

18102



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

**Case reference** : LON/00AG/LAM/2018/0017

**Property** : 24 Highgate West Hill, London N6  
6NP

**Applicant** : Ms. J. Selby  
Ms. R. Renner (1)  
Ms. R. Stratton (2)

**Representative** : In person

**Respondent** : Ms. L. V. Chamberlain (3)  
Mr. P. Seifter. (4)

**Representative** : In person

**Type of application** : Application under S.24(9)  
Landlord & Tenant Act 1985 for the  
Variation of a Management Order.

**Tribunal member(s)** : Ms. A. Hamilton-Farey

**Date and venue of  
hearing** : On the papers 6 December 2018.

**Date of decision** : 6 December 2018.

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal is satisfied that the existing management order that appointed Ms. Mary-Anne Bowring of Ringley Limited on 8 September 2018 and which expires on 9 December 2018, should be extended for a further period of three years.
- (2) The tribunal determines that the existing Order, as appended to this decision, should therefore continue the same basis as previously, and shall expire, unless extended further on 9 December 2021.

## **The application**

1. The applicants are two of the four-joint freeholders of the property. The respondents are the other two joint-freeholders. Ms. Selby together with the joint-freeholders are leaseholders of flats in the building.
2. By an application under 24(9) of the Landlord & Tenant Act 1987, the applicants seek an extension of the existing Management Order that appointed Ms. Mary-Anne Bowring of Ringley Limited, that Order expires on 9 December 2018. This application therefore requires urgent determination.
3. Directions were issued by the tribunal on 26 October 2018 that provided for the parties to supply any supporting documentation in relation to the variation of the order.
4. Statements and documents have been received on the part of the applicants.
5. The respondents have written to the tribunal to confirm that, in their view, the property requires an external manager, and they support the application. The respondents have suggested that the Order continue indefinitely until either the current manager wishes to resign from the appointment, or one of the parties seeks the appointment of a different manager. The tribunal is not minded to make such a variation to the existing Order and considers that it is appropriate for the applicants to return to the tribunal before the expiry of the existing Order to confirm their satisfaction with the arrangements. The extension is therefore granted for three years.
6. Both parties confirm that a manager is required to managing this building. The applicants are satisfied with the progress made by Ms. Bowring since her appointment and they consider that further improvements will be made during the extended period of management.

7. The respondents have not made any comment regarding the actual manager, and this tribunal therefore considers that they are too satisfied with the progress made in relation to the management of the building.
8. The respondents have also said that they do not agree with the reasoning given by the applicants in their application for the extension, and are concerned that, over time, through repetition and accumulation of accusations to the tribunal a false narrative is being developed and they strongly object to that practice.
9. The tribunal has noted the respondents' comments, and it may be that when the next application for variation of the Order is made, the tribunal will hold a hearing at which the parties may make submissions in relation to these concerns.

**Fees:**

10. The respondents oppose any award of reimbursement of fees in relation to the application, and say that it might have been possible, given their agreement to the variation of the Order, for a Consent Order to be jointly made to the tribunal and save the cost of the application.
11. The tribunal is aware that there have been communication problems in the past between the parties and it considers it reasonable for the applicants to have made the application. However, the tribunal does not consider in this instance, that any reimbursement of fees should be made to the applicants by either the respondents or the manager, and therefore no Order is made.
12. In addition, it does not appear that any of the freeholders wish to claim costs against the service charge of the building. In the event that they may wish to, the Tribunal makes an Order under S.20c of the Landlord & Tenant Act 1985 whereby the landlords may not recover any costs of these proceedings under the service charge provisions of the lease(s).

**Other:**

13. The Manager shall have liberty to apply to the tribunal for further directions if required.
14. The parties are reminded that any application for variation of the current Order should be made at least three months before the 9 December 2021. The tribunal cannot vary an Order that has expired.

**Name:** Ms. A. Hamilton-Farey      **Date:** 6 December 2018.

## **Rights of appeal**

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

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

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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



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

**CASE REFERENCE : LON/00AG/LVM/2016/0010**

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**VARIATION OF ORDER OF THE TRIBUNAL DATED 9 NOVEMBER 2015 FOR  
THE APPOINTMENT OF MANAGER  
Section 24(9) of the Landlord and Tenant Act 1987**

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IT IS ORDERED THAT:

1. **Mary-Anne Bowring** of Ringley Ltd Chartered Surveyors (“the Manager”) shall replace Mr Darren Powell (“the previous manager”) and be appointed manager of 24 HIGHGATE WESTHILL, LONDON N6 6NP for the remaining period of the order, that is until 10 December 2018, on the following terms.
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. In accordance with the duties of a manager set out in the Service Charges Residential Management Code (“the Code”) from time to time 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;
  - c. The Schedule of functions and services set out below.
3. Without prejudice to the generality of clause 2 above:
  - a. She shall, within one calendar month of the date of this order, or such earlier date, unless already done by the previous manager, arrange for a suitably qualified surveyor to attend the property to prepare a schedule of the works that need to be carried out in order to comply with the landlords’ repairing obligations. The instructions to the surveyor shall include copies of all three leases and state that the

works to be included in the schedule are all and only those that are necessary and which the landlord is obliged to carry out under the terms of the leases and the surveyor is to advise on the nature of the works, the sequencing of the works, whether the works should be carried out under a single contract or phased and provide reasonable cost estimates against which reserve fund demands can be calculated.

- b. She shall take due note of the Asbestos, Health and Safety and CAPEX reports already obtained by the previous manager and shall provide them to the surveyor.
  - c. She shall arrange for the consultation procedure under s.20 of the Landlord and Tenant Act 1985 to be complied with in full and promptly, and for the schedule of works referred to in sub-paragraph (a) above to be attached to the initial Notice of Intention to Carry Out Major Works.
  - d. She shall arrange for the works to be carried out with all dispatch following completion of the consultation process.
  - e. As soon as the surveyor has produced reasonable estimates/survey as above and providing that the surveyor considers urgent works are needed and should not wait for inclusion in the main contract, she can collect £3,000 + VAT for the urgent health and safety works and shall not be bound to wait until the dates in the leases to issue these demands.
4. She shall prepare a statement showing the opening balance at the time of appointment of Mr Powell and the service charge end of year accounts as at 28/09/2016. Once these statements have been sent to the lessees she can collect the 25<sup>th</sup> March 2016 demand to discharge costs already incurred.
  5. 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 in the proportions agreed by the parties: Garden Flat 26.4%, Ground + First Floor Flat 32.1%, Upper flat 41.5%. If she appoints an Accountant the accountancy fees shall be an allowable service charge expense but the cost thereof to be capped at £500 + VAT.
  6. Subject to obtaining reasonable budget estimates, she shall be able to collect, in accordance with service charge collection on date 25 March and 29 September, funds of a reserve (to be treated as the "sinking fund") and hold funds in trust of the Lessees from year to year until spent.
  7. She shall manage the property fairly, impartially and in accordance with the terms of the leases.

8. She shall not subcontract or employ any of the leaseholders to provide any service or carry out any work in respect of the property.
9. She will receive all sums whether insurance premiums, payment of service charges or otherwise arising under the said leases, but *not* ground rent.
10. She shall collect insurance premiums as part of the service charge budget, not after the Landlord has expended the premium (page 2, clause 1(b) of the lease).
11. She will make arrangements for the present insurers of the building to make any payments under the insurance policy presently effected by the landlords to her as manager.
12. 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 £1,750 plus VAT for 2017 to include the services set out in the Service Charge Residential Management Code published by the RICS. In subsequent years this fee may be increased by 5%.
  - b. £750 + VAT for the surveyor's costs in producing the specification of the works ( see 3. a above) to qualify what needs to be done, and £750 + VAT for tender analysis
  - c. For Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) a charge of 12 – 15 % of the cost. This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
  - d. Any additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
13. She shall have the power in her own name or on behalf of the Freeholders to bring or defend any legal action or other legal proceedings in connection with the leases or the property and to make any arrangements or compromise on behalf of the Freeholders including but not limited to:
  - a. proceedings against any lessee in respect of arrears of service charges or other monies due under the leases;
  - b. legal action to determine that a breach of covenant has accrued;
  - c. legal action to prevent a further breach of covenant.
14. The Manager shall have the power to recover any service charge arrears owed by any lessee.

15. From the date of the appointment and throughout the appointment the Manager shall ensure that she has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property or the Tribunal.
16. That no later than four weeks after the date of this order the previous manager shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities including apportionment of initial annual fee paid by lessees to the Manager.
17. By no later than 1 May 2017 the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date (copied to the lessees).
18. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
19. The manager will have liberty to apply to the Tribunal for further directions if so required.
20. If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.

Judge Barran

8 September 2016



## **SCHEDULE OF FUNCTIONS AND SERVICES**

### **Insurance**

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

### **Service charge**

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) Set Demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment other than ground rent due from the lessees.
- (iii) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

### **Accounts**

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

### **Maintenance**

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

### **Complaints procedure**

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