



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

Case reference : LON/00BA/LVM/2018/0011

Property : Kilmeny House, 36 Arterberry Road, London SW20 8AQ

Applicant : Mark Blooman

Representative : Luke Gibson, Solicitors' Agent

Respondents : (1) The leaseholders of the Property and (2) Kilmeny House Limited

Representative : Alejandra Hormaeche, Counsel (acting for leaseholders of Flats 2, 3, 4 and 7 only)

Also present : Wade Barker (Applicant's proposed substitute manager) and David Broome (represented leaseholders' proposed substitute manager)

Type of application : Variation of Appointment of Manager

Tribunal members : Judge P Korn
Mr T Sennett FCIEH

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 24th October 2018

Date of receipt of all further submissions : 29th November 2018

Date of decision : 11th December 2018

DECISION

Decision

1. In accordance with section 24(9) of the Landlord and Tenant Act 1987 (“**the 1987 Act**”), the Management Order dated 17th July 2017 and varied on 12th April 2018 is hereby further varied (a) by the replacement of the existing manager, Mr Mark Blooman, with Mr David Broome of HML PM Limited and (b) so as to include various other amendments/variations to the text of the Management Order as shown in the amended version set out at the end of this decision.
2. The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985. In other words, the tribunal declines to make an order preventing the Applicant from putting his costs incurred in connection with this application through the service charge.

Background

3. The Applicant is the current tribunal-appointed manager of the Property pursuant to a Management Order dated 17th July 2017 and varied on 12th April 2018.
4. The application is for the existing Management Order to be further varied by the Applicant being substituted as manager by Mr Wade Barker, a consultant at Sustainable Property Management Limited. In his written statement of case, the Applicant sets out his experience of managing the Property and states that it has become apparent to him that his appointment is no longer trusted. The hearing bundle also contains details of Mr Barker’s proposed alternative management plan.

Hearing

5. At the hearing, Ms Hormaeche said that according to her understanding all of the Respondents, with the exception of one leaseholder who had not expressed a view, were of the same view in relation to the present application. They had no objections to the Applicant being replaced as manager, but they wanted the replacement manager to be Mr David Broome of HML PM Limited and not Mr Barker. Mr Barker was already involved in managing the Property as the existing manager’s managing agent, and the Respondents were not happy with his performance.
6. In response Mr Gibson said that the Applicant was completely neutral on the question of whether he was replaced by Mr Barker or by Mr Broome. The Applicant also had no objections to Mr Broome’s management plan or proposed fee structure.
7. In the light of the Applicant’s lack of active support for his own proposed substitute manager the tribunal then decided to hear from Mr Broome, the Respondents’ preferred manager. Mr Broome was asked various questions about his experience. It was noted that this would not be his first tribunal appointment as a manager. It was also clear that he had visited the Property and was able to express a view as to what his priorities would be if he were appointed. He also spoke

knowledgeably about one of the live issues, namely whether a lease variation was needed.

8. In relation to Mr Barker's proposed management plan, Mr Broome felt that this plan if implemented would significantly increase the cost of management to leaseholders but it was not clear to him what the benefits of Mr Barker's proposed approach would be. He noted that Mr Barker felt uniquely placed to deal with the Property as he was already familiar with it, but Mr Broome suggested that a fresh approach could be helpful. In addition, Mr Barker had not come up with any proposals to deal with the existing lease defects, and Mr Broome felt that this was an important issue.
9. The hearing bundle contained a copy of Mr Broome's own management plan and he answered questions on this put to him by the tribunal.
10. Nicholas Walker, the leaseholder of Flat 2, gave evidence as to why he was opposed to Mr Barker being appointed as manager. Mr Walker felt that Mr Barker had a conflict of interest as he acted for the leaseholder of Flat 5. In addition, he was concerned about Mr Barker's management plan and the likely cost of implementing such a plan. He also felt that Mr Barker did not allow enough time for people to pay their service charges, did not explain figures when asked to do so and generally did not communicate effectively with him. As regards Mr Broome, Mr Walker felt that he was impartial and could take a fresh view. He also had relevant experience and had identified the current priorities well. Mr Walker was happy with Mr Broome's proposed charging structure.

Tribunal's analysis

11. Under section 24(9) of the 1987 Act "*A tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section ...*". Under section 24(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*".
12. The slightly unusual circumstances of this case are that, having put forward a proposed substitute manager, the Applicant is not in fact inviting the tribunal to prefer his proposed manager over the Respondents' proposed manager. This is a practical approach for the Applicant to have taken and the tribunal does not criticise him for it.
13. As a result of the Applicant's neutrality as between the two candidates, the situation is that there is common ground between the parties. The Applicant wishes to be replaced as manager and is happy for Mr Broome to be the replacement, whilst the Respondents agree that the Applicant should be replaced as manager and have put Mr Broome

forward as their preferred candidate whilst making it clear that they do not want Mr Barker.

14. The question came up at the hearing as to whether the tribunal should cross-examine Mr Barker. On the particular facts of this case the tribunal did not feel that this would be helpful, and both parties expressed agreement with this assessment at the hearing.
15. Having noted the various written submissions, including as to the relative merits of Mr Broome and Mr Barker on the facts of the case, and having cross-examined Mr Broome and heard from Mr Walker we are satisfied that it would be just and convenient in all the circumstances of the case to vary the Management Order by replacing the Applicant with Mr Broome. We are also satisfied that to vary the Management Order in this way will not result in a recurrence of the circumstances which led to the Management Order being made.
16. As to the terms of the Management Order, Mr Broome has asked for a minimum of 2 years. However, as stated at the hearing we consider that a term of 3 years from the date of this decision would be more suitable than just 2 years. There are some significant issues to be dealt with, and 2 years might be an insufficient amount of time within which to tackle them.
17. As regards other changes to the Management Order proposed by the Respondents, the Applicant has not objected to these and the tribunal considers them to be sensible and reasonable subject to some changes to the terminology and some minor corrections and deletions.

Costs

18. The Respondents have applied under section 20C of the Landlord and Tenant Act 1985 for an order that none of the costs incurred by the Applicant in connection with these proceedings can be put through the service charge. The Respondents argue that the Applicant effectively discontinued and/or abandoned his case insofar as it related to proposing Mr Barker as manager. Mr Barker was not called to give evidence and there was no case to answer.
19. In response, the Applicant states that in making his application under section 24(9) of the 1987 Act he was carrying out his functions as manager. The application was necessary because he was not receiving co-operation from the leaseholders to enable him properly to carry out his duties. He did not abandon his case; on the contrary, he applied to be substituted as manager and the tribunal has granted the application. It was for the tribunal itself, not the Applicant, to decide who should replace him as manager.
20. Having considered both parties' written submissions we agree with the Applicant. It was appropriate in the circumstances of the case for him to apply to be substituted, and he went through the appropriate process of seeking an alternative manager and then making an application to

the tribunal. It was logical for him to propose someone who already had knowledge of the Property, and then it was pragmatic for him not to object to the alternative option of Mr Broome once it was apparent that the Respondents had a marked preference for him over Mr Barker. It is simply not the case that he discontinued or abandoned his application; his aim was to be discharged and in this he has succeeded.

21. Therefore, we do not consider that it is appropriate to make a section 20C order and accordingly we decline to do so. As regards the specific amounts intended to be charged, the Respondents have not made any submissions on this and the Applicant's own submissions are very brief. In any event, in our view it is not within the ambit of a section 20C application to determine whether the particular costs are reasonable in amount, this being something in respect of which any party can make a specific application for determination (together with detailed submissions) if they wish to do so.

Name: Judge P Korn

Date: 11th December 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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

Case reference: LON/00BA/LVM/2018/0011

PROPERTY: KILMENY HOUSE, 36 ARTERBERRY ROAD,
LONDON SW20 8AQ (“the Property”)

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
24(9) OF THE LANDLORD AND TENANT ACT 1987

BETWEEN:

MARK BLOOMAN

Applicant

and

(1) THE VARIOUS LEASEHOLDERS AT KILMENY HOUSE

(2) KILMENY HOUSE LIMITED

Respondents

MANAGEMENT ORDER

UPON the Application pursuant to section 24(9) of the Landlord and Tenant Act 1987 to vary or discharge the Management Order appointing the Applicant as Manager of the Property and made under this section on 17th July 2017 and varied by a further order dated 12th April 2018

AND UPON reading the Applicant’s Statement of Case dated 4th September 2018, together with the Proposed Management Plan of Wade Jonathan David Barker, and the evidence contained in Exhibits WJDB 1-4, and in the bundle of documents filed on behalf of the Applicant

AND UPON reading the Respondents' Statement of Case dated 5th October 2018, together with the Respondents' Proposal for the appointment of David Broome as Manager of the Property

AND UPON the First-tier Tribunal (Property Chamber) ("FTT") hearing oral evidence from David Broome and Nicholas Walker on behalf of the Respondents

AND UPON the FTT determining that it is just and convenient for the Applicant to be discharged and the Management Order to be varied so as to appoint David Broome as Manager of the Property for a fixed term of 3 years from the date of this Management Order

AND UPON hearing an agent of the Applicant and Miss Alejandra Hormaeche of Counsel for the Respondents

AND UPON reading the Respondents' Proposed Draft Management Order replacing or containing amendments to the Management Order made on 17th July 2017 and amended on 12th April 2018

IT IS ORDERED THAT:

1. Mr David Broome of HML PM Limited, 94 Park Lane, Croydon, Surrey CR0 1JB is appointed as Manager of the Property in substitution for Mr Mark Blooman.
2. This order shall continue for a period of 3 years from the date of this order. If the parties wish to apply for any extension of

the order, they are encouraged to do so at least 3 months before the order expires.

3. The Manager shall manage the Property in accordance with:

- (a) the directions and Schedule of functions and services attached to this order;
- (b) the respective obligations of “the Lessor” and “the Company” by which the flats at the Property are demised to the leaseholders. In particular, the Manager is to have regard to the obligations relating to repair, decoration, provision of services and insurance of the Property, as modified and extended by the directions and Schedule of functions and services attached to this order. For the avoidance of doubt, the Manager is to deal with licenses as set out in clause 2(j) of the leases where the lessor is to provide consent for assignments and sub-lettings;
- (c) the duties of a 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 section 87 Leasehold Reform Housing and Urban Development Act 1993.

4. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
5. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £5,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, Kilmeny House Limited or the Tribunal.
6. No later than 4 weeks after the date of this order the parties to this Application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicant shall transfer to the Manager all the accounts, books records and funds (including, without limitation, any service charge reserve fund (if any)).
7. The rights and liabilities of the Applicant arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 14 days from the date of this order become rights and liabilities of the Manager.
8. Subject to paragraph 9 below, the Manager shall account forthwith for the payment of ground rent received by him (if any) to the person(s) to whom it is due and shall apply the remaining amounts received by him (other than those

representing his fees) in the performance of the landlord's covenants contained in the leases.

9. As the collection of the very low ground rent may be uneconomical, the Manager has a discretion as to the extent to which, if at all, he incurs costs in attempting to recover the ground rent from any of the lessees.
10. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of functions and services below.
11. The Manager shall forthwith produce a statement of condition in respect of the lift and a schedule of any remedial works necessary to the lift pursuant to the leases.
12. Within 90 days of this order the Manager shall produce a statement of condition in respect of all parts of the Property other than the lift and a schedule of any remedial works necessary pursuant to the leases.
13. Within 28 days of the expiry of the fixed term of 3 years under this Management Order, the Manager shall prepare and submit a brief written report for the FTT on the progress and outcome of the management of the Property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts

on the lessees and on the freeholder, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new FTT-appointed Manager, or, in the case of dispute, as decided by the FTT upon application by any interested party.

14. The Manager shall be entitled to apply to the FTT for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property. For the avoidance of doubt, this includes areas and structures outside the footprint of the building itself as well as the building. The insurance is to cover all usual modern risks, including terrorism.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) The Manager has the power to adopt a service charge year starting on the 1st day of January in each year and ending on the 31st day of December in each year.

- (iii) The Manager has the power to collect an interim service charge in advance.
- (iv) The Manager will prepare an estimate of the service charge for the year commencing 1st January 2019 and each successive year, such estimate to be sent to all lessees prior to the commencement of the relevant service charge year.
- (v) Interim payments of the service charge will be due on the 1st day of January and the 1st day of July in each year.
- (vi) Demand and collect ground rents (insofar as he considers it economic to do so), service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees. The Manager will issue interim service charge demands in good time and by no later than 30 days prior to the service charge demand being issued on 1st January (although in the case of the demand to be issued on 1st January 2019 the Manager will issue the demand as soon as reasonably possible).
- (vii) After the actual expenditure in any service charge year has been certified by an accountant, to demand any shortfall or repay or give credit for any surplus paid.
- (viii) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.
- (ix) The proportion of the total service charge which is to be borne by each flat is as follows:

1.	11.60%
2.	15.88%
3.	14.24%
4.	14.73%
5.	12.66%
6.	15.54%
7.	15.35%

Accounts

- (i) Within 90 days from 31st December of each year prepare and submit to the lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account, which are open for inspection by the Respondents. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest-bearing account/s (if available) at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondents.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.
- (iv) In respect of the staircase, the Manager is to carry out tendering in respect of its repair within 6 weeks of his appointment. If necessary, he is to apply to the FTT for dispensation of the consultation requirements.
- (v) The Manager is at liberty to remove the lift if he considers it appropriate so to do. He is under no obligation to replace it, as it is now redundant.
- (vi) The Manager has power to incur expenditure in respect of the provision of all necessary health and safety equipment, and in complying with all regulatory and statutory requirements.
- (vii) The Manager is entitled to recover through the service charge the cost of any surveyors', architects' or other professional persons' fees incurred by the Manager whilst carrying out his functions.

Right to prosecute claims

- (i) The Manager shall be entitled to bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of this appointment.
- (ii) Such entitlement shall include, but shall not be limited to, bringing proceedings in respect of any arrears of service charge and/or ground rent attributable to any of the flats in the building and which for which purpose "proceedings" shall include any application made under Part 7 or Part 8 of the Civil Procedure Rules 1998 for judgment in the County Court or High Court or any application made to the FTT under section 27A Landlord and Tenant Act 1985 or section 168(4) of the Commonhold and Leasehold Reform Act 2002 and shall further include any appeal made against any decision made in any such proceedings.

Fees

- (i) Fees for the above-mentioned management services will be a basic fee of £400 per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to the following charges:

£1 - £20,000	By agreement but not exceeding £750
£20,001 - £50,000	£1,000
£50,001 - £150,000	£2,000
£150,001 - £500,000	£3,000
£500,000+	£5,500

Obtaining competitive tenders, tender reports and administering all major works

£1 - £20,000	14% subject to £750 minimum
£20,001 - £50,000	12% subject to £2,800 minimum
£50,001 - £150,000	10% subject to £6,000 minimum
£150,001 - £500,000	9% subject to £15,000 minimum
£500,000+	7% subject to £45,000 minimum

- (i) All charges under this section will be discounted by any amounts paid under the earlier section.
- (ii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (iii) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (iv) The preparation of insurance valuations and the undertaking of other tasks, which fall outside those duties described above are to be charged for a time basis.

Complaints procedure

The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

Judge P Korn

11th December 2018