



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

Case reference	:	LON/00AN/LVM/2019/0018
Property	:	46, Auriol Road, London, W14 0SR
Applicant	:	Mr Andrew McKeer MRICS (tribunal-appointed manager)
Respondents	:	(1) Helene Sandberg (leaseholder of the Garden Flat)[First Respondent]; (2) Ahmed and Deana El-Sadek (leaseholders of the Ground Floor Flat)[Second Respondents]; (3) Daniela Becher(leaseholder of the First Floor Flat and the Second Floor Flat)[Third Respondent]; (4) Auriol Management Limited (freeholder)[Fourth Respondent].
Type of application	:	Application for a variation of a Manager Order under section 24 of the Landlord and Tenant Act 1987.
Tribunal members	:	Mrs H C Bowers MRICS Mr C Gowman BSc MCIEH MCMi Mr O Miller BSc
Date and venue of hearing	:	4 and 5 February 2020 at 10 Alfred Place, London WC1E 7LR
Date of this Decision	:	12 March 2020

DECISION

The Tribunal varies the Management Order and substitutes Mr Martin Kingsley as the manager of 46 Auriol Road, London, W14 0SR in place of Mr Andrew McKeer with effect from 1 April 2020.

REASONS

The Issues:

1. The Tribunal received an application dated 22 August 2019 seeking a determination from the Tribunal for a variation of an order appointing a manager under section 24(9) of the Landlord and Tenant Act 1987.
2. The variation sought is that Mr McKeer, the current Tribunal appointed manager is substituted as manager by Mr Martin Kingsley of K&M First Property.
3. The Tribunal is therefore required to determine whether to vary the Order and in doing so:
 - a. If the Tribunal decides to vary the order and substitute an alternative manager, would the proposed alternative manager be a suitable appointee and if so on what terms and for how long.

Background

4. Mr McKeer was appointed as manager of 46, Auriol Road, London, W14 0SR (the subject property), following a decision of the Tribunal in January 2017. The Management Order appointed Mr McKeer for a period of five years from 27 January 2017 and hence his period of appointment is due to terminate on 26 January 2022.
5. The previous decision dated 27 January 2017 considered the history of the interaction between the Respondents. The Tribunal found that the situation at the time was untenable and the management of the Property was in jeopardy. Hence it made the Management Order.
6. In the current case a case management hearing (CMH) was held on 1 October 2019. Although the application had not identified an alternative manager to replace Mr McKeer, at the CMH the First and Second Respondent put forward Mr Martin Kingsley of K & M Property Management Limited as the new manager. Directions were issued that anticipated a process where all the Respondents had an opportunity to propose an alternative manager and for any such manager to inspect the subject property.
7. The first three Respondents own the four flats that comprise the building. The fourth Respondent, Auriol Management Limited, owns the freehold interest. This is a leaseholder owned company with one share per flat. The first three Respondents are directors of the company and Ms Rawicz is a director in respect of the second floor flat. Ms Beecher is the company secretary.

The Law

8. This application is under section 24 of the Landlord and Tenant Act 1987 and the relevant parts state:

“(9) The appropriate 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 tribunal may by order direct that the entry shall be cancelled.

(9A) The tribunal shall not vary or discharge an order under section (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.”

Inspection

9. The Tribunal made an inspection of the subject property on the morning of 4 February 2020, prior to the hearing. The subject property is a large detached house on four floors (lower ground floor to second floor). The property has been divided into four flats, Garden Flat, Ground Floor Flat, First Floor Flat and Second Floor Flat. The front boundary is a low brick wall with two brick pillars on either side of a short flight of stairs leading to the front door. There is a covered porch to the front door. There is an entry phone system by the front door and a key fob mechanism. The front door give access to a small outer hall area and then another door gives access to a small inner hallway. The outer hallway has a radiator and this appears to be supplied from the central heating system installed in the Ground Floor Flat. There is also a meter cupboard for the electrics in the Ground, First and Second floor flats. The inner hallway is small and is carpeted with an electric light on a timer switch. This hallway gives access to the stairs serving the First and Second Floor Flats via a sliding doorway and to the Ground Floor Flat. It was noted that the door to the Ground Floor Flat has an eyehole and an entry phone system with a video camera arrangement.
10. Externally the Tribunal observed a small area to the side of the main stairs where bins were stored, there was also an outside tap in this area. Beneath the stairs is a vault area that is demised to the Garden Flat. This is used for storage but it was observed that there was a stopcock/tap that was labelled for the First Floor Flat. There was also a boxed, cupboard area and although it was not possible to open at the inspection, a photograph was brought to the hearing to show that this housed the electrical intake. This was undisputed by the parties.
11. The Tribunal also observed other garden areas to the front, sides and rear of the property that were demised to the Garden and Ground Floor Flats. There is also a garage to the side of the property (right hand side when observing the property from the front) that is demised to the Ground Floor Flat. The whole of the side and rear boundaries were walled. The wall between the subject property and an adjacent property on Edith Road shows some indication of previous movement but there is evidence of some pointing work carried out to the wall.
12. In general, the property is well maintained and the decorative condition is sound. Mr El-Sadek asked the Tribunal to observe the condition of the external brickwork. Whilst it is noted that this has not been repointed recently, there is no indication that this is causing any problems to the property.

The Hearing

13. A hearing was held on 4 February 2020 at 10, Alfred Place, London, WC1E 7LR. In attendance were Mr McKeer, who represented himself; Ms Becher who was represented by Mr Brocklesby at the hearing; Mr and Mrs El-Sadek and Ms Sandberg. Also in attendance was Mr Martin Kingsley the proposed, substitute manager.
14. The parties had produced an extensive bundle of documents including various statements of case, witness statements and supporting documents. The whole of the bundle has been considered by the Tribunal. However, many of the submissions and documents relate to issues that are beyond the scope of this application. It was noted that Ms Becher made an application under section 27A of the Landlord and Tenant Act 1985 (section 27A application) and many of the issues identified in the bundle would be more properly considered under the section 27A application. The Tribunal has considered all the relevant submissions and documents in the bundle even if no direct reference is made to the documents.
15. At the start of the hearing all the Respondents confirmed that there had been no improvement in their relationships and indeed matters had in fact deteriorated.
16. Mr McKeer explained that he wished to be removed as the Tribunal appointed manager as he had suffered some serious medical issues. Details of these had been previously given to the Tribunal but with a request that the information should not be disclosed. Therefore, Mr McKeer now has a new working arrangement, whereby he works three days a week and is only involved in projects and is finishing all involvement in residential management. It was proposed that Mr Kingsley should replace Mr McKeer.
17. There was a general agreement that Mr McKeer should be replaced as the Tribunal appointed manager. Indeed, Ms Becher suggested that the new manager should start as soon as possible. Ms Becher's main concerns were not with the replacement of Mr McKeer and indeed she seemed to have no objection to Mr Kingsley as the proposed manager. However, she was concerned about the terms of the Management Order.
18. The Tribunal heard from Mr Kingsley who confirmed that he was a director of K & M Property Management Limited. He had previously provided a copy of his CV. This was subsequently updated following clarity as to his proposed fee basis that was explained at the hearing. He stated that he had experience in residential management and that he holds several Tribunal appointments. He listed his various qualifications and memberships including that he is an Associate member of the RICS and a member of the Institute of Residential Property Management. He has personal, professional, indemnity cover of £2,000,000. He stated that he carries out the management functions in accordance with the third edition of the RICS Code of Practice and that his firm complies with GDPR.
19. Mr Kingsley confirmed that he had inspected the property on two occasions and had met all the leaseholders and had listened to the concerns they had raised. He set out his management plan for the building and in this regard the principle points were the establishment of a reserve fund and the collection of £1,500.00 from each of the leaseholders; a review of the current insurance arrangements; to review any health and safety reports and implement any necessary works; to

maintain and clean the common parts; to consider whether any repair works are need to the boundary walls and to the main structure of the house and if needed to carry out such works and to inspect the property within one month of appointment and consider the appointment of any relevant suppliers/contractors.

20. Mr Kingsley stated that he had considered the lease and the existing Management Order and he stated that he was happy to adopt the terms in principle. However, there were many issues raised by Ms Becher and there were some additional aspects raised by Mr Kingsley to vary the Order. The Tribunal explored these issues with the parties and they are detailed below.
21. Mr Kingsley confirmed that he would manage the property in accordance with the leases, the Order and the RICS Code of Practice.
22. Ms Becher had set out various requirements as to what should be included in respect of the insurance policy. Mr Kingsley thought that a standard insurance policy was necessary for the building. Whilst he had no objection to many of the suggestions made by Ms Becher he considered that a three-year loss of rent cover was excessive and that a one-year loss of rent would be sufficient. After discussions with the Tribunal, Mr Kingsley confirmed that he would procure the building insurance in accordance with the terms of the lease. He also confirmed that he had no particular arrangement for placing insurance with a single broker and worked with a number of brokers, that he would not be taking any commission from the placing of insurance and any commission from a broker would be transparent.
23. It appears that the building was last valued for insurance purposes in 2017 and Mr Kingsley stated that best practice was a revaluation every three years and he would ensure that all necessary steps are taken to ensure an appropriate revaluation was undertaken.
24. Ms Becher offered several proposals regarding the employment of various contactors at the premises. Again, Mr Kingsley did not disagree with many of the proposals. However, he did state that the contractors that he uses are trusted and that if required he would make provisions for such contractors to be given keys to allow access to the property for necessary works. Whilst he would try to ensure that the leaseholders are kept informed of the times when contractors are on site, there may be exceptions to this if there was emergency work that was required.
25. Ms Becher made various requests as to the treatment of the party and boundary walls. Mr Kingsley's response was that he would consider any surveys and reports and will act in a manner that takes those issues into account.
26. It is suggested by Ms Becher that the substitute manager carries out a Health and Safety survey of the property and that a survey of the asbestos roof to the garage demised to the Ground Floor Flat is undertaken and paid for by the leaseholders of the ground Floor Flat. Mr Kingsley replied that it was standard practice to undertake a health and safety report and an asbestos survey of the whole building and that any actions required would be undertaken.
27. Ms Becher proposes that there should not be a sinking fund for the building and that leaseholders should be charged when items arise. She also suggested that in

preparing the annual service charge budget there should be consultation with the leaseholders. Mr Kingsley replied that the establishment of a sinking fund was good practice and that he was happy to prepare the service charge budgets and consult the leaseholders.

28. Ms Becher proposed that the external brick wall to the property should not be cleaned as apparently requested by Mr and Mrs El-Sadek. In response Mr Kingsley stated that he will decide if the bricks require cleaning in consideration of any report.
29. Ms Becher requested that she continued her role as Company Secretary and will file the annual dormant accounts and confirmation statement at Companies House at no charge. Mr Kingsley considered that as there had been a breakdown in the relationship between the parties that the Company Secretary service should be supplied by the manager. It is proposed that a specialist company would be used and the cost of about £200 would be recovered by the service charges.
30. Regarding consents under the lease and breaches of lease, Ms Becher proposed that the manager should serve copies of all requests from the leaseholders to all the other leaseholders and give reasons for refusal or complaint. That the manager should pursue breaches of lease and seek enforcement of the terms of the lease, Mr Kingsley expressed his concerns about these requirements. He stated that one of the reasons there had been management problems in the building was the poor relationships between the parties. He considered that the role of the manager was to be independent of all the leaseholders. He noted how issues had been raised with the current manager and how that had to some extent fettered the management of the property. To that end he suggested an addition to his fee structure which is noted below in paragraph 35.
31. As to the length of the appointment Ms Becher proposes that the appointment should be for no longer than is necessary. Mr Kingsley is proposing an appointment of five years. He stated that in general his appointments are for periods of between three and five years. In other appointments, terms of five years were usually on the basis that the relevant building required some major work. He considers that if a term of only three years is given, that the parties will just return for a further order.
32. Ms Becher provided her view as to what would be a future management plan for the property. She does not anticipate any major works in the foreseeable future. She considered that at some stage there would be a necessity to undertake the redecoration of the internal entrance hall and that the approximate cost would be £600. It is anticipated that the timing of that work would be agreed with the leaseholders. It is proposed that the cleaning and the payment of the electricity bills for the common hallway will remain with Ms Becher and that she will not seek any recovery of the costs from the other leaseholders. It is proposed that health and safety surveys would be carried out as soon as possible. It was noted that repointing work had been carried out in 2003, 2007 and 2016 and it was noted that external redecoration would be required within the next five years. In response Mr Kingsley stated that as part of his role he would consider what work would be required to the property. He considered that the cleaning of the common parts and the payment of bills/provision of services for the common parts is

something that should be independent from individual leaseholders and should be part of the service charge regime. He would consider the best steps to address these issues.

33. Mr Kingsley stated that his proposed fee structure would be an annual management of £700 plus VAT per flat. He acknowledged that this was higher than his usual fee structure and had increased from his original proposal. He denied that this fee structure was altered because of the report prepared by Mr McKeer and that he had prepared his quotation prior to the report but after considering the issues raised by the various leaseholders. When questioned by Mr Brocklesby why the proposed fee had increased, Mr Kingsley stated he now had a greater awareness of the issues between the parties and how those relationships would impact on this management role.
34. Mr Kingsley was also concerned that given the history there was a strong possibility that the manager may become embroiled in the neighbour disputes between the leaseholders. Therefore, he proposed an arrangement whereby if any matter is raised by a leaseholder with the manager, he will decide the issue both fairly and objectively and respond verbally and follow up in writing if required. Any further engagement on the issue would be dealt with on the basis of a prior payment of an individual fee from the leaseholder of £75 plus VAT per letter. It was stated that this arrangement would not affect a leaseholder's statutory rights.
35. As part of his management plan Mr Kingsley is seeking a contribution of £1,500 per leaseholder to act as a fund so that he could commence management of the property.
36. In response to Mr Brocklesby's question about the use of the arbitration clause in the lease, Mr Kingsley suggested that as an independent manager he would seek to resolve issues and if required he could seek further direction from the Tribunal. He thought the issue of if the walls were demised to a particular leaseholder was something that he could consider and again may need to approach the Tribunal for a direction. As to the various claimed breaches of lease he would consider the appropriate steps to take.
37. Ms Sandberg raised the issue about the Ryfield Board located in her vault storage area under the main external stairs. She asked whether other leaseholders would have access rights to this area. Mr Kingsley responded that access to the intake equipment should be limited to a properly trained electrician and either contracted by the manager or from the appropriate supplier. Ms Sandberg also expressed the desire to have the water pipes re-arranged to avoid any future conflicts with other leaseholders.

Discussion and Decision:

38. All parties indicated that there remained communications issues between them and in fact their relationship had further deteriorated. It is clear that there is still a necessity for a management order. The Tribunal notes the Mr McKeer's health issues and the agreement from the Respondents that they would like to see a substitution. The Tribunal is also satisfied that having spoken to Mr Martin Kingsley and having considered his experience and his planned management

scheme for the property that he would be a suitable person to act as the tribunal appointed manager. Taking all these factors into account, the Tribunal determines that it would be just and convenient to substitute Mr Andrew McKeer with Mr Martin Kingsley as the Tribunal appointed manager.

39. As to the terms of the Order, the Tribunal has considered all the suggestions made by the parties and by Mr Kingsley. Many of the proposals put forward by Ms Becher were acceptable to Mr Kingsley as a methodology as to how he would manage the property. The Tribunal makes the following general comments. A management order is a means by which a manager can effectively manage a property, but the order cannot be totally prescriptive. A manager will need to use his expertise to balance the provisions of the leases, the statutory provisions and protections, the needs of the building and the interests of the leaseholders. But in the end, it is for the manager to use his own discretion as to how the building will be managed. It is not for any individual leaseholder to direct the management. There are sufficient remedies available for the leaseholders to ensure that their own rights are protected. It is for these reasons and for the fact that Mr Kingsley has stated that he would generally manage the property in consideration of the aspects raised by Ms Becher, that the Tribunal does not vary the terms of the Order to add the all the additional terms sought by Ms Becher. However, some terms of the Order need revising to substitute Mr Kingsley and some terms that are beneficial are missing and therefore Tribunal does make some alternations to the Order.
40. The Tribunal is satisfied that Mr Kingsley has provided a confirmation that he will comply with the requirements of RICS Code of Practice. However, as a matter of good practice it would be appropriate to add such a clause in the Order and to emphasise that Mr Kingsley is to act in a manner that is independent from all the parties and to remind the parties of Mr Kingsley's overriding duty to the Tribunal. Such clauses are now added to the varied Management Order.
41. As to the building insurance, the Tribunal notes that Mr Kingsley will apply the relevant terms of the lease. It is particularly noted that the lease makes provision for how frequently the property should be revalued for insurance purposes. No actual provision is made for the number of years loss of rent but the Tribunal comments that this is a substantial building and it may be more appropriate to consider three years loss of rent as a suitable level of cover. The terms of the varied Management Order set out suitable provision for the Manager's duties in respect of insurance and is varied slightly to reflect the revaluation provisions as set out in the lease.
42. Regarding contractors, Mr Kingsley was in broad agreement with Ms Becher's suggestions. However, he stated that trusted contractors would be given keys to allow access to the property for necessary works and that in case of emergency work, it may not be able to give leaseholders full notice of the contractor's attendance. These aspects are within the scope of reasonable management functions and do not require to be explicitly provided for in the terms of the varied Management Order and as such the tribunal adds no further terms to the Order.
43. The Tribunal understands the position of the parties in respect of the party walls and indeed the main structural aspects of the building including the cleaning of

the bricks. However, the Tribunal does not consider that it is appropriate that the varied Management Order is so prescriptive as required by Ms Becher and Mr and Mrs El-Sadek. The Manager will need to have some discretion as to how best to investigate matters and will need the opportunity to consider all aspects including the recommendations of any survey/reports together with any the obligations under the leases and then make his decision as to whether or not to proceed and in what manner. As such the Tribunal will not add any anything further terms to the Order on this issue.

44. Ms Becher and Mr Kingsley seem to be in agreement as to the need for the relevant Health and Safety surveys of the property. The full need and the extent of those surveys will need to be considered by the Manager and as such the Tribunal does not consider it necessary for the varied Management Order to be prescriptive of what surveys should be undertaken. This is an aspect that comes within the professional expertise of the Manager.
45. As noted below, the Tribunal understands the position in respect of any reserves to be transferred and any accruals. At the commencement of the new term for Mr Kingsley there will be no transfer of funds directly made to him. He will start at a zero balance on 1 April 2020. As such it is appropriate that he raises a demand for £1,500.00 from each of the leaseholders, to be paid within seven days of his appointment. This will enable him to have sufficient reserves, held in trust for the proper management of this property. At the hearing the Tribunal questioned if the parties would have sufficient time to raise such funds. Mr Kingsley stated that the parties are on notice of such a demand from the hearing and from his management plan, produced and circulated prior to the hearing. The Tribunal are satisfied that the leaseholders have had sufficient notice and that it is reasonable for the sum of £1,500.00 to be collected from each leaseholder as a reserve to help fund the proper management of the property.
46. Ms Becher is currently the Company Secretary of the Fourth Respondent, Auriol Management Limited. Whilst the Tribunal understands the concerns that there has been a breakdown in the relationship between the parties and how that may impact on Ms Becher's role as the Company Secretary. The constitution of the Company, role of the Company Secretary and the wider scope of the Fourth Respondent's responsibilities are distinct from the management functions over the Property. As such the Tribunal does not consider it appropriate to vary the Management Order to provide that the Manager take over the role of Company Secretary. The Manager will have a duty in providing any relevant information to the Fourth Respondent to ensure that it can function appropriately and file any dormant accounts and confirmation statement at Companies House.
47. Regarding Ms Becher's proposals about consents (serving copies of any requests on leaseholders, with reasons for refusal or complaint) and any issues such as pursuing alleged breaches of lease, this is a contentious matter as there are many individual disputes between the leaseholders. The suggestions put forward by Ms Becher would appear to be a mechanism where such issues remain in the hands of the leaseholders rather than the Manager. The Tribunal does not consider that is an appropriate way in which this property should be managed. Therefore, the Tribunal declines to add the suggested terms into the varied Management Order.

It is important that the manager is independent and impartial from all the leaseholders and does not to act as a conduit for one leaseholder against another leaseholder.

48. The existing Order ends on 26 January 2022. Mr Kingsley seeks a term of five years from the date of the varied Management Order and Ms Becher's position is that the term should be for no longer than is necessary. There were no comments on this issue from the other leaseholders. The Tribunal notes that there are no major works required at this property at the current time and in those circumstances the Tribunal considers that a term of three years is sufficient in this case. Therefore, this varied Management Order will cease on 31 March 2023.
49. The proposed fee structure of £700 plus VAT per flat may be considered high in relation to a conventional, management arrangement. However, the nature of this work is that the Manager is required to navigate the fraught relationships between the parties. As such the Tribunal considers that the level of fee proposed is reasonable in the circumstances.
50. The second part of the fee arrangement is the proposal that following an initial enquiry and response, any further engagement on a particular issue would be dealt with on the basis of a prior payment of an individual fee of £75 plus VAT per letter. It appears to the Tribunal that amongst the many of the issues faced by Mr McKeer, was the unduly heavy burden of having to respond to numerous and ongoing enquiries. This proposed mechanism allows a leaseholder to raise an issue with the Manager and to receive a response. However, once the response is received then that leaseholder will need to consider whether they are happy with the response, or wish to pay for the manager's further involvement, or whether they will utilise any appropriate alternative remedy. Although unconventional, the Tribunal considers that this is a practical way in which effective management control is retained over the property. The varied Management Order therefore makes provision for such an arrangement.
51. Finally, the Tribunal takes this opportunity to vary several the other terms of the Management Order to reflect current good practise. The parties should therefore consider all the terms of the varied Management Order.

Proposed Handover Arrangements

52. Mr McKeer confirmed that the only contract in place is the insurance contract which is currently with Covea Insurance PLC. The policy was secured via Lansdown Insurance Brokers and the policy is for twelve months from 23 August 2019 and due to expire on 22 August 2020.
53. It is proposed that the handover would be within fourteen days of the Tribunal's decision but as noted above it would be prudent for the change of management to be effective from 1 April 2020. Mr McKeer and Mr Kingsley explained that as both were members of ARMA Q they would ensure that handover would follow the suggested ARMA Q procedure.
54. Mr McKeer reminded the Tribunal that the parties had agreed at the CMH to take no action in respect of any dispute on the service charges until this case had been resolved. It was agreed that the collection of any outstanding arrears and dealing

with any service charge dispute for the period of his management would be undertaken by Mr McKeer. It was also agreed that he would retain all the relevant documents and correspondence files until those issues were resolved. As noted above there is already an application from Ms Becher under section 27A that should deal with any outstanding service charges. Once those issues were resolved any relevant correspondence and documents would be forwarded to the new manager. Both Mr McKeer and Mr Kingsley considered that they could deal with any transitional arrangement by agreement. Following the hearing, Mr McKeer submitted a statement of account for the property showing that as of 26 February 2020 there were accruals of £1,596.00 plus legal fees of £12,959.78. These sums will be subject of the section 27A application and once a determination has been made to ascertain the level of service charges for the relevant period and the level of arrears, then arrangements should be made for the transfer of any surpluses to Mr Kingsley.

55. Given that Mr McKeer will be dealing with all expenditure, accruals and reserves up to the date of the variation, Mr Kingsley will commence his management of the property with a zero balance.
56. One practical aspect of the handover arrangements was that Mr McKeer currently holds the key for the external storage area beneath the external stairs. It was agreed that the key would be passed to Mr Kingsley but on the condition that the key would not be handed over to any third party without Ms Sandberg's prior consent.

Name: Helen Bowers

Date: 12 March 2020

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).

MANAGEMENT ORDER

Interpretation

In this order

- (a) “Common Parts” means any garden area, postal boxes, refuse store, security gates, paths, halls, staircases and other access ways and areas (if any) within the Property that are provided by the Respondent for common use by the Lessees or persons expressly or by implication authorised by them
- (b) “Freeholder” means the person or persons with the benefit of the freehold title registered at HM Land Registry under Title Number LN179684
- (c) “Functions” means any functions in connection with the management of the Premises including any obligations and powers of the Respondent under the Leases
- (d) “Leases” means the long leases vested in the Lessees and as varied by various Deeds of Variation.
- (e) “Lessee” means a tenant of a dwelling holding under a long lease as defined by section 59(3) of the Landlord & Tenant Act 1987 (“the Act”)
- (f) “the Manager” means Martin Kingsley MIRPM AssocRICS of K & M Property Management Limited, The Studio, 63 Darlands Drive, Barnet, Hertfordshire, EN5 2DE.
- (g) “the Property” means all that property known as 46 Auriol Road, London W14 0SR
- (h) “the Order” means this Management Order
- (i) “the Respondent” includes any successors in title of the freehold estate registered under title number LN179684 or any interest created out of the said freehold title.

Preamble

UPON the Applicant having applied for the variation of the Management Order dated 27 January 2017 for the appointment of a manager under Part II of the Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal being satisfied that it is just and convenient to appoint a manager

IT IS ORDERED THAT

The Manager

- 1 Martin Kingsley is appointed Manager (including such functions of a Receiver as are necessary) in substitution of Andrew McKeer. The appointment is for a term of 3 years commencing on 1 April 2020 and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Fourth Respondent as set out in the following Schedule of Functions and Services.
 - (a) The power and duty to carry out the obligations of the Fourth Respondent contained in the Leases and in particular and without prejudice to the foregoing:
 - (i) The Respondents' obligations to provide services;
 - (ii) The Respondents' repair and maintenance obligations; and
 - (iii) The Respondent's power to grant consent.
 - (b) The power to delegate to other employees of K & M Property Management Limited, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.
 - (c) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
 - (d) The power to open and operate client bank accounts in relation to the management of the Property and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to s42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the Leases (if any) or to powers given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.
 - (e) The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondent.
 - (f) The Manager shall manage the Property in accordance with the duties of a manager set out in the Service Charge Residential Management

Code, 3rd Edition (“the RICS Code”) or such other replacement code as published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform and Urban Development Act 1993.

- (g) The Manager must perform his duties under this Order independently, and has an overriding duty to this Tribunal.
- 2 From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Property where the same is a responsibility of the Manager under this Order.
 - 3 From the date of this Order, the Fourth Respondent shall not, whether by itself or any agent, servant or employee, demand any further payments of service charges, administration charges or any other monies from the Lessees. Such functions are transferred to the Manager forthwith.
 - 4 The Fourth Respondent, the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
 - 5 From the 1 April 2020, the Respondent and the Lessees shall - on receipt of 24 hours written notice – give the Manager reasonable access to any part of the Premises which he might require in order to perform his functions under this Order.
 - 6 The obligations contained in this Order shall bind any successor in title in the current leaseholders and freeholders and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or freehold.
 - 7 The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.
 - 8 From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £2,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
 - 9 At a date agreed, between Mr Andrew McKeer and Mr Martin Kingsley, but no later than three months from this Order, Mr McKeer shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities.
 - 10 The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
 - 11 The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property in accordance with the terms of the lease and to ensure that a revaluation of the Property for insurance purposes is carried out as provided by the lease.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.
- (iii) Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Property with the insurer.

Service charge

- (i) To ensure that the Manager has adequate funds to manage the Property, on the commencement of his management, the Manager may invoice £1,500.00 from each of the Lessees, payable within seven days
- (ii) Within one month of appointment, the Manager shall prepare a service charge budget in consultation with the Lessees. Having considered the budget and the sums paid on account in accordance with point (i) above, the Manager will issue a balancing charge if required.
- (iii) In future years the manager shall prepare an annual service charge budget (consulting with the Lessees as appropriate), administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (iv) The right to treat the service charge financial year as commencing on the 1 April 2020 and ending on 31 March 2021 and thereafter as running from 1 April to 31 March in each year this Order is in place.
- (v) Set, demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (vi) The Manager shall collect any ground rents payable under the leases and properly account those sums to the Fourth Respondent.
- (vii) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (viii) 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.
- (ix) All monies received by the Manager in respect of the Property shall be held in a designated trust account.

Accounts

- (i) Prepare and submit to the Fourth 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.

Contracts and Litigation

- (i) The rights and liabilities of the Fourth Respondent under any contract of insurance for the Property or for the provision of goods or services to the Property shall become the rights and liabilities of the Manager with effect from 1 April 2020.
- (ii) The Manger may place, supervise and administer contracts and check demands for payment of goods and services and equipment supplied for the benefit of the Property.
- (iii) The power in his own name or on behalf of the Fourth Respondent to bring or defend any legal action or other legal proceedings in connection with the Leases or the Premises and to make any arrangement or compromise on behalf of the Respondent including but not limited to:
 - (i) proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases;
 - (ii) legal action to determine that a breach of covenant has accrued;
 - (iii) legal action to prevent a further breach of covenant.

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.

Licenses to Assign, approvals and pre-contract enquires

- (iv) The Manager shall be responsible for carrying out those functions in the leases with regard to approvals and permissions, including those for sub-letting, assignments, alterations and improvements, that the lease provides should be carried out by the Fourth Respondent.
- (v) The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat.

Reporting

- (vi) By no later than 31 July 2021, 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 and provide a copy of that report to all the Lessees and the Freeholder.

Fees

- (i) Fees for the above-mentioned management services will be a basic fee of £700 per annum. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) The sum of £250 for each consultation notice under section 20 of the Landlord and Tenant Act 1985, as amended.
- (iii) The sum of 10% of the contract sum in relation to the arrangement and overall responsibility and supervision of major works.
- (iv) The recovery of outstanding service charges shall give rise to an administration charge payable by the defaulting Lessee of £15 for each letter written after the first.
- (v) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (vi) An additional charge in relation to brokering insurance claims or valuations based on £200 per claim where the Manager is directly involved.
- (vii) A charge of £150 per hour for further tasks which fall outside the agreed duties.
- (viii) To be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of Counsel, solicitors and expert witnesses) of and incidental to any application or proceedings whether in the Court or the First-tier tribunal, to enforce the terms of the Leases. For the avoidance of doubt, the Manager is directed to use reasonable efforts to recover any such costs, disbursements and expenses directly from the party concerned in the first instance and will only be entitled to recover the same as part of the service charges in default of recovery thereof.
- (ix) The Manager shall respond to any written query raised by a Lessee and shall provide a reply either verbally or in writing. If the response is verbal,

then the Lessee may request a response in writing. Any further query on the same issue raised by that Lessee will require the prior payment of £75.00 per letter before the Manger deals with the query.

- (x) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.

End of Appointment

- (i) 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.

Disputes

- (i) In the event of a dispute regarding the payability of a service charge a Lessee, or the Manager, is entitled to pursue an application to this Tribunal under section 27A of the Landlord and Tenant Act 1985.
- (ii) In the event of a dispute regarding the payability of any sum payable under this order, rather than under a residential lease (including as to the remuneration payable to a manager and litigation costs incurred by a manager), a Lessee, or the Manager, may apply to the Tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.