



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

**Case Reference** : LON/00BK/LVM/2020/0017  
**Property** : 45 Essendine Road, London W9 2LX  
**Applicant** : Ms M Solomon  
**Respondents** : (1) Ms C Karpellus  
(2) Mr A Morris  
(3) Mrs D Morris  
(4) Ms M Solomon  
**Type of Application** : For the variation of an order appointing  
a manager  
**Tribunal Members** : Judge T Cowen (chairman)  
Mr S Mason BSc FRICS  
**Date and method of  
Hearing** : 21 April 2021 by Cloud Video Platform  
**Date of order** : 21 April 2021

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**ORDER WITH REASONS**

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**Order of the Tribunal**

- (1) The appointment of Ms Alison Mooney of Westbury Residential Limited (“the Manager”) (which was made by order of this Tribunal dated 6 February 2017 (LON/00BK/LVM/2016/0006) is extended for a further period of three years from the date of this order and varied as follows under section 24(9) of the Landlord and Tenant Act 1987.
- (2) She shall manage the property in accordance with:
  - a. The respective obligations of the landlord and the lessees under the various leases by which the flats at the property are demised, and in particular, but without prejudice to the generality of the foregoing, with regard to the repair, decoration, provision of services and insurance of the property;
  - b. The duties of a manager set out in the Service Charges Residential Management Code (“the Code”) published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform Housing and Urban Development Act 1993; and

- c. The Management Plan attached to the order made in LON/00BK/LVM/2016/0006 on 6 February 2017 (the “Management Plan”).
- (3) Without prejudice to the generality of clause 2 above, she shall have authority to pursue payment of any sums due under any of the leases in respect of the management of the building, including authority to take legal proceedings in the name of the landlord. This provision shall apply equally to sums due and invoiced prior to this order being made and to sums falling due after this date.
  - (4) She shall provide quarterly unaudited statement of account itemising/providing brief description of the payments into and out of the building account.
  - (5) She shall manage the property fairly, impartially and in accordance with the terms of the leases.
  - (6) She shall be responsible for keeping proper Service Charge accounts and preparing and serving invoices on the lessees. All charges shall be apportioned in accordance with the terms of the leases.
  - (7) She will receive all sums whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the said leases.
  - (8) She will account forthwith to the freeholder owners for the time being of the property for the payments of ground rent received by her and will apply the remaining amounts received by her (other than those representing her fees) as hereby specified in the performance of the landlords’ covenants contained in the said leases.
  - (9) She will be entitled to the following remuneration (which for the avoidance of doubt shall be recoverable as part of the said service charges in accordance with the said leases) namely:
    - a. A basic fee of : £1,575 + VAT per annum.
    - b. An administrative fee of £180 + VAT per annum
    - c. other fees and charges as set out in the appendix to the Management Plan; and
    - d. Applications for licenses or for information relating to a sale will attract a fee payable by the person applying.
  - (10) The manager will have liberty to apply to the Tribunal for further directions if so required.
  - (11) The Applicant’s application for an order under section 20C of the Landlord and Tenant Act 1985, which was not actively pursued at the hearing, is dismissed.
  - (12) There shall be a liberty for any party to ask the Tribunal to review the dismissal of the section 20C application. Any such review shall be decided on paper after the other parties have had an opportunity to make written submissions in response.

## **REASONS FOR ORDER**

### **Background**

1. 45 Essendine Road is a terraced house in Maida Vale, London divided into four flats. The Respondents are the freeholders. The Applicant is one of the freeholders, but brings this application in her capacity as a leaseholder.
2. In 2016 and 2017, there were contested proceedings (LON/00BK/LVM/2016/0006) following the Applicant's application for the appointment of a manager under Part II of the Landlord and Tenant Act 1987. The Tribunal appointed Alison Mooney of Westbury Residential Limited under terms set out in the order dated 6 February 2017 for a period of 4 years from 24 January 2017. That period of appointment expired on 23 January 2021.

### **The Extension Application**

3. The Applicant applied on 14 November 2020 for an extension of that appointment for a further three years. The grounds for the application were that the works had not yet completed and that even when they were completed, it would be desirable for the manager to oversee the remedying of any defects arising out of the works and to establish an ongoing maintenance strategy.
4. The manager, Alison Mooney, filed a witness statement dated 30 January 2021 indicating that she agreed to the proposed extension of her appointment and that she supported the present application. She supplied a report to the Tribunal in which she outlined some proposed increases to her remuneration.
5. The Second and Third Respondents, Mr & Mrs Morris, filed a joint witness statement dated 24 March 2021, in which they indicated their support for the application.
6. Further witness statements followed from the parties.

### **The hearing**

7. A hearing took place on 21 April 2021 remotely by Cloud Video Platform. The Applicant attended by telephone from Australia, because she could not gain access online. She was able to hear and be heard. We are satisfied that, in the circumstances of this case, neither the Applicant nor the interests of justice were prejudiced by the fact that the Applicant could not see or be seen.
8. Mr & Mrs Morris, the Second and Third Respondents also attended by Cloud Video Platform, as did Mr Nigel and Mrs Jan Stern, leaseholders who were merely observing.
9. Mr Stern was in fact extremely helpful to the Tribunal in assisting all the participants with connection difficulties during the hearing. The Tribunal is very grateful to Mr Stern for his assistance.
10. At the hearing before us, the Respondents agreed to the extension of the appointment for a further 3 years on the terms suggested in the application. The manager herself also consented to the extended appointment and to the terms of the proposed variation.

## **The Tribunal's Decision**

11. The Tribunal is satisfied that the conditions are still present in which it is appropriate to continue the appointment. All of the witness statements of the parties (other than that of Ms Mooney) contained reference to various disagreements between them as to the management of the property. It was not necessary for us, on this application, to resolve or investigate any of those disputes, but the fact that they were there made it clear that it would be desirable for the management to continue to be handled by an impartial and competent professional, namely Ms Mooney. It is, of course, an extremely important factor that all parties support the requested extension of her appointment.
12. We have therefore decided to grant the proposed extension and variations.
13. At the hearing, one of the parties expressed the hope that there will come a time when this Tribunal no longer needs to be involved in overseeing the appointment of a manager. We share that hope. The sooner the parties can work towards a more consensual arrangement, such as the appointment of Ms Mooney (or another person) as a managing agent, rather than as a Tribunal-appointed manager, the better. In the meantime, this application for an extension of the appointment is granted.

## **Section 20C Application**

14. There was an application made under section 20C of the Landlord and Tenant Act 1985 by the Applicant on 14 November 2020 in relation to the Respondents' costs of this application. That application did not appear in any of the hearing bundles supplied by the parties and none of the parties mentioned it at the hearing.
15. We take the view that in the circumstances of an extension of the appointment of the manager with the consent of all parties, it would not be appropriate to deprive the Respondents of any costs which they have incurred. In any event, neither party was represented and so it is unlikely that any costs were incurred. For those reasons, we dismiss the section 20C application with liberty for any party to apply for a review on paper of that dismissal.

**Name:** Judge T Cowen                      **Date:** 21 April 2021

## **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.