



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

Case Reference : **MAN/OOBN/LAM/2018/0001**

Property : **The Princeton 22 Estate
Bold Street & Chichester Road South
Hulme
Manchester M15 5QQ**

Applicants : **Various leaseholders as listed**

Represented by : **Mr A Milne and Mr D George**

Respondent : **FirstPort Property Services Limited**

Type of Application : **Landlord and Tenant Act 1987 – Section 24(1)**

Tribunal Member : **Mr J. Platt FRICS, FIRPM (Valuer Chairman)
Mrs E. Scull MRICS**

Date : **17 June 2019**

DECISION

Application

1. By application dated 28 February 2018, 17 leaseholders at the Property seek the appointment of Mrs Pauline Jones as Manager of the Property.
2. The Applicant leaseholders, who make up 77% of leaseholders at the Property, are listed in Appendix 1.

Introduction

3. Princeton 22 is a development of 22 leasehold properties comprising 2-28 (Even) Chichester Road South, Hulme, Manchester M15 5QQ and 1-11 (Odd) and 15 and 17 Bold Street, Hulme, Manchester M15 5QR ("the Property"). The Property comprises two blocks of 8 flats with 6 three-storey town houses between.
4. All 22 properties are subject to tri-partite residential underleases, made between "the Landlord", Proxima GR Properties Ltd ("Proxima"), "the Manager", FirstPort Property Services Ltd ("FirstPort") and the lessees.
5. In general terms, the Manager has covenanted to take a management lease of the common parts from the Landlord and to fulfill the Landlords covenants under the underleases.

Background

6. Since August 2013, there have been a number of previous Tribunal applications and Orders under Section 24(1) of the Landlord & Tenant Act 1987 ("the Act"), which form relevant background to the subject Application.
7. By way of an Order dated 13 August 2013 the Tribunal appointed Mr Ian Magenis of Scanlan Property Management LLP for a 3 year term. This Tribunal has not had sight of that Order but was advised by Miss Ackerley (during summing up) that the Order was made with the consent of FirstPort and not following findings of fault.
8. By way of an Order dated 14 August 2014, upon application by a number of leaseholders and with Mr Magenis' consent, the 2013 Order was varied; substituting Mr Anand Patel of Revolution Property Management as the Manager from 1 September 2014 until 31 August 2016.
9. On 13 June 2016, Mr Patel applied to the Tribunal to extend the Order but subsequently sought permission to withdraw due to leaseholders' dissatisfaction. The Tribunal directed that he remain as Manager until further Order.

10. On 22 September 2016, a number of leaseholders made an application, seeking to replace Mr Patel with Mr Daniel Pollard of Reality Management and to extend the Order by 12 months.
11. Subsequently, Mr Pollard's nomination was removed by the applicants and following their failure to nominate any alternative Nominee, on 19 December 2016 the application was struck out by the Tribunal and the Order discharged.
12. Following discharge of the Order, FirstPort took over the management (as Manager under the underleases) of the Property on 1 January 2017.
13. On 16 January 2017, the Applicants applied to the Tribunal for the application of 22 September 2016 to be reinstated or for permission to appeal the decision to strike out. Both requests were refused by the Tribunal on 20 January 2017.

Section 22 Preliminary Notice

14. On 21 January 2018, the Applicants served a Preliminary Notice on FirstPort under Section 22 of the Act.
15. The Preliminary Notice listed all four grounds under Section 24 of the Act, namely (in summary):
 - That FirstPort are in breach of obligations owed to the tenants under their leases
 - That FirstPort has demanded and propose to demand unreasonable service charges
 - That FirstPort are in breach of a recognised Code of Practice
 - Other circumstances exist which make it just and convenient for the appointment of a manager
16. The Preliminary Notice stated (in summary) that the matters relied on by the tenants for the purposes of establishing the grounds are:
 - For more than 12 months FirstPort have neglected to manage the Princeton 22 Estate
17. The Preliminary Notice did not specify the steps FirstPort was required to take to rectify the matters relied upon, nor did it specify a reasonable period within which to do so. The Notice stated:
 - Since the matters relied upon (which include the last twelve months) are in the past, the matters in question are not capable of remedy.

18. The Preliminary Notice went on to say the tenants would consider withdrawing the Preliminary Notice if FirstPort responded to detailed points within paragraph 10. It is not necessary to reproduce all those points within this decision, but they primarily demanded that FirstPort produce specified information.

Directions and Case Management

19. Initial Directions were issued by the Tribunal on 16 April 2018. Following receipt of various correspondence from the parties, a case management hearing was held on 19 June 2018 with further Directions issued on 25 June 2018. Those Directions were in the usual form, requiring the Applicants to provide supporting documentation (including the Section 22 Notice) and a witness statement of the proposed manager and requiring the parties to exchange statements of case.
20. The supporting documentation was provided by the Applicants and statements and witness evidence were exchanged, in compliance with the Directions.
21. The Tribunal continued to receive various correspondence from the parties and requests for further Directions or further information. A number of additional Directions were either issued or refused in response to these requests. A hearing was eventually listed for 13 December 2018.
22. On 4 November 2018 the Applicants requested a Direction that the parties produce a table of issues in dispute to help narrow down the issues at the hearing. The parties were advised by email on 30 November 2018 that the Tribunal agreed with the request and directed that the said tables should be produced, exchanged between the parties and provided to the Tribunal within 7 days.
23. On 6 December 2018, four copies of a schedule of issues in dispute was received by post from FirstPort with a covering letter confirming service upon the Applicants.
24. On 4 December 2018 an application for a 28 day stay in the hearing was received from FirstPort. The application pointed out that the applicants, representing 77% of leaseholders, were in a position to invoke the contractual entitlement within their occupational leases, to permanently transfer management away from FirstPort to a Nominee. FirstPort advised that they had made a proposal to facilitate such a permanent hand over to the Applicants in October 2018 but the Applicants had responded on 4 November 2018 that such a transfer of management would simply not be “workable, viable or attainable”. The application advised that FirstPort had sought clarification from the Applicants as to why a transfer would not be viable, but no further response had been forthcoming. FirstPort, therefore,

sought a stay in the hearing to ensure that the Applicants had sufficient time to consider these options as FirstPort considered their proposal renders the application unnecessary. By email dated 5 December 2018, the Applicants objected to a stay in the proceedings and an adjournment of the hearing.

25. On 7 December 2018, the Tribunal issued further Directions staying the proceedings until 7 January 2018 to:

“allow the parties further time to fully explore the possibility of agreeing a permanent alternative arrangement for the ongoing management of The Princeton 22 Estate, without a need for intervention of the Tribunal.”

26. On 5 January 2019 further correspondence was received by the Tribunal from the Applicants, objecting to the stay that had been granted on 7 December 2018 and advising that a hearing was still required. Although being some 34 numbered paragraphs in length, the correspondence gave no information on how a contractual transfer of management had been further considered nor any further information as to why such a transfer was not workable, viable or attainable. FirstPort also confirmed, by letter dated 8 January 2019, that they had contacted the Applicants on 10th and 21st December 2018 to invite them once more to discuss the prospect of agreeing a permanent alternative arrangement but no response had been received and:

“the Respondent therefore considers that the contractual transfer of management remains unexplored by the Applicants.”

27. As the parties had clearly not been able to resolve the issues between them, a hearing was arranged for 21 May 2019.

The Evidence

28. In accordance with the Directions of 19 June 2018, FirstPort submitted a response to the application and Section 22 Notice. This included a statement of case and witness statement of the then Property Manager, Andrew Goulden. Appended to this witness statement were (inter alia): copies of property inspection reports, audited accounts for 2017-18 and a budget estimate for 2018-19, a report on the condition of the roofs produced in 2017, fire risk assessment and health & safety risk assessment.
29. In response, the Applicants submitted their own statement of case and witness evidence of Mr Milne, Mr Sanghera and Mr George. These highlighted a number of management issues; some of which had been ongoing for a significant period of time (even before FirstPort’s period of management). In very general terms the witness evidence highlighted (inter alia):

- Ongoing problems with roof leaks particularly into Mr Sanghera's property
- Lack of flat roof clearance
- Poor standards of cleaning and grounds maintenance
- Ongoing problems with the automated vehicle gates
- Issues with the front house gate
- Out of date battery operated smoke detectors in communal areas
- Lack of working communal lights
- Lack of maintenance to balconies and front door canopies
- Unwashed brickwork
- Poor standard of paintwork
- Abandoned bike in communal areas
- Fly tipping in car ports

In addition, the evidence focused on the lack of effective communication from and with FirstPort and highlighted a few specific instances (where FirstPort also provided counter evidence) relating to the erection of scaffolding for a prolonged period of time, lack of access for high level access equipment via automated gate and due to car park not being cleared. The Applicants also provided history of roof repair (attempts) and evidence that they do not fully concur with FirstPort's history of repairs being undertaken.

30. Mrs Pauline Jones provided a witness statement as the Nominee manager.

31. FirstPort subsequently sought and was granted permission on 15 January 2019, to lodge a witness statement of Mr G Cox. FirstPort explained that Mr Andrew Goulden had left the company and that Mr Cox had taken over responsibility for management of the Property.

32. On 11 February 2019, the Applicants requested the Tribunal strike out the witness evidence of Mr Cox and bar either Mr Cox or FirstPort from taking any further part in the proceedings. That request was refused on 21 February 2019 for the following stated reasons:

“The Applicants will have an opportunity to cross examine Mr Cox and make submissions on his evidence at the hearing. The Tribunal will consider all the evidence received in determining (inter alia) whether the Respondent:

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

And, whether:

it is just and convenient to make the order in all the circumstances

In considering the above issues, the Tribunal is likely to be assisted by the evidence of Mr Cox, as a current employee of the Respondent, with regard to the current management of the premises in question.”

The Law

33. The Law is set out in Appendix 2.

The Hearing

34. A hearing was convened at the Tribunal Services in Manchester on 21 May 2019. The Applicants were represented by Mr Milne. Mr Sanghera and Mr George attended as witnesses. Mrs P Jones attended as Nominee manager. The Respondent (FirstPort) was represented by Miss Ackerley of counsel. Mr Cox and Mr Ousey attended as witnesses.

35. Firstly, the Tribunal needed to establish that they had jurisdiction in accordance with Section 21 of the Act. The Tribunal determined that the Property consisted of flats within the definition set out in the Act and an application could properly be made. The Tribunal noted, however, that the Application had been made by tenants of both flats and houses. The Tribunal advised that the tenants (leaseholders) of the houses could not properly be Applicants in accordance with the Act because the houses did not fit the definition of flats within the Act. In the opinion of the Tribunal, this is of limited practical consequence because one or more tenants can make an application and there is no threshold requirement. Mr Sanghera and Mr George were advised that they could still attend the hearing and could still present evidence on behalf of the Applicants.

36. A revised list of eligible Applicants is detailed within Appendix 1.

37. Secondly, the Tribunal needed to establish if a compliant Preliminary Notice had been served in accordance with Section 22 of the Act and, if so, whether the grounds specified within the Preliminary Notice had been established.

38. Miss Ackerley relied on paras 12 and 13 of FirstPort’s statement of case in asserting that the Preliminary Notice was not a valid notice in accordance with the Act and that the grounds expressed within the Preliminary Notice had not been established.

39. In response, Mr Milne asserted that the Preliminary Notice was a valid notice which adequately laid out the grounds under which the Applicants

sought the appointment of a manager. He denied that it was primarily intended to produce the disclosure of information for the purposes of making the Section 24 application. He was invited by the Tribunal to consider, with the benefit of FirstPort's subsequent statement of case and witness evidence, if the Applicants case was still that FirstPort had provided no management services to the Property and he asserted that was still the Applicants' case. He also asserted it was the Applicants' case that, having provided no management services at all, any demands for service charges were unreasonable.

40. Under Section 22 of the Act, the Preliminary Notice must be served 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.*

The only copy Preliminary Notice provided in evidence was addressed to and served on FirstPort as Manager under the lease. The Tribunal asked Mr Milne who the Preliminary Notice had been served on and he confirmed that a copy of the same notice had been sent to Proxima (as Landlord). The Tribunal asked if he had a copy of the Proxima notice available for the Tribunal. Mr Milne responded that he was surprised that Section 22 issues were being raised at the hearing and he had not come prepared to respond to them. He had assumed that any issues relating to Section 22 would have been addressed as preliminary issues prior to the hearing. The Tribunal advised that the hearing was the only substantive hearing of the Application and the Tribunal needed to have regard to all the relevant statute (primarily, S21-24 of the Act) to establish if grounds had been established to enable the Tribunal to consider making an order.

41. The Tribunal advised that, having regard to FirstPort's evidence, they had concerns about the Section 22 Preliminary Notice which they would need to take a view on during deliberations.

42. In view of the time that had elapsed since the Preliminary Notice was served in January 2018 and a lack of matters to be relied upon being detailed therein, the Tribunal stated a wish to initially concentrate on the more up to date position as detailed within the schedule of outstanding issues produced in November 2018 (referred to as Scott Schedule for ease). Mr Milne advised that he had never seen the document.

43. The Tribunal had assumed that the Scott Schedule had been put together initially by the Applicants and completed by the Respondent; especially as permission to produce the schedule was granted at the Applicants' request on 4 November 2018. The Tribunal's understanding had been stated within the reasoned Directions issued on 21 February 2019:

Both parties have contributed to a comprehensive schedule of outstanding issues prepared by the Applicants.

Miss Ackerley advised that the schedule had been produced entirely by the Respondent who had summarised the Applicants' position from their statement of case and witness evidence and had added their own response as to current position and management plan going forwards; the content had not been agreed by the Applicants. It was not known, however, why the Applicants had not received a copy.

44. Further analysis of the Scott Schedule was, therefore, put on hold pending copies being produced for the Applicants to consider during an adjournment. Mr Milne requested that the hearing should also consider the details of outstanding issues contained within the Applicants' statement of case. The Tribunal advised that it would consider all relevant documents but once Mr Milne had had chance to review the Scott Schedule he would note that it largely reflected the Applicants' stated positions and therefore the Tribunal considered it to be a good starting point; especially as the positions of FirstPort detailed within the Scott Schedule had also been elaborated upon within the witness evidence of Mr Cox.
45. Whilst copies were being obtained, the Tribunal requested an update from Mr Milne on the Applicants' considerations of enforcing their contractual rights under para 7.10 of the lease:

"If after the elapse of Five (5) years following the sale and purchase of the last Dwelling the obligations of the Manger under the terms and conditions of the plot leases of the Dwellings shall be required by a majority of not less than 75% of the lessees thereof (on the basis of one vote per Dwelling) to be undertaken other than by the Manager or its managing agent then the Manager as soon as shall be reasonably practicable procure that its successor ("the Nominee") shall undertake the management of the Maintained Property and shall transfer to the Nominee the Management Lease firstly for the consideration of One pound (£1.00) and secondly in return for all the reasonable and proper costs and disbursements incurred by the Manager in any such transfer and such transfer shall contain a covenant on the part of the Nominee to perform all the covenants on the part of the Manager herein contained and to indemnify the Manager against all costs actions claims and demands made against the Manager in respect of any breach non-performance of non-observance of such covenants."

Mr Milne advised that consideration had ceased in October 2018 and FirstPort had been made aware of this on 5 November 2018.

46. The hearing planned for 13 December 2018 had been stayed by the Tribunal following representations from the Respondent that the contractual opportunity rendered the Application unnecessary. The Tribunal's Directions of 7 December 2018 stated that the hearing be stayed for one discrete reason, namely to:

“allow the parties further time to fully explore the possibility of agreeing a permanent alternative arrangement for the ongoing management of The Princeton 22 Estate, without a need for intervention of the Tribunal.”

Despite both of these facts, the Applicants had not considered it necessary to give any further consideration to the opportunity.

47. Mr Milne expressed his surprise that the matter was being raised at the Hearing as he had not interpreted the Tribunal's Directions as implying that the Tribunal would wish to explore the issue further. He advised that the contractual opportunity had been considered by the Applicants over the years and a Residents' Management Company had been established in 2012 with a view to taking over the management of the Property but it was not a “workable, viable or attainable” solution. The Tribunal asked Mr Milne why that was the case and he was either unable or willing to provide any further clarity simply repeating that it was “not a workable, viable or attainable solution”.

48. The Tribunal explained the purpose of Section 24 and the requirement under all of the grounds that it may only make an Order for the Appointment of a Manager:

where the tribunal is satisfied that it is just and convenient to make the order in all the circumstances of the case

The Tribunal explained that they would, therefore, like Mr Milne's view as to why the Tribunal should consider it just and convenient to make an Order and appoint an Officer of the Tribunal to manage the Property, in circumstances where the Applicants have a contractual right to provide their own Nominee directly to the Respondent and the Respondent has already offered to assist with the process.

49. Mr Milne was again unable or unwilling to elaborate on his position that it was “not a workable, viable or attainable solution”.

50. The Tribunal, therefore, adjourned the hearing at 12.30 for one hour to enable the Applicants to fully consider the contents of the Scott Schedule. One copy of the Scott Schedule was provided at that time to Mr Milne and a further 3 copies, together with copies of the Tribunal's email of 30 November 2018 and FirstPort's covering letter of 6 December 2018, were provided approximately 15 minutes later.

51. When the hearing reconvened (approx. 13.40) the parties advised that they had engaged in meaningful and promising discussions and requested additional time to fully explore the options further. The Tribunal therefore adjourned again and reconvened at 14.30.
52. When the hearing reconvened at 14.30, Mr Milne was later into the room than everybody else. During his absence Miss Ackerley advised that the parties were potentially close to agreement but the Tribunal could probably assist (on Mr Milne's return) with clarifying some aspects of the lease. When Mr Milne returned he took a different approach, however, immediately advising that he did not consider he had any remit from his fellow Applicants and that he could not continue with any discussions until he had had that opportunity. He had a brief conversation with Mr George (seemingly about Mr George taking over the case) and then requested that the hearing be adjourned to enable him to engage with all fellow Applicants.
53. The Tribunal advised that it was minded to dispose of the Application within the one day and that it did not consider an adjournment to be necessary because the Applicants could continue to consider their contractual options at a later date, whether the Tribunal granted the Order or not. The request for an adjournment was refused.
54. The Tribunal, therefore, proposed to continue by considering the issues as detailed in the Scott Schedule and asked Mr Milne if he had now read it. He replied that he had not read it. The Tribunal (being mindful they had just returned from a 2 hour adjournment to enable Mr Milne to read the Scott Schedule, which was only a short document reflecting the parties' statements of case) advised they would go through the items one by one allowing Mr Milne enough time to read each point. Mr Milne asked if the Tribunal would determine it was not just and convenient to make the order irrespective of the subsequent discussions on the Scott Schedule. The Tribunal advised that no determination had yet been made and before considering whether it was just and convenient to make an Order, the Tribunal would wish to understand the current state of the Property; even if only to satisfy itself that the Property "was not falling to bits".
55. At this point and without any explanation, Mr Milne abruptly left the room and did not return.

56. The Hearing continued with Mr Sanghera and Mr George helpfully providing the Tribunal with evidence on all of the issues listed in the Scott Schedule and detailed within their respective witness statements (as listed at para 29 above). Mr Cox also elaborated on FirstPort's position relating to all of the issues; advising of the current position and future plans and offering to amend those future plans to reflect the discussions and the concerns expressed by Mr Sanghera and Mr George.
57. These discussions are referred to, both in general terms and in some detail, with the Deliberations section below and are not repeated here.

Deliberations and Decision

Section 22 Notice

58. Absent any definition of 'Landlord' within Part II of the 87 Act, the Tribunal interprets 22(1)(i) and (ii) as requiring notice to be served on the landlord with the immediate right to the reversion of the subject lease. Mr Milne did confirm verbally that a copy of the notice had been served on Proxima and the Tribunal had also forwarded a copy of the application to Proxima. In the absence of Proxima taking any stance on this point (or any part of the proceedings) the Tribunal accepts Mr Milne's evidence of service.
59. In the view of the Tribunal, the Preliminary Notice fails to adequately satisfy Sections 22 (2) (c) and (d) that
- (2) A notice under this section must—*
- (c) specify the grounds on which the tribunal 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*
60. The Preliminary Notice fails to particularise the matters that would be relied on for establishing the grounds and does not specify a reasonable period within which FirstPort is expected to take steps to remedy those matters.

61. The Tribunal largely agrees with FirstPort's case, that paragraph 10 of the notice:

“was merely an exercise by the Applicants to ‘uncover facts upon which to support the grounds that they identified therein pursuant to Section 24(2) of the Act, rather than attempting to set out themselves any facts that could establish in the first instance that those grounds existed.’”

62. Establishing whether the property is being managed appropriately and uncovering any such facts is more correctly undertaken by the appointment of a surveyor or accountant to undertake a management audit; it is not the purpose of the Section 22 Preliminary Notice.

63. In the alternative, if the Tenants' case remains, as Mr Milne confirmed during the hearing, that FirstPort had failed to provide any management services at all during 2017, that case is bound to fail for the reasons laid out at para 12(a) of FirstPort's statement of case. It is self-evident that (irrespective of the Tenants' frustrations) some management services had been provided, e.g.:

- FirstPort had kept books of account
- FirstPort had collected and chased service charge monies
- FirstPort had instructed and paid suppliers and contractors
- FirstPort had produced audited accounts for the period Aug 16 – Aug 17
- FirstPort had procured a Fire Risk Assessment and Health and Safety Risk Assessment

64. Having reached the above conclusions, the Tribunal, being mindful of their discretion under para 24(7) of the Act, considered that it was still appropriate to have regard to all of the issues detailed within the Scott Schedule to fully consider whether, having regard to the current and proposed level of services it would consider it 'fair and convenient' to appoint a manager.

65. The Tribunal is grateful for the evidence and assistance given by Mr Sanghera and Mr George on behalf of the Applicants, after the departure of Mr Milne. Their evidence was very helpful in providing the Tribunal with a 'picture' of the relationship between the parties and the level of services provided during 2017 and since.

66. It is clear to the Tribunal that the concerns and frustrations of the Applicants are not without foundation and Mr Sanghera (in particular) has genuine cause for concern about prolonged roof leaks into his property for several years. It is evident, however, that both FirstPort and previous managers have instructed contractors to undertake works to resolve the issues. Notwithstanding that, there are evidently still problems and the Tribunal was pleased to hear (and notes) Mr Cox's promise to commission a (new) specialist contractor to undertake investigations with a view to rectifying those problems.
67. Mr George summed up a number of the items within his witness statement very succinctly e.g window cleaning, grounds maintenance, wall, balconies etc by describing the Property as unkempt and a mess.
68. Mr Cox admitted in his evidence that the previous property manager had taken a reactive approach to management and communications between FirstPort and the Applicants were far from perfect. The Tribunal notes however that there may have been a number of contributing factors e.g.
- the Applicants were still engaged in Tribunal proceedings at the commencement of FirstPort's management in January 2017.
 - FirstPort's management commenced in the middle of a financial year and FirstPort (perfectly understandably) sought to manage within the constraints of the budget already set and service charges already demanded.
 - Communication is a two-way street and the Residents' Association do not appear to have assisted by reliance on a public forum, despite FirstPort's advice that they needed to be aware of the author of correspondence with whom they could correspond confidentially and doubt remains as to the 'recognised' status of the association.
 - The subject application has been ongoing for some considerable time. Management of the estate and interaction with and from residents has, to some degree, been in a state of limbo.
69. Mr Cox updated the Tribunal on current service provision at the estate and his management plan going forwards. For instance, new cleaners had recently been contracted for increased hours, the grounds maintenance contract had been adapted to cope with leaf fall, plans were now in place for replacing light bulbs and smoke detector batteries etc. Within the management plan going forwards, Mr Cox proposed to seek residents' permission to look at individual balcony conditions and proposed additional services, including protection from leaves for the automatic gates, ad hoc window cleaning etc. It is, however, noted that responsibility under the lease for maintaining the surface of balconies is not currently clear and does not form part of this determination.

70. The concerns and frustrations of Mr Sanghera and Mr George were not lost and were noted by the Tribunal. Some of the discussions focused on issues where the Applicants have yet to note any improvement in service. For example, Mr Sanghera highlighted that communal lighting was still not adequately maintained, and breaches of covenant were not being remedied. The Tribunal also noted Mr Cox's promise to attend to these items as a matter of urgency.
71. The Tribunal noted that Mr Cox's management plan and budget projections are very similar to those proposed by Mrs Jones. The Tribunal understands the skepticism expressed by Mr Sanghera and Mr George but also takes on board Mr Cox's evidence that he has recently taken over management functions for the Property and that he is keen to work pro-actively and collaboratively with the residents to establish the appropriate level of service provision.
72. The Tribunal notes that Mrs Jones is the fourth manager that the Tribunal has been requested to appoint under Section 24 since August 13 and the Applicants appear to have been dissatisfied with all previous nominees (as well as FirstPort). The Tribunal is concerned about the frequency of those applications and the prospect, if Mrs Jones is appointed, that further applications will be received in the future to extend any appointment. Appointment of a Manager is a solution of last resort and not a 'back door' alternative to the Right to Manage.
73. The Applicants also appear, in the past, to have misunderstood the effect of a manager being appointed by the Tribunal and the role of the Applicants thereafter. Mr Milne's email to FirstPort on 16 February 2016 states:

"we are the landlord and tenants' association for an estate in Manchester"

and

"Given the current agent's poor performance, our committee unanimously voted to sack them and we issued them and all parties with the attached notice on 5/1/16."

An appointed manager is an officer of the Tribunal and the appointment does not confer landlord status on the Applicants nor does it provide them with the ability to "hire and fire".

74. It is very clear that the Applicants desire a change of manager and appear to desire (and / or believe they previously had) a greater degree of management control. As the application is supported by 77% of leaseholders, they have the contractual ability to require FirstPort to transfer their management lease and management obligations to a Nominee, under clause 7.10 of the lease. The Tribunal is disappointed that, despite the hearing listed for 13th December 2018 having been stayed for no other reason except:

“to allow the parties further time to fully explore the possibility of agreeing a permanent alternative arrangement for the ongoing management of The Princeton 22 Estate, without a need for intervention of the Tribunal.”

no further consideration had been given to this (and other options proposed by FirstPort) by the Applicants since October 2018. Mr Milne’s only explanation was that the options were “not workable, viable or attainable”. He was unable or unwilling to provide the Tribunal with any explanations why this was the case and was unable or unwilling to provide any answer to why the Tribunal should consider it just and convenient to appoint an officer of the Tribunal to manage the estate when the Applicants had the contractual ability to require FirstPort to transfer those functions directly to their Nominee. FirstPort confirmed at the hearing that it has offered to assist in the process and offered to cover the legal costs incurred.

75. The Applicants have made the point, in their statement of case, that Tribunal appointments may be for an indefinite period of time and appear desirous of such ongoing appointments. “The Manager” has covenanted obligations to the leaseholders, the landlord and the superior landlord, under the lease. The Tribunal does not consider it appropriate (unless no other suitable option exists) for the management functions and control to sit with a party other than “the Manager” over the long term. It is not appropriate for “the Manager” to remain bound by those covenants without any means of ensuring they are complied with. It is entirely appropriate that the lease requires any Nominee to provide a covenant and indemnity to the Manager upon transfer.

76. Having regard to all of the above, the Tribunal conclude that it is not just and convenient to appoint a manager in response to the current application.

77. This aspect of the Tribunal’s determination was notified to the parties orally at the hearing.

Decision

78. The statutory requirements of a Preliminary Notice under Section 22 have not been adequately met.
79. The grounds advanced within the Preliminary Notice have not been established.
80. Irrespective of the above, the Tribunal does not consider it just and convenient to appoint a manager.
81. No order is issued

Judge J. Platt
17th June 2019

Appendix 1

Original list of Applicants

Sin Leong Yong	1 Bold Street
Gerard Maher	5 Bold Street
Garry & Janet Harrison	9 Bold Street
Maureen Hickey	11 Bold Street
Edward Kehoe	15 Bold Street
Maureen Hickey	17 Bold Street
C Barton & J Sanghera	2 Chichester Road South
David George	4 Chichester Road South
Sara Talai	8 Chichester Road South
David Hall	10 Chichester Road South
Gerard Maher	14 Chichester Road South
Elizabeth Murphy	16 Chichester Road South
David Hall	18 Chichester Road South
Andrew Milne	20 Chichester Road South
Paul Clinton	12 Chichester Road South
David Hall	24 Chichester Road South
Mark Treacy	26 Chichester Road South

List of eligible Applicants under Section 21 Landlord & Tenant Act 1987

Sin Leong Yong	1 Bold Street
Gerard Maher	5 Bold Street
Garry & Janet Harrison	9 Bold Street
Maureen Hickey	11 Bold Street
Edward Kehoe	15 Bold Street
Maureen Hickey	17 Bold Street
Gerard Maher	14 Chichester Road South
Elizabeth Murphy	16 Chichester Road South
David Hall	18 Chichester Road South
Andrew Milne	20 Chichester Road South
Paul Clinton	12 Chichester Road South
David Hall	24 Chichester Road South
Mark Treacy	26 Chichester Road South

Appendix 2

The Law

Landlord and Tenant Act 1987

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

21(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.

21(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.

.....

“Flat” is defined in section 60(1) as meaning a separate set of premises (whether or not on the same floor) which forms part of a building and which is constructed or adapted for use for the purposes of a dwelling and which is divided horizontally from some other part of that building.

22 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 the appropriate 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 tribunal 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) The appropriate 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 the 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.*

23 Application to court for appointment of manager.

- (1) No application for an order under section 24 shall be made to the appropriate tribunal unless—*
- (a)in a case where a notice has been served under section 22, either—*

- (i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or
- (ii) that paragraph was not applicable in the circumstances of the case; or
- (b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—
 - (i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or
 - (ii) no direction was given by the tribunal when making the order.

24 Appointment of manager by a tribunal.

- (1) The appropriate 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 tribunal thinks fit.
- (2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—
 - (a) where the tribunal 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
 - (ii).....
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ab) where the tribunal 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 tribunal 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; or*
- (b) *where the tribunal 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 tribunal 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 tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal 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 tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.*
- (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 tribunal 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).*

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