



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

Case Reference: MAN/00CA/LAM/2021/0006

Property: 37 Hall Road East, Crosby, Liverpool,
L23 8TT

Applicant: Mr Ian Parnell

Respondents: (1) Fernhawk Property Management Ltd
(2) Fiona McCaul
(3) Daniel Birmingham
(4) Mavis Forrest

The Manager: Carolyn Delaney

**Tribunal
Members:** Regional Surveyor N. Walsh
Judge J. Holbrook

Date of Order: 7 December 2022

MANAGEMENT ORDER

Interpretation

1. In this Order:

“The Property” means the flats and other premises known as 37 Hall Road East, Crosby, Liverpool, L23 8TT and registered at HM Land Registry Under title number MS152797 and shall include the building, outhouses, gardens, amenity space, drives, pathways landscaped areas, flower beds, passages, bin-stores, common parts, storage rooms basements, electricity and power rooms; and all other parts of the property.

“The Landlord” shall mean Fernhawk Property Management Limited or their successors in title to the reversion immediately expectant upon the Leases.

“The Tenants” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and "Tenant" shall be construed accordingly.

“The Leases” shall mean all leases and/or underleases of flats in the Property.

“The Manager” means Carolyn Delaney, Residence (Liverpool) Limited, 54 St James Street, Liverpool, L1 0AB.

“The Tribunal” means the First-tier Tribunal (Property Chamber).

ORDER

In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) Carolyn Delaney of Residence (Liverpool) Limited, 54 St James Street, Liverpool, L1 0AB is appointed as Manager of the Property.

The Manager’s appointment shall start on **1 January 2023** (“the start date”) and shall end on **31 December 2025** (“the end date”).

For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the Tenants remain bound by them. Where there is a conflict between the provisions of the Order and the Leases, the provisions of the Order take precedence.

The purpose of this Management Order is to provide for the management of the Property which includes taking steps to resolve the following problems of inadequate management identified by the tribunal:

A dispute between the Tenants as to the liability of Daniel Birmingham and Mavis Forrest to contribute to the costs incurred personally by Ian Parnell and Fiona McCaul in undertaking works to re-carpet common areas and re-surface the driveway to the Property.

A dispute between the Tenants as to the necessity for repairs to be undertaken to chimney stacks and the exterior of the Property to be painted.

A dispute between the Tenants as to the appropriate level of contribution to be made in order to allow the Landlord to fulfil its obligations pursuant to the Leases.

To address the problems identified in the previous paragraph the Manager is empowered to:

Create service charge accounts and budgets and make consequent demand of and collect in from each Tenant their respective 25% proportionate share of any such service charge, for which purpose the service charge year shall run from the date of the Manager’s appointment.

Create final service charge accounts for any year pre-dating the Manager’s appointment.

Determine whether demands, in accordance with the terms of the Leases, should be made of Tenants to make payment in respect of works which have already been carried out and if so in what amount, and to collect such amounts.

Take such steps as may be necessary from time to time to compel payment of service charges by the Tenants.

Take such steps as may be required to utilise monies collected by way of service charge for the performance of the Landlord’s obligations pursuant to the Leases.

The Manager shall manage the Property in accordance with:

- the terms of this Order and the Directions set out below;
- the respective obligations of the Landlord and the Tenants under the Leases whereby the Property is demised by the Landlord (save where modified by this Order);
- the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors (“RICS”) and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993 (whether the Manager is a Member of the RICS or not); and
- the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.

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

The tribunal requires the Manager to act fairly and impartially in the performance of her functions under this Order and with the skill, care and diligence to be reasonably 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.

The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.

Any application to extend or renew this Order **must** be made before the end date, preferably at least three months before that date, and supported by a brief report of the management of the Property during the period of the appointment. Where an application for an extension or renewal is made prior to the end date, then the Manager’s appointment will continue until that application has been finally determined.

The Manager is appointed to take all decisions about the management of the Property necessary to achieve the purposes of this Order. If the Manager is unable to decide what course to take, the Manager may apply to the Tribunal for further directions, in accordance with section 24(4) of the Act. Circumstances in which a request for such directions may be appropriate include, but are not limited to:

a serious or persistent failure by any party to comply with an obligation imposed by this Order;

circumstances where there are insufficient sums held by the Manager to discharge their obligations under this Order and/or for the parties to pay the Manager’s remuneration; and

where the Manager is in doubt as to the proper construction and meaning of this Order.

Contracts

Rights and liabilities arising under contracts, including any contract of insurance and/or any contract for the provision of any services to the Property, to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:

the Landlord shall indemnify the Manager for any liabilities arising before commencement of this Order; and the Manager has the right to decide, in her absolute discretion, the contracts in respect of which she will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date this order.

The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.

Licences to assign, approvals and pre-contract enquiries

The Manager shall be responsible for carrying out those functions in the residential Leases concerning approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the Leases provide should be carried out by the Landlord.

The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

Legal Proceedings

The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and, subject to the approval of the Tribunal, may continue to bring or defend proceedings relating to the appointment, after the end of her appointment.

Such entitlement includes bringing proceedings in respect of arrears of service charge and rent attributable to any of the Flats in the Property, including, where appropriate, proceedings before this tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act or before the courts and shall further include any appeal against any decision made in any such proceedings.

The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so during, or after, this appointment. If costs paid from the service charge are subsequently recovered from another party, those costs must be refunded to the service charge account.

Remuneration

The Tenants are responsible for payment of the Manager's fees, which are payable under the provisions of this Order and which may be collected under the service charge mechanisms established by this Order.

The sums payable are:

an annual fee of £450 per flat for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable); and VAT on the above fees.

Ground Rent and Service charge

The Manager shall collect the ground rents payable under the residential Leases. The Manager shall collect all service charges and insurance premium contributions payable under the Leases or in accordance with the terms and mechanisms in this Order.

Whether or not the terms of any Lease so provides, the Manager shall have the authority to:

- demand payments in advance and balancing payments at the end of the accounting year; and
- alter the accounting year and to collect arrears of service charge and insurance that have accrued before her appointment.

The Manager may set, demand and collect a reasonable service charge to be paid by the Landlord (as if he were a lessee), in respect of any unused premises in part of the Property retained by the Landlord, or let on terms which do not require the payment of a service charge.

The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by them whilst carrying out their functions under the Order.

Administration Charges

The Manager may recover administration charges from individual Tenants for her costs incurred in collecting ground rent, service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Disputes

In the event of a dispute regarding the payability of any sum payable under this Order by the lessees, additional to those under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, may apply to the tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.

In the event of a dispute regarding the payability of any sum payable under this Order by the landlord, other than a payment under a Lease, the Manager or the Landlord may apply to the tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.

In the event of dispute regarding the conduct of the management of the Property by the Manager, any person interested may apply to the Tribunal to vary or discharge the order in accordance with section 24(9) of the Act.

In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Tenant, or the Landlord may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

DIRECTIONS TO LANDLORD

The Landlord must comply with the terms of this Order.

On any disposition other than a charge of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager, that the said person will (a) comply with the terms of this Order; and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of their functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.

The Landlord is to allow the Manager and their employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform their functions and duties, and exercise their powers under this Order.

Within 14 days from the date of this Order the Landlord must provide all necessary information to the Manager to provide for an orderly transfer of responsibilities, to include the transfer of:

all accounts, books and records relating to the Property, including a complete record of all unpaid service charges; and
all funds relating to the Property including uncommitted service charges and any monies standing to the credit of a reserve or sinking fund.

DIRECTION TO CHIEF LAND REGISTRAR

To protect the direction in paragraph 33 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate under title no MS152797. The restriction is to have overriding priority against any search with priority or pending application for a

disposition of the registered estate (other than a charge) that has been lodged after the 5 December 2022.

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration or their conveyancer that the provisions of paragraph 33 of an Order of the Tribunal dated 5 December 2022 have been complied with”.

DIRECTIONS TO MANAGER

The Manager must adhere to the terms of the Order above. Registration
The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 37, within 14 days of the date of this Order.

Conflicts of Interest

The Manager must be astute to avoid any Conflict of Interest between their duties and obligations under this Order, and their contractual dealings. Where in doubt, the Manager should apply to the Tribunal for directions.

Complaints

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

Insurance

The Manager must maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.

From the date of appointment, and throughout the appointment, the Manager must ensure that she has appropriate professional indemnity insurance cover in the sum of at least £500,000 and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Tenant or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

Accounts

The Manager must:

prepare and submit to the Landlord and the Tenants an annual statement of account detailing all monies receivable, received and expended. The accounts are to be certified by an external auditor, if required under the Leases;

maintain efficient records and books of account and produce these for inspection, to include receipts or other evidence of expenditure, upon request by the Landlord or a Tenant under section 22 Landlord and Tenant Act 1985;

maintain on trust an interest-bearing account at such bank or building society as the

Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and hold all monies collected in accordance with the provisions of the Code.

Repairs and maintenance

The Manager must:

by the start date draw up a planned maintenance programme for the period of the appointment, allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property, as well as any roads, accessways, mechanical, electrical and other installations serving the Property, and shall send a copy to every Tenant and to the Landlord;

subject to receiving sufficient prior funds:

carry out all required repair and maintenance required at the Property, in accordance with the Landlord's covenants in the Leases, including instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the Leases or in accordance with the Order.

arrange and supervise any required major works to the Property, including preparing a specification of works and obtaining competitive tenders.

liaise with all relevant statutory bodies in the carrying out of their management functions under the Order; and

ensure that the Landlord, and the Tenants, are consulted on any planned and major works to the Property and to give proper regard to their views.

The Manager has the power to incur expenditure in respect of health and safety equipment reasonably required to comply with regulatory and statutory requirements.

Reporting

By no later than six months from the date of appointment (and then annually) the Manager must prepare and submit a brief written report to the Tenants, and the Landlord, on the progress of the management of the Property up to that date, providing a copy to the Tribunal at the same time.

End of Appointment

No later than 56 days before the end date, the Manager must:

apply to the tribunal for directions as to the disposal of any unexpended monies; include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a "Final Report"); and

seek a direction from the tribunal as to the mechanism for determining any unresolved disputes arising from the Manager's term of appointment (whether through court or tribunal proceedings or otherwise).

Unless the tribunal directs otherwise the Manager must within two months of the end date:

prepare final closing accounts and send copies of the accounts and the Final Report to the Landlord and Tenants, who may raise queries on them within 14 days; and

answer any such queries within a further 14 days.

The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed Manager within three months of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.