

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



Section 24 and Section 20C Landlord and Tenant Act 1987

Application for the appointment of a Manager or the variation of the existing Leasehold Valuation Tribunal Order dated 5th October 2005 appointing a manager to extend the appointment of the current manager Martin Woodhead FRICS

Application for an Order that all or any of the costs incurred by the landlord in connection with these proceedings shall not be regarded as relevant costs in determining service charges

DECISION AND REASONS

Case Number: CH1/15UB/LVM/2008/0001

Property: Cawsand Fort, Cawsand, Torpoint, Cornwall PL10 1PL

Applicant : Peter Fitch (No. 18) and others

Respondent : Cawsand Fort Management Company Limited

Date of Application: 30th April 2008

Dates of Hearing: 11th August 2008 "First Day" (adjourned)
13th October 2008 "Second Day"

Mr. Peter Fitch - Applicant
Dr. S. Killops - Applicant
*Mr. Edward Denehan – (Counsel for the Applicant)
*Mr. Maddocks – (Applicant's solicitor)
Mr. Martin Woodhead FRICS – (Existing Manager)
Peter Carroll (Director of Respondent)
Mrs P. Carroll (Secretary of Respondent)
Mr. Guy Adams (Counsel for the Respondent)

Witnesses: Mr. Andrew Gardener FRICS - Surveyor for the Respondent

In Attendance: Terry Pinker (Clerk)

Mrs. Stafford

Mrs. J. Smith

Mrs. K. Snailham

Mrs. J. Fitch

Mrs. P. Careen

Mr. Caveen

Mr. K. Snailham

Mrs. Killops

*Mr. and Mrs Taylor

*Mr. and Mrs. Pullen

*Mr. and Mrs Butchers

*Mr. and Mrs Liddle

* Indicates attendance only on the Second Day

Tribunal Members: Cindy Rai LLB Chairman

William H. Gater FRICS AAAA Valuer Member (First Day only)

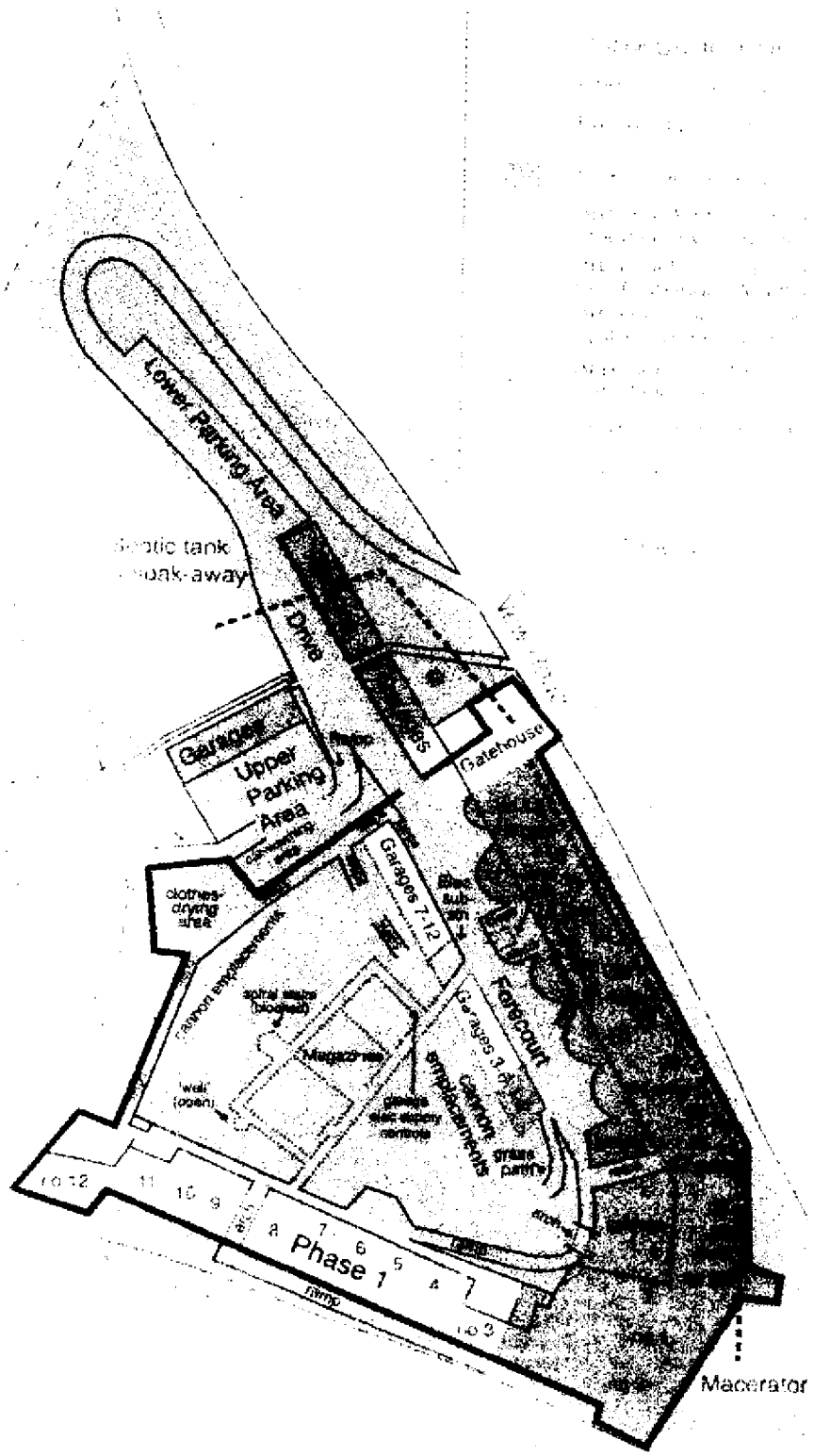
Peter Groves Lay Member

Date of Decision: 10th November 2008

SUMMARY OF DECISION

1. The Tribunal determine that it is just and convenient to appoint a manager of the Property being the Property to which the Original Order relates and which is shown coloured purple blue and pink on the plan annexed hereto a further copy of which plan is attached to the Order. The manager appointed is Martin Woodhead.
2. The application made by the Applicant under section 20(C) of the Landlord and Tenant Act 1987 is also granted in so far as it relates to the Deeds of Easement and Covenant to which all or some of the Applicants are a party or which might affect other parties who are specified in this application.

photograph locations



Photograph locations
 1. Septic tank soak-away
 2. Lower Parking Area
 3. Gatehouse
 4. Garages 7, 12
 5. Garages 4, 5, 6, 7
 6. Forecourt
 7. Macerator
 8. Waste containers
 9. Waste storage
 10. Machinery
 11. Plant area
 12. Wells (open)
 13. Clothes-drying area
 14. Upper Parking Area
 15. Garage
 16. Dne
 17. W.A. 1000

BACKGROUND

3. The Property which is the subject of this application is a former coastal defence fort, constructed in 1867. The entire site comprising the Property is a scheduled ancient monument. In June 2002 the Respondent acquired the freehold interest in those parts of the fort that have not been sold or in respect of which residential leases had been created. In or about 1987 Michael Peacock the previous owner of the Respondent's property developed part of the fort as residential units creating 30 units. Eleven units were freehold properties and nineteen units being numbers 1 and 2 and 14 to 30 were sold as leasehold units. Units 14 – 30 and one of the freehold units are connected to a private drainage system. The other units are on mains drainage. Both the leasehold and freehold properties gain access over common roadways and have the right to use common footpaths and for the most part enjoy rights over specified amenity land within the property as well.
4. Various plans can be found within the bundles produced by both Applicant and Respondent but the plan at Appendix 33 of the Applicant's bundle, which is a coloured plan, shows the extent of the Property as a whole. The green colouring shows the freehold properties; the purple colouring shows the leasehold properties; the blue colouring shows the "Amenity Land" as defined in various Deeds of Easement and Covenant and the leases; the pink land shows the area beneath which or on which the private drainage system is located.
5. The first schedule to the leases, a specimen copy of which has been provided in the Applicant's bundle at Appendix 3, described the rights easements and privileges granted to the lessees. Subsequently deeds of easement and covenant were entered into by the owners of the freehold and leasehold units with the Cawsand Fort Management Company granting rights of entry and the right to use defined "amenity land" for recreational uses. In those deeds of easement and covenant the company covenanted to maintain and repair the amenity land. The Respondent has never been active in carrying out its management obligations relating to the amenity land.
6. The Applicant comprises the current leasehold owners of eighteen of the nineteen leasehold units and the application is supported by the freeholders of the other units. The director and secretary of the Respondent are Mr and Mrs Peter Carroll respectively. Mr. Eric Groom who is the only leaseholder who is not an applicant is believed to be a shareholder in the Respondent.
7. In 2005 an application was made to the LVT by some of the leaseholders for the appointment of a manager of the Property. An order dated 5th October 2005 made by the LVT appointed Mr Woodhead as a manager of the Property referred to in that order (the extent of which was shown on a plan attached to that order) for a term of three years ("the Original Order") .
8. The Respondent appealed to the Lands Tribunal against the 2005 LVT decision. Following the dismissal of that appeal it appealed to the Court of Appeal. The Court of Appeal rejected that appeal on the 20th November 2007. Leave for the Respondent to appeal to the House of Lords was refused on the 9th April 2008.
9. The Original Order expired on the 5th October 2008. Following the First Day an order ("the Consent Order") was made by this Tribunal with the consent of

both the Applicant and the Respondent that the Original Order be extended until the 31st January 2009 on the same terms.

10. The application ("the Application") before the Tribunal is made pursuant to Section 24 of the Landlord & Tenant Act 1987 ("the Act") by the Applicant for the reappointment of a Manager for a further term upon the expiry of the Original Order. The Applicant seeks to reappoint Mr. Woodhead as manager of the Property for a further term. It is not clear from the Act whether the Application should be made as a fresh application or whether it can simply be an application to vary the Original Order pursuant to section 24(9). As a result of this uncertainty, the Applicant served a section 22 Notice ("the section 22 Notice") on the Respondent and the Tribunal on the 12th May 2008. The Respondent did not object to the section 22 Notice prior to the date of the Application.

THE INSPECTION

11. On the First Day and prior to the hearing, the Tribunal together with Mr. Woodhead and Mr. Gardener inspected the Property. Mr. Adams, arrived towards the end of their inspection He produced his skeleton argument together with a file containing a Witness Statement made by the Respondent ("the Respondent's Witness Statement") Separately Mr. Gardener produced a report ("the Respondent's Surveyors Report"). Since it appeared to the Tribunal that no attempt had been made to produce either the Respondent's Witness Statement or the Respondent's Surveyors Report to the Applicant before the day of the Hearing the Tribunal declined to accept copies of either at the Property.
12. At the inspection the Tribunal were shown the works carried out to the walls which formed part of the fort and which were within the amenity land as is described and referred to later in this decision. In addition the Tribunal inspected the general condition of the accessways and the footpaths and the works- carried out to repair the railings and keep safe those areas which were apparently used by the Applicants and other residents of freehold properties at the Property

THE HEARING

13. At the beginning of First Day Mr. Adams asked the Tribunal to admit the Respondent's Witness Statement and the Respondent's Surveyors Report. He said that his client would be barred from receiving a "fair hearing" if the new evidence he had just produced was not admitted. He then told the Tribunal that the Respondent has made an application under section 24(9) of the Act for a variation of the Original Order. The Tribunal indicated that it was not aware, nor had it been notified, that such an application had been made. Following an examination of the office file of correspondence (which had been brought to the hearing by the Clerk) the Tribunal noted that an undated email had been received by the Tribunal Office together with an attachment in the form of a document headed notice of application ("the Notice") which Mr. Adams claimed was the Respondent's section 24(9) application. In addition Mr. Adams said that the Notice also constituted an application to strike out the Application on the grounds that that the section 22 Notice was defective. Mr. Adams wanted the applications he claimed were contained in the Notice to be considered by the Tribunal together with the Application. The Notice was not treated as an application under section 24(9) by the Tribunal office. It had not been acknowledged as such an application; no fee had accompanied the Notice. It had been sent by email with a letter which was not dated.

Nevertheless Mr. Adams suggested that the application was in the form that would be recognised in any court proceedings. Following further discussion he eventually accepted that there may have been procedural errors in the Notice that would prevent it from being treated as a valid application.

14. The Tribunal asked Mr. Adams what matters other than those that the Respondent would have raised in response to the Application, he might have raised in support of the Notice, on the assumption (which was not yet to be treated as fact) that it might accept that the Notice constituted and could be treated as an appropriate application by the Respondent. Mr. Adams was unable to indicate why it would be prejudicial to his client for the Tribunal not to treat the Notice as an application on behalf of the Respondent for both the striking out of the section 22 Notice and an application for the variation of the Original Order. He suggested that he could not seek to vary the terms of an order not yet made.
15. The Application is for a new order to be made on the same terms as the Original Order (or to be treated as a variation of the Original Order by extension) and in respect of the same property in relation to which the Original Order was made but for a different period. Mr. Adams was therefore invited to address the Tribunal on which parts of the Original Order were unacceptable to the Respondent and why; and which parts of the Original Order he would have applied to vary had the Notice been treated as such an application. The Tribunal wanted to establish which (if any parts of an order) if it were made on identical terms to the Original Order the Respondent could agree.
16. After considering Mr. Adams's response the Tribunal decided that the Respondent would not be prejudiced by it not treating the Notice as an application by the Respondent under section 24(9) and therefore the only application before it was the Application.
17. The Tribunal then went on to consider whether the evidence it had been offered on the First Day of the hearing should be admitted. The chronology of the Application is set out below:
 - 29th March 2008 - Section 22 Notice by Applicant served on the Tribunal and the Respondent
 - 30th April 2008 - Application made to the Leasehold Valuation Tribunal
 - 15th May 2008 - Provisional Directions made by the Tribunal and which referred to the actual date of the First Day as being the "proposed hearing date"
18. Mr. Adams argued that it would be contrary to natural justice if the new evidence was not accepted. He offered no explanation or justification for the delay in its production. Eventually it was agreed that as neither the Applicants or the Tribunal members had had an opportunity to read the additional evidence the hearing would be adjourned for one hour to enable the parties to look superficially at the evidence and to enable Dr Killops to speak to the Applicant's solicitor.
19. When the hearing was reconvened the Applicant objected both to the timing of the production of the Respondent's Witness Statement and the Respondent's Surveyor's Report just before the beginning of the Hearing and it being accepted as evidence. The Tribunal formed the opinion that it was

unlikely that the Respondent's Surveyors Report would have been available for circulation before the First Day of the hearing since copies were given to Mr. Adams during the inspection and Mr. Gardener had said that he had visited the Property for the first time during the week preceding the First Day of the hearing.

20. The Applicant advised the Tribunal that if the new evidence was admitted it would seek an adjournment. It claimed that its case was being prejudiced by the deliberate late submission of evidence by or on behalf of the Respondent.
21. The Respondent agreed to an adjournment but the Applicant also wanted to protect its position with regard to the Original Order. Since it had assumed the Application would be heard on the 12th August 2008, and determined shortly thereafter, Mr. Woodhead had tendered works. It did not want there to be any interruption in the "scheduled works", not least on account of it hoping to obtain a "keen price" by tendering the work at the time that it had.
22. Following a discussion between both parties' surveyors it was agreed that a consent order could be made on the same terms as the Original Order until the 31st January 2009. The Respondent would not indicate which works (if any) to which it objected; it accepted however that the contracted works as explained to Mr. Gardener could be completed. The Tribunal indicated that further directions would be issued from the Tribunal office the next day to the parties.
23. The Tribunal advised both parties that it would be very reluctant to consider any evidence provided by either party when the hearing was reconvened unless such evidence was submitted in good time and in accordance with the directions that would be issued by the Tribunal..
24. All parties agreed to target dates for the hearing to be reconvened during the week commencing the 12th October 2008 subject to some of the Tribunal members and the Applicant checking upon their own and their representatives availability. Counsel for the Respondent confirmed his availability to attend on the target dates.
25. On the second day of the hearing Mr. Denehan set out the Applicant's case. He sought to establish the grounds of the application; namely that it was just and convenient to appoint a manager. He suggested but this was not accepted by the Respondent, that it did accept that grounds for the application were established. However it became clear to the Tribunal as the hearing progressed that this was not the case and the Tribunal therefore has treated the application as having been contested.
26. Mr. Denehan suggested that the requirement for the appointment of the manager resulted from the landlord being delinquent. He referred to the scheme envisaged in Part II of the 1987 Act and the background to the application. He confirmed that a Section 22 notice was served but the Respondent did not either comply with or object to the notice.
27. The grounds upon which Applicant sought a response from the Respondent are set out in fourth schedule to the Section 22 Notice and required:
 - a. that the 69 shares held by Mr. Carroll be returned to the company and reallocated so that each freehold and leasehold unit (30 in all) were allocated

- a single share with the remaining shares to be declared unissued and non-voting.
- b. that Mr. Carroll and Eric Groom resign as directors of the company and any other office which they may hold in the company and nominate four shareholders to act as director and one as a company secretary.
 - c. that the removal of the debts from CMC imposed by EG and PC since the CFMC was resurrected so that the financial burden was no more onerous than shown in the balance sheet for 31 December 2000 a copy of which was included in the appendix to the application.
 - d. that the Applicants would pay (at a price to be set by the LVT) a sum of money for the [transfer of the Respondent's interest in the] freehold.
28. Mr. Denehan said that it was common ground (between the parties) that an appointment of a manager could be made and he identified as the only substantive issue the extent of the land over which any manager appointed by the LVT would exercise his powers. He said "his" since the identified and proposed manager would be Martin Woodhead FRICS who is the manager who was appointed by the Original Order
29. He asked the Tribunal to consider the decision of the Lands Tribunal to which he referred them and which is appendix 21 in the Applicant's bundle. The Respondent had appealed to the Lands Tribunal with regard to the extent of the property referred to in the Original Order.
30. In paragraph 11 of the Lands Tribunal decision George Bartlett QC and President of the Lands Tribunal stated "there is one issue in the appeal - whether it was in the power of the LVT to include in the management order land in the ownership of the appellant that consists neither of residential buildings nor the curtilages of such buildings. There is no dispute that the amenity land and the rights of way over parts of the fort that owners and lessees of individual residential properties enjoy under their respective titles are outside the curtilages of the buildings".
31. Mr. Denehan advised the tribunal that Section 21 of the 1987 Act entitled "Tenant's right to apply to the court for the appointment of manager" contains a definition of the premises which is necessary to identify the *locus standi* of an applicant who is qualified to apply for an order under Section 24 appointing a manager. He referred to case of *Maunder Taylor v Blacquiere* [2003] 1EGLR 52 and the dictum of Aldous LJ "In my view Mr. Fancourt is correct in his submission that the purpose of Part II of the Act is to enable the Tribunal to appoint a manager who may not be confined to carrying out the duties of a landlord under the lease. The Tribunal is enabled under sub section (1) to appoint a manager to carry out, in relation to any premises to which Part II applies, such functions in connection with "management" of the premises as the Tribunal thinks fit. It should be noted that the premises may be two or more see Section 21 (4) and that the manager will carry out the functions of management. As sub section (11) makes clear that includes repair, maintenance or insurance. There is no limitation as to the management functions of the manager; in particular functions are not limited to carrying out the terms of the leases. That is not surprising since the manager will need to obtain estimates and do repairs. He need not use the landlord's surveyor as required by the lease in this case". In paragraph 39 of the decision he said "sub section (2) restricts the ability of the Tribunal to make orders. But sub section 2 (b) is of greater width, in that it enables the Tribunal to appoint a manager when satisfied that circumstances exist that make it "just and

convenient to do so". That also suggests that the Tribunal is concerned to provide a scheme of management, not just a manager of the landlord's obligations".

32. That case was a counterclaim made by a tenant seeking to set off his claim against the landlord in respect of a manager's invoice for service charges. In that case the manager had been appointed by the court. When the Lands Tribunal decided the issue it stated in paragraph 18 of its judgement "the contention of the appellant (the Respondent in this case) that the LVT had no jurisdiction to make a management order extending over parts of the fort that are not within the curtilage of the buildings containing the leasehold flats must therefore necessarily fail, since this is the only issue raised the appeal must be dismissed."
33. Mr. Denehan quoted this decision as evidence that the Lands Tribunal did not accept that the extent of the premises should be limited to the premises referred to in section 21(1) of the 1987 Act. He suggested that what the Tribunal had to consider was whether :-
 - a) an order should be made
 - b) to what premises any order should be applied; and
 - c) whether the terms of any order were agreed.
34. It is just and convenient that an order should be made on the grounds set out in the section 22 Notice and because the Respondent has not managed the Property. The Applicant would like a similar order made to the Original Order and with regard to the same Property. It does not appear from the Respondent's Surveyors Report that there is any agreement between the parties as to the terms of the Order
35. Mr. Denehan confirmed that the Applicant wants the current manager Mr. Woodhead to continue in his role as manager. The Respondent has never suggested or offered any evidence that he is prepared to manage the whole or any part of Cawsand Fort; perhaps more relevant no one, even Eric Groom who remains a leaseholder at the Fort, has suggested that the current manager Mr. Woodhead has acted wrongly in the performance of his management functions or indeed that he has exceeded with his powers or interfered with the landlord's right. He said that the manager does not step into the shoes of the landlord and is therefore not immune from issues covered by the general law. He was also critical of the report prepared by the Respondents' surveyor as being based upon limited instructions; he suggested that it is a biased interpretation of the law based on the Respondent's interpretation of the two decisions in the higher courts and a lack of experience on the part of Mr. Gardener with regard to the management of premises such as the Property; Mr. Gardener had not spoken to the Mr. Woodhead or any of the Applicants or the other residents of the Fort. He seemed to have carried out an academic exercise, and then utilising the framework of the Original Order, had amended it by narrowing the definition of the Property to which it could, or might, relate to make it unworkable. He had justified all that he had done by suggesting concern that the amount of money that would or was being collected from the Applicant and any other contributors towards the management costs would make the leasehold properties less attractive on sale. No consideration or comment had been made as to how the sale prices might be influenced if the accessway had not been resurfaced, which it had been since the Original Order was made. In the evidence sent to the Tribunal prior to the Hearing the

Applicant has referred to the neglected state and condition of the area with in the Fort known as the Solider's Garden which the Respondent does not maintain notwithstanding that a public footpath runs through part of it.

36. When asked by the Tribunal to address the increased period of the Order sought Mr. Denehan said that it would provide the Applicant with greater security from the attempts of the Respondent to interfere with a resident led management regime. He accepted however that if an order was to be made by the Tribunal in similar terms to the Original Order albeit for a longer period it would still be open for the Respondent to make an application to seek to vary the extent of the Property to which the order should apply. He said that no such application had been made by the Respondent since the Original Order was made.
37. In response to the Applicant Case Mr. Adams disputed that the Landlord was a delinquent landlord. He said that the only Landlord obligations contained in the leases did not impose a maintenance liability on the Landlord. He said that the obligations regarding the amenity areas were only contained in the Deeds of Easement and Covenants. He said that what the Original Order had done amounted to a confiscation of the Respondent's rights over its own property. He told the Tribunal that it was not accepted that the Applicant had established that there were grounds under section 24 of the 1987 Act for the Tribunal to appoint a manger. He said that in fact now that the roadways had been resurfaced little ongoing work would be required to maintain any of the amenity areas. He claimed that the allegations of neglect that were put forward by the Applicant related to an unwillingness on the part of the Applicants and the freeholders to pay the maintenance costs that were envisaged by the Deed of Easement and Covenant.
38. He then referred to section 24(1) of the 1987 Act as referring to any premises to which this part of the Act applies and enabling a LVT to appoint a manager to carry out such functions in relation to the management of the premises as the tribunal thinks fit. He says that by reference to sections 24(3) can be more or less extensive than those specified in the application but then went on to state that those premises, if more than specified in the notice, must still be premises to which Part II of the Act applies.
39. Mr. Adams stated that if the LVT appoint a manager under section 24 to carry out functions the reasoning that the LVT should adopt is as set out in the 4th step referred to in the Court of Appeal decision a copy of which is annexed as appendix 22 of the Applicant's bundle. This fourth step identified in paragraph 32 of the decision "involves a decision by the LVT as to what management functions in connection with the premises the manager should carry out " in relation to " the premises".
40. In paragraph 33 of its decision Mummery L. J. states:- " In my judgment, the flaw in the Company's [Respondent's] submissions on the construction of section 24 stems from narrowly concentrating on the definition of "the premises to which the act applies" and neglecting the self-evident purpose of the provision and the width of the language in which the power of the LVT is expressed"
41. Mr. Adams contends that the Lands Tribunal and the Court of Appeal had not decided the same issue that he was now arguing and that contention must limit the jurisdiction of the Tribunal to making an order only in respect of

premises to which Part I of the Act applied. For that reason the Tribunal was not bound by the decisions of the Lands Tribunal or the Court of Appeal. The Tribunal was however unable to discern a distinguishable difference in the arguments put forward at the hearing on behalf of the Applicant and the issues upon which the Lands Tribunal and the Court of Appeal had decided.

42. In Mr. Gardener's evidence he explained the nature of his instructions and the fact that he had relied upon his instructing solicitor Mr. Carroll with regard to the ambit of his instructions. Mr. Gardener stated that his views as expressed in his report are accurate and the report has been prepared for the benefit of the LVT. He visited the property once prior to writing the report and again on the First Day. He has never spoken to Mr. Woodhead. He does not currently manage, nor has he ever managed, a similar residential estate. His professional primary expertise is commercial but not exclusively. He does undertake Landlord and Tenant work. He had looked at the Original Order. He reviewed its relevance and appropriateness based on a single visit to the Fort. He considered the issues in relation to the physical environment. He did not speak to the leaseholders or the other Freeholders who support the current management regime. Notwithstanding his limited experience he had prepared a draft order and it was this draft which formed the basis of the draft order attached to Mr Adams second skeleton argument produced to the parties prior to the Second Day.
43. In response to cross examination by Mr. Denehan Mr Gardener defended the academic approach he had taken citing an interest in the value of the leaseholders interest in the property and the possible influence on such value of excessively "wide" service charges.
44. Mr. Adam considers that the alleged failure in management of which the Applicant complains is a failure to manage the premises which actually form part of the neighbouring land. Therefore the Manager cannot be given management functions in relation to these premises. Failure by the Applicant to pay service charges had resulted in a shortfall in the funds prior to the transfer of the land (the freehold). The only functions that could be included in any management order are so limited in particular now that the road has been resurfaced that they do not warrant the cost and expense of a manager. He said that the thrust of the application is based on the Applicant's mistrust of Mr. Carroll (one of the directors of the Respondent Company) and Eric Groom (a shareholder) the roots of all of this are based in an exchange of correspondence and occurrences including meetings in 2000 which led to those two to acquire the freehold and shares in the Respondent.
45. Mr. Adams believes that the Applicant's grounds of "lack of trust" are misplaced. The problem is in relation to the management of the retained land (or the absence of any discernable management) which he submits can only be resolved by agreement between the Respondent and the Applicants (and presumably the affected freeholders).
46. If the LVT decides to make an order he submits that such order can only be made in relation to the premises he has narrowly defined and that section 24(1) of the 1987 Acts limits the functions of the manager to management of these premises.; it must therefore limit the scope of the order on the basis of the evidence put forward in Mr. Gardener's report and it should be based on the draft order attached to his skeleton argument.

47. He accepts that the LVT can decide upon the functions and he says that the wording in his draft order. He thinks it would be helpful for any order to refer to a plan but not all the available plans are consistent; but the plan he has attached to his draft order best represents what was intended and provides a sufficient area for a manager to manage therefore it is a suitable plan. He has no idea if this is agreed or not but it is something upon which the LVT can decide.
48. He has already demonstrated (in his opinion) that much of what the Applicants claim relates to land outside the definition (his definition) of the Premises; However he does not object to the inclusion and undertaking of the duties in the Deeds of Easement and Covenant if these are not taken to be part of the order.
49. With reference to clause 11 of the draft order it is suggested that if the manager is crossing neighbouring land he would expect notice to be given. He expects that a landowner (the Tribunal assumed that he was referring to the Respondent) will object if works go beyond the enjoyment of ancillary rights.
50. He has deleted reference to freeholders but accepts that the manager can act for the freeholders but they should not be referred to in an order made by a LVT. In the existing leases the primary responsibility for management of the structure falls upon the leaseholders.
51. He also stated that any order cannot be protected by registration at the Land Registry and the restriction originally entered against the Respondent's title should be vacated.
52. In summing up he said that no Manager could be given greater functions than those that the freeholder has.
53. In response and in summing up Mr. Denehan said that the history of the proceedings before the LVT the Lands Tribunal and the Court of Appeal demonstrated the attitude of the Respondent.
54. Essentially notwithstanding that the point of law upon which the Respondent had appealed had not succeeded in its application before the Land Tribunal and the Court of Appeal, the Respondent was raising the same point again. He suggested, in order to be able to argue again, that he had been misunderstood in his application to the Lands Tribunal and the Court of Appeal and that the point of law each had considered was not the point of law he had raised. In fact the Tribunal had itself noted on the First Day that Mr. Adams had told the Tribunal that he had been misquoted in the Court of Appeal judgement.
55. Mr. Denehan reminded the Tribunal that Mr. Adam's language was the same as that he had used in the preceding proceedings notwithstanding that until today all the applications made on behalf of the Respondent had been rejected.

THE LAW

S20C "Limitation of service charges: costs of proceedings.

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Lands Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.".]

PART II

APPOINTMENT OF MANAGERS BY THE COURT

S21 Tenant's right to apply to court for appointment of manager.

- (1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises.

- (2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.

- (3) This Part does not apply to any such premises at a time when—
 - (a) the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or
 - (b) the premises are included within the functional land of any charity.

- [(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.]
- (4) An application for an order under section 24 may be made—
- (a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and
 - (b) in respect of two or more premises to which this Part applies; and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.
- (5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.
- (6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.
- (7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.[...]

S22 Preliminary notice by tenant.

- (1) *Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served [by the tenant on—]*
- [(i) the landlord, and*
 - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.]*
- (2) *A notice under this section must—*
- (a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which [any person on whom the notice is served] may serve notices, including notices in proceedings, on him in connection with this Part;*
 - (b) state that the tenant intends to make an application for an order under section 24 to be made by a leasehold valuation tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the [requirement specified in pursuance of that paragraph is complied with] ;*

- (c) *specify the grounds on which the court would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;*
 - (d) *where those matters are capable of being remedied by [any person on whom the notice is served, require him], within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and*
 - (e) *contain such information (if any) as the Secretary of State may by regulations prescribe.*
- (3) *a leasehold valuation tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section[on a person] in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the [person], but a leasehold valuation tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.*
- (4) *In a case where—*
- (a) *a notice under this section has been served on the landlord, and*
 - (b) *his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.[...]*

S24 Appointment of manager by the court.

- (1) *A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—*
- (a) *such functions in connection with the management of the premises, or*
 - (b) *such functions of a receiver,*
- or both, as the court thinks fit.*
- (2) *A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—*
- (a) *where the court is satisfied—*
 - (i) *that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and*
 - (iii) *that it is just and convenient to make the order in all the circumstances of the case; or*
 - (ab) *where the court is satisfied—*

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the court is satisfied—

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice); and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(b) where the court is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section "relevant person" means a person—

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) *The premises in respect of which an order is made under this section may, if the court thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.*

(4) *An order under this section may make provision with respect to-*

(a) *such matters relating to the exercise by the manager of his functions under the order, and*

(b) *such incidental or ancillary matters,*

as the court thinks fit; and, on any subsequent application made for the purpose by the manager, the court may give him directions with respect to any such matters.

(5) *Without prejudice to the generality of subsection (4), an order under this section may provide—*

(a) *for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;*

(b) *for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;*

(c) *for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;*

(d) *for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.*

(6) *Any such order may be granted subject to such conditions as the court thinks fit, and in particular its operation may be suspended on terms fixed by the court.*

(7) *In a case where an application for an order under this section was preceded by the service of a notice under section 22, the court may, if it thinks fit, make such an order notwithstanding—*

(a) *that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or*

(b) *that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).*

- (8) *The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.*
- (9) *A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the court may by order direct that the entry shall be cancelled.*
- (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.*
- (10) *An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.*
- (11) *References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.[...]*

THE DECISION

56. The Application made to the Tribunal is for an appointment of a Manager. If the Tribunal determines that, on the basis of the Application, and the submissions of the Applicant, it is just and convenient to appoint a manager the Application is for the appointment of a Manager in respect of the same Property referred to in the Original Order. The Tribunal has therefore also considered whether if an order is made it should in some way be limited with regard to the extent of the property which the Manager should manage.
57. The criteria for the appointment of a Manager are contained in Section 24 of the Act. Under Section 24(1) of the Act the LVT may appoint a manager to carry out in relation to any premises to which this part of the Act applies (and this is Part II of the Act) such functions in connection with the management of the premises (sic) or such functions of a receiver as the Tribunal thinks fit.
58. The Tribunal determines that on the basis of the Section 22 Notice and the grounds set out therein none of which have not been substantially refuted by the Respondent it is satisfied that it is just and convenient in accordance with section 24 (2) (b) to make an appointment of a manager to manage the Property.
59. The Property set out in the Section 22 Notice is the Property coloured purple blue and pink on the Plan annexed and a copy of which is annexed to the Order (which is also annexed). In paragraph 34 of the Court of Appeal decision *Mummery L. J.* stated that “the practical purpose of Part II is to protect the interests of lessees of premises, which form part of a building, by enabling them to secure, through the flexible discretionary machinery of the

appointment of a manager, the carrying out of the management functions which they are entitled to enjoy "in relation to" the premises of which their flats are part. There is nothing in the language of Part II or in its aim to justify limiting a manager's function to those which must be carried out on "the premises to which the Act applies"

60. Mr Adams submissions that the Property to which any order should apply should be limited to a narrow definition which he claimed was in accordance with the Act did not make sense to the Tribunal. If it accepted his argument, the property the subject of this application, theoretically and in accordance with Mr. Adam's interpretation of section 24(1) refers to the block within which the leaseholds are situate and the curtilages and the steps and paths leading thereto. In any order made by the LVT it may enlarge the premises; However according to Mr. Adams such enlargement cannot be other than premises to which Part II of the Act applies (and which is very narrow and can only be the ground below the leasehold block;) This is contrary to what was decided by both the Lands Tribunal and Court of Appeal. To accept such an interpretation would in the view of the Tribunal undermine the purpose of the Act. Mr. Denehan's suggestion that the actual purpose of section 24(1) of the Act was to establish the "locus standi" of an applicant (seeking to use the section) and who needs to be someone with a leasehold interest in a flat forming part of a block was preferred. His interpretation of this section of the Act will enable a qualifying tenant to make an application to overcome hardship experienced in circumstances where there is an absence of management or a delinquent landlord or any of the other perceived evils which the legislation seeks to address. Such interpretation is consistent with the reasoning expressed by both the Lands Tribunal and the Court of Appeal and is accepted by the Tribunal.
61. Having regard to section 25(3) of the Act which makes it clear that the Property can be more extensive than that referred to in the section 22 Notice, coupled with the decision in *Maunder Taylor v. Blaquiére* [2003] 1EGLR 52, as authority that the Tribunal can make an order which gives a manger wider, and indeed different, management functions than those the Landlord would have under the lease, This is contrary to what Mr Adams had argued and stated in his summing up. The Tribunal found it difficult to reconcile the decision in this case and the fact that a Manager appointed by the Tribunal is entitled to be given management functions which are not necessarily the functions that are given to or retained by a Landlord under a lease with Mr, Adams submissions.
62. An appeal can only be made to both the Lands Tribunal and the Court of Appeal on a point of law. This seemed to the LVT to offer an explanation as to why both the Lands Tribunal and Court of Appeal determined "that if (and this was an "if" not an "as") the original order went too far the appropriate remedy was to apply to the LVT to vary that order.
63. The Application is for an order to be made on the same terms as the Original Order. The Respondent however has produced a draft order in a different form. It appeared to the Tribunal that a comparison of the Original Order, with the draft order produced by the Respondent's surveyor, revealed little agreement as to the terms of any new order that might be made, mainly on account of the fact that the Respondent's surveyor was seeking to limit the extent of the order by reference to the Respondent's preferred definition of

property which definition had not been accepted by either the Lands Tribunal or the Court of Appeal (and is not accepted by this Tribunal)

64. The Tribunal has noted that since the appointment of the current manager Mr. Woodhead the Property is apparently well maintained and managed and the Applicants wish the programme of works initiated by Mr. Woodhead to be completed. However evidence has been disclosed of some attempts have been made by or on behalf of the Respondent to obstruct the performance of the Managers duties and that there have been threats to disconnect services to the leaseholders and attempts to obstruct the transfer of leasehold interests and reference is also made to management costs listed in the accounts of the Respondent company (although it has not been suggested that any attempt has been made to pass on any costs listed in the accounts of Respondent to the Applicants).
65. The Tribunal accept that the evidence of neglect of the Soldier's Garden, which is not within the extent of the Property, reasonably demonstrates the lack of involvement of the Respondent.
66. The Application is therefore granted. The Order is attached. Martin Woodhead shall be required to provide the Tribunal with evidence of his indemnity insurance cover within 14 days of the date of this decision.
67. The Applicant also made an application under section 20C of the Landlord and Tenant Act 1985 that all or any of the costs incurred by the Landlord in connection with the proceedings before a court or leasehold valuation tribunal or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken in to account in determining the amount of any service charge payable by the tenant or other person or persons specified in the application. Both parties agreed that the Applicant's leases contained no provision enabling recovery of such costs as part of a service charge and therefore the application was not necessary. Having noted that there is a provision contained in the second schedule of the Deed of Easement and Covenant which enables the Respondent to recover costs incurred by it in bringing or defending any actions or other proceedings against or by any person whomsoever which may have been entered into by some of the Applicants and some or all of the freeholders who have supported (but are not party to this application) In so far as any attempt might be made by the Respondent to recover costs of these proceedings from the Applicants or other persons specified in the application (and taking into account the grounds specified by the Applicant in the Section 22 Notice) the Tribunal orders that the costs of these proceeding are not to be regarded as relevant costs to be taken into account in determining the amount of any service charged payable by the Applicant or any other person specified in this application.

Cindy A. Rai LLB
Chairman

A Member of the Leasehold Valuation Tribunal appointed by the Lord Chancellor

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



Case Number: CH1/15UB/LVM/2008/0001

In the matter of Section 24 of the Landlord and Tenant Act 1987

And in the matter of Cawsand Fort, Cawsand, Torpoint, Cornwall PL10 1PL

Applicant : Peter Fitch (No. 18) and others

Respondent : Cawsand Fort Management Company Limited

ORDER FOR THE APPOINTMENT OF MR. MARTIN WOODHEAD AS MANAGER

UPON hearing the evidence

IT IS ORDERED THAT

1. Mr. Martin Woodhead FRICS of Messrs. Drew Pearce, Chartered Surveyors, 14 Cathedral Close, Exeter, Devon EX1 1HA ("The Manager") be appointed for a period commencing on the 1st February 2009 and ending on the 31st October 2013 as the Manager of the Property pursuant to Section 24 of the Landlord and Tenant Act 1987, as amended by the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. The Manager shall manage the Property in accordance with:
 - a. The respective obligations of the Landlord and the Lessees under the Leases by which each of the flats within the Property are demised as supplemented by the Deeds of Easement and Covenant and in particular, without prejudice to the generality of the foregoing, with regard to the repair, decoration, provision of services to and the insurance of the Property and
 - b. The duties of a Manager as defined by and set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institute of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

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 - b. The duties of a Manager as defined by and set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institute of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

- c. The Programme set out below (the Programme”) PROVIDED ALWAYS the Manager shall be entitled to vary or depart from the Programme should the circumstances reasonably require him to do so.
3. The following powers are, without limitation to the generality of this Order, expressly conferred on the Manager:
 - a. The power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his powers and duties.
 - b. The power in his own name on behalf of the Landlord to bring, defend, or continue any action or other legal proceedings in connection with the Leases or the Property, but subject to applying for directions as provided for under paragraph 9 of this Order.
 - c. The power to receive, consider, refuse or grant or otherwise deal with applications for consents or licences and like matters as the Lessees may require under the terms of their Leases
 - d. the power to enforce the Landlord’s and the Lessee’s covenants under the Leases as supplemented by the deeds of easement and Covenant
4. The Lessees and their servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his duties and powers under this Order and shall not interfere with the exercise of any of his said duties and powers.
5. Details of the Programme are contained in the attached Programme of Work
6. The Manager shall receive all sums payable by way of service charges or otherwise arising under the said Leases
7. The Lessees shall pay into the Manager’s client account their proportionate share of any pre-estimate of the costs of the works inclusive of VAT and consultancy fees as may be demanded by the Manager in writing together with any further costs that the Manager may incur in discharging his functions under this Order. All such sums shall be paid within two weeks of the written demand by the Manager.
8. The Manager shall apply the payments of ground rent and other monies receivable by him first in the discharge of such sums as the landlord properly

requires in order to meet the expenditure involved in filing its annual return and preparing any documents necessary in connection therewith and shall apply the remaining amounts of ground rent and monies received by him (other than those representing his costs and expenses hereby specified in paragraph 13) towards the costs of the performance of the landlord's covenants contained in the leases for which he is responsible within the terms of this order and undertaking any other functions of management that it was envisaged that the landlord would undertake under the provisions of the Deeds of Easement and Covenant.

9. In the event that it is necessary for the Manager to commence legal proceedings for the recovery of sums due under this Order, or in the event that any proceedings are brought against the Manager, the Manager shall be at liberty to apply to the Tribunal for appropriate directions.
10. It is hereby stated that the Manager shall have no obligation under this Order to enter into any financial expenditure unless he is fully in funds to discharge the obligations.
11. All the Lessees are ordered to provide the Manager and such contractors, consultants and agents as he may retain, such access to their respective flats and the Property as may be reasonably required for the purposes of carrying out the Programme and the major works
12. The Manager shall maintain appropriate indemnity insurance for the duration of his appointment and shall file evidence of such insurance with the Tribunal within 14 days of the date of this Order.
13. The Manager shall be entitled to the following remuneration (which shall be recoverable as part of the service charges) namely:
 - a. A basic annual fee of £120 per leasehold unit plus VAT plus reasonable out of pocket expenses to a maximum of £100 per annum, payable half yearly in arrears at 31 May and 30 November in each year during his appointment for performing the duties set out in paragraph 2.5 of the Code and
 - b. In the case of any new works , for the initial inspection and preparation of a maintenance report £1500 plus VAT for further Building Surveying services, in connection with the maintenance of the buildings and

grounds, fees based on the time expended on the work at the rate of £75 per hour plus reasonable out of pocket expenses plus VAT

- c. Costs and incidental expenses shall be included as an overhead charge in the basic annual fee specified in sub paragraph (a) above.
14. The Manager shall make arrangements for the insurance of the building forthwith.
15. The Manager shall be entitled to seek professional advice where appropriate and as is permitted under the terms of the Leases and the Deeds of Easement and Covenant
16. During the period of his appointment the Manager shall comply with all statutory requirements, within the Landlord and Tenant Act 1985 and the Act, as amended by the Commonhold and Leasehold Reform Act, and the Code and in particular:
 - a. Review the insurance of the Property, obtain quotations and arrange appropriate cover
 - b. Prepare an annual service charge budget which may include (if required) sinking fund contributions
 - c. Recover the agreed service charges from the Lessees
 - d. Prepare a maintenance plan of the repair and decorative condition of the exterior of the building and common parts of the Property
 - e. Deal expeditiously with routine repairs
 - f. In connection with the sale of individual flats liaise as necessary with the lessees, their purchasers and their respective solicitors as required
 - g. Maintain current and deposit accounts for any reserve or sinking fund and account to the Lessees periodically for monies raised and expended.
17. This Order shall commence on the 1st February 2009 and shall remain in force for a period of 4 years and 9 months until the 31st October 2013 or until it is varied or revoked by a further Order of the Tribunal
18. This Order shall be protected by the entry by the Manager of a restriction in the registers of the freehold title to the Property at the Land Registry in accordance with Section 24(8) of the Act

Cindy A. Rai LLB

Chairman

A member of the Leasehold Valuation Tribunal appointed by the Lord Chancellor

Dated 10th November 2008

Programme of Work

Programme of work on appointment of Manager by a Leasehold Valuation Tribunal

1. Scope of Duties

- 1.1. The Manager will be responsible for advising the lessees on their responsibilities under the Leases and the Deeds of Easement and Covenants, and for budgeting for and collection of service charges payable by the Lessees. All budgets will be discussed and will be subject to the approval of the Lessees when collected the service charges will be paid into a designated client account of the Manager's firm which will in due course, be subject to examination and audit by the Royal Institution of Chartered Surveyors.
- 1.2. The Manager will convene and attend a maximum of 4 meetings of the Lessees per annum and will prepare agendas for such meetings and minutes of the business agreed.

2. Building Surveying Services

- 2.1. Within three months of his appointment the Manager will arrange for a Building Surveying partner of his firm to inspect the buildings and those parts of the Property which are the responsibility of the Landlord under the Leases and Deeds of Easement and Covenant to establish their condition and identify any works required
- 2.2. When the results of that inspection are established and any works needed identified the Manager will discuss the results with the Lessees in order to update the existing Programme of Works
- 2.3. The Manager will thereafter through his Building Surveyor Partner arrange for quotations to be obtained for any works required, and will obtain the Lessees approval to such expenditure and supervise any works undertaken

3. Generally

- 3.1. The Manager will liaise where necessary at all times with the Lessees and other interested parties and will be available for consultation on any matters relating to the management of the Property
- 3.2. It is agreed that either party may terminate the agreement upon giving the other a minimum of six months prior written notice.
- 3.3. Any dispute between the parties on the interpretation of the agreement shall be referred to an arbitrator appointment in the absence of agreement by the President for the time being of the Devon and Exeter Law Society.
- 3.4. The responsibilities and duties of the Manager shall incorporate the service Charge, Residential Management Code of the Royal Institution of Chartered Surveyors

4. Scheme of Management

- 4.1. The Manager shall be responsible for preparing a Scheme of Management relating to the maintenance, upkeep and management of the amenity land referred to in the first schedule of the Deed of Easement and Covenant and in particular the maintenance of the trees and shrubs situated therein
- 4.2. The Manager shall be responsible for the maintenance, repair and renewal (as appropriate) of the walls, fences and railings within the boundaries of the amenity land and any other walls or fences which may hereafter be erected within the amenity land.
- 4.3. The Manager shall be responsible for organising the maintenance, repair and renewal of any lamps, footpaths, roads, foul sewers, sewage disposal units, surface water drains or other facilities on the amenity land which are not adopted by any public authority.
- 4.4. The Manager shall keep insured the land and buildings including all third party claims resulting from the use of the amenity land.
- 4.5. The occupation of some parts of the Mound by Bats and preservation of their habitat should also form part of the Manager's functions
- 4.6. The Manager shall take into account all statutory responsibilities regarding the Ancient Monument status of the Property.

Cindy A. Rai LLB
Chairman

A member of the Leasehold Valuation Tribunal appointed by the Lord Chancellor
Dated 10th November 2008