" means any functions in connection with the management of the Premises including any obligations and powers of the First Respondent under the Leases
- (d) "Leases" means the long leases vested in the Lessees
- (e) "Lessee" means a tenant of a dwelling holding under a long lease as defined by section 59(3) of the Landlord & Tenant Act 1987 ("the Act")
- (f) "the Manager" means Ms Alison Mooney MRCIS AssocRICS, of Westbury Residential Limited, Suite 2 De Walden Court, 85 New Cavendish Street, London W1W 6XD
- (g) "the Premises" means all that property known as 135 Ladbroke Grove, London W11 1PN including the commercial unit on the ground and lower ground floors
- (h) "the First Respondent" includes any successors in title of the freehold estate registered under title number LN144645 or any interest created out of the said freehold title

***Preamble***

UPON the Applicant having applied on 11<sup>th</sup> April 2017 for the variation of an Order dated 30<sup>th</sup> April 2015 appointing her as manager of the Premises under s. 24(9) of the Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal having extended the appointment of the Manager as manager of the Premises until 31<sup>st</sup> July 2017 in an Interim Order dated 21<sup>st</sup> April 2017 on its existing terms

AND UPON the First-Tier Tribunal being satisfied that it is appropriate to vary the Order to extend the appointment of the Manager in the manner set out below

IT IS ORDERED THAT

***The Manager***

- 1 The appointment of Ms Alison Mooney MRCIS AssocRICS as Manager (including such functions of a Receiver as are specified herein) of the Premises is extended to 31<sup>st</sup> July 2018 pursuant to s24(9) of the Act and the Manager is given for the duration of her 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 the First Respondent and in particular:

- (a) To receive all service charges, interest and any other monies payable under the Leases and any arrears due thereunder, the recovery of which shall be at the discretion of the Manager.
- (b) The right to continue to treat the service charge financial year as running from 1 January to 31 December in each year this Order is in place.
- (c) To receive the ground rents reserved under the Leases and any rents reserved in respect of the commercial unit situated on the ground and lower ground floors of the Premises and to account to the First Respondent in respect of the same on the usual quarter days, save that she shall be entitled to deduct any sums owing from the First Respondent in respect of service charge contributions and/or her fees.
- (d) The power and duty to carry out the obligations of the First Respondent contained in the Leases and in particular and without prejudice to the foregoing.
  - (i) The First Respondent's obligations to provide services;
  - (ii) The First Respondent's repair and maintenance obligations; and
  - (iii) The First Respondent's power to grant consent.
- (e) The power, if so required, to pursue a claim in the First Respondent's name under any existing insurance policy for the Premises in respect of such repairs/works as have been identified as being required.
- (f) The power to delegate to other employees of Westbury Residential Limited, appoint solicitors, accountants, architects, surveyors and such other professionally qualified persons as she may reasonably require to assist her in the performance of her functions.

- (g) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform herself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- (h) The power in her own name or on behalf of the First Respondent to bring or defend any legal action or other legal proceedings in connection with the Leases or the Premises and to make any arrangement or compromise on behalf of the First Respondent 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) legal action to determine that a breach of covenant has accrued;
  - (iii) legal action to prevent a further breach of covenant.
- (i) The power to commence proceedings or such other enforcement action as is necessary to recover sums due from the Commercial Tenant and/or the First Respondent pursuant to paragraphs 1(c), 1(d) and 7 of this Order.
- (j) 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 her functions.
- (k) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to her appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to s42 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 her by this Order) and all other monies received pursuant to her appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.

- (l) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the First Respondent, the Commercial Tenant or any Lessee owing sums of money to the Manager.
- (m) The power to borrow all sums reasonably required by the Manager for the performance of her functions and duties, and the exercise of her 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 First Respondent or the Commercial Tenant, such borrowing to be secured (if necessary) on the interests of the First Respondent in the Premises or any part thereof against the registered estate of the First Respondent registered under title number LN144645.

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

- (a) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;
- (b) the respective obligations of all parties – landlord and tenant – under the Leases and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and
- (c) the duties of managers set out in the Service Charge Residential Manager 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 s87 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, the First Respondent shall not, whether by itself or any agent, servant or employee, demand any further payments of service charges, administration charges, ground rents or any other monies from the Lessees or the Commercial Tenant at the Premises. Such functions are transferred to the Manager forthwith.

- 5 The First Respondent, the Commercial Tenant and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of her duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of her said duties and powers.
- 6 From the date of this Order, the First Respondent, the Lessees and Commercial Tenant shall – on receipt of 48 hours' written notice – give the Manager reasonable access to any part of the Premises which she might require in order to perform her functions under this Order.
- 7 Without prejudice to the generality of the foregoing hereof:-
- (a) The First Respondent, whether by itself, its agents, servants or employees, shall within 7 days of a request made in writing by the Manager (which includes a request made by email) deliver to the Manager any accounts, books, papers memoranda, records, computer records, minutes, correspondence, emails, facsimile correspondence and other documents as are necessary to the management of the Premises as are within its custody, power or control together with any such as are in custody, etc of any of its agents, servants or employees in which last case it shall take all reasonable steps to procure delivery from its agents, servants or employees.
  - (b) Within 14 days of compliance of paragraph 7(a) above the Manager shall decide in her absolute discretion which or any contracts she will assume the rights and liabilities under.
  - (c) The First Respondent shall within 7 days of a request made in writing by the Manager (which includes a request made by email) deliver to the Manager any keys, fobs and other access/entry cards to the Premises. If the First Respondent fails to deliver such keys etc, the Manager shall be entitled to remove the existing locks and other security systems currently installed at the Premises and install such locks and other security as, in her absolute direction, she thinks fit.
  - (d) The First Respondent shall within 7 days of a request made in writing by the Manager (which includes a request made by email) deliver to the Manager all keys to electricity, gas, water and any other utility meters located in the Premises. To this end, the First

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.

- (e) The First Respondent shall within 7 days of a request made in writing by the Manager (which includes a request made by email) give 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 any relevant bank statements and shall forthwith pay such sums to the Manager. If the First Respondent shall thereafter receive such sums under the Leases of any Lessee it shall forthwith pay such sums to the Manger without deduction or set-off.
- (f) The First Respondent shall permit the Manager and assist her as she reasonably requires to serve upon Lessees any Notices under s146 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.
- (g) The rights and liabilities of the First Respondent as Landlord arising under any contracts of insurance to the Premises shall from the date hereof become rights and liabilities of the Manager.
- (h) 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.

8 The First-Tier Tribunal being satisfied that the liability for the Schedule 1 Service Charges under the Leases will result in a 75% recovery of the costs and expenditure in providing services to the Premises, orders the First Respondent to pay 25% of the expenditure, so as to ensure that the Manager can obtain 100% service charge recovery and the Manager is authorised to demand, claim and, if necessary, sue for the same. Such sums to be computed as if the Eighth Schedule of the Leases applied.

9 The Manager shall in the performance of her 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 she has appropriate professional indemnity cover in the sum of at least £2,000,000 providing copies of the current cover note upon request by any Lessee, the First Respondent or the Tribunal.

- 10 The Manager shall act fairly and impartially in her dealings in respect of the Premises.
- 11 The Manager is directed to retain the registration of a restriction in Land Registry standard Form N against the First Respondent's freehold estate registered under title number LN144645 in the following words:

*"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by Ms Alison Mooney of Westbury Residential Limited, Suite 2 De Walden Court, 85 New Cavendish Street, London W1W 6XD."*

- 12 The Manager's appointment shall continue until 31<sup>st</sup> July 2018.
- 13 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 leasehold interest (whether by assignment or fresh grant) or freehold.

***Liberty to apply***

- 14 The Manager may apply to the First-Tier Tribunal for further directions, in accordance with s.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
  - a. Any failure by any party to comply with an obligation imposed by this Order;
  - b. For directions generally;
  - c. Directions in the event that there are insufficient sums held by her to discharge her obligations under this Order and/or to pay her remuneration.



**SCHEDULE**  
**FUNCTIONS AND SERVICES**

**Financial Management:**

1. Prepare an annual service charge budget (consulting with the Lessees as appropriate) administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees and the First Respondent as per the percentage share under the terms of this Order.
2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees and the First Respondent in the percentage proportions set out in the Annex to this Order. Instruct solicitors to recover any unpaid service charges, and any other monies due to the First Respondent.
3. Produce for inspection, (but not more than once in each year) within a reasonable time following a written demand by the Lessees or the First Respondent, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
4. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
5. 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:**

6. Take out on behalf of the First Respondent and 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 and the First Respondent.
7. 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:**

8. 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.
9. Administer contracts entered into on behalf of the First Respondent and Lessees in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to such contracts.
10. Manage the Common Parts, and service areas of the Premises, including the arrangement and supervision of maintenance.
11. 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 of the Premises 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:**

12.
  - (a) In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise 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 (including structural repairs) where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and supervise the works in question).
  - (b) In particular to undertake as soon as practicable a full health and safety review and an assessment of the electrical supply to the Premises.

**Administration and Communication:**

13. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquiries from the Lessees or their solicitors.

14. Provide the Lessees with telephone, fax, postal and email contact details (including emergency contact details) and complaints procedure.
15. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

**Fees:**

16. Fees for the above mentioned management services (with the exception of supervision of major works) would be a fee of £2,500 plus VAT for the Premises until the Manager's appointment under this Order expires on 31<sup>st</sup> July 2018.
17. An additional charge shall be made in relation to the arrangement of major works (including the preparation and service of any statutory consultation notices) on the basis of a fee of 1% of the cost of the works plus VAT.
18. 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.
19. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £275 plus VAT payable by the outgoing Lessee.
20. The undertaking of further tasks which fall outside those duties described above are to be charged separately at a rate of between £50 to £150 plus VAT (depending on seniority) or such other rate as shall be agreed.
21. The Manager is entitled to be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of Counsel, solicitors and expert witnesses) of and incidental to any application or proceedings (including these proceedings) whether in the Court or First-Tier Tribunal, to enforce the terms of the Leases. For the avoidance of doubt, the Manager is directed to use reasonable efforts to recover any such costs etc directly from the party concerned in the first instance and will only be entitled to recover the same as part of the service charges in default of recovery thereof.

## Annex

### Service Charge Proportions

<b>Unit Description</b>	<b>Sch. 1 Percentages (Service Charges relating to Premises)</b>	<b>Sch. 2 Percentages (Service Charges relating to Residential Areas)</b>
1	25%	33.33%
2	25%	33.33%
3	25%	33.33%
Commercial	25%	0%
Total	100%	100%