



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

Case reference : **BIR/00AW/LVM/2021/0001
(LON/00AW/LVM/2021/0007)**

Property : **1 Palace Gate London W8 5LS**

Applicant : **Michael Maunder Taylor MRICS
FIRPM**

Respondent(s) : **The Leaseholders of 1 Palace Gate
listed in the application**

Type of application : **Application for variation of an order
for appointment of a manager**

Tribunal members : **Judge D. Barlow
Mr D. Satchwell FRICS**

Date of Decision : **25 August 2021**

DECISION

Covid 19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, no-one requested it and all issues could be determined in a remote hearing/on paper.

DECISION OF THE TRIBUNAL

The Tribunal varies paragraph 8 of the Management Order to read as follows:

“8. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be expected of a Manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure he has appropriate professional indemnity cover in the sum of at least £1,000,000.00, providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.”

Reasons

- 1) The Applicant is the present tribunal appointed manager under the existing Management Order dated 3 July 2021, made under reference BIR/00AW/LVM/2020/0001, which expires on 31 May 2023.
- 2) The Manager has applied for a variation of paragraph 8 the Management Order, pursuant to s24(9) of the Landlord & Tenant Act 1987.
- 3) The variation applied for is to reduce the level of cover for professional indemnity insurance required under paragraph 8 of the Order, from £5m to £1m.
- 4) The Manager’s reasons for the application are as follows:
 - (i) With effect from 1 May 2020, the Royal Institution of Chartered Surveyors reduced the minimum level of indemnity to £1 million due to unprecedented market conditions within the professional indemnity insurance market. The general increase in the cost of professional indemnity cover was recognised by RICS when reviewing the minimum policy requirements in late 2019/ early 2020.
 - (ii) The additional layer of indemnity cover required to reach the level of £5 million will cost the Manager’s firm an additional premium of £25,000.00.
 - (iii) If required to obtain this level of cover, the Manager will need to seek an increase in the level of management fees to cover the cost

of the premium. Alternatively, the Manager could apply to be discharged. As neither option are attractive to the Manager, he seeks a variation of the Order, reducing the compulsory level of professional indemnity cover to £1 million.

- (iv) The total annual service charge budget for 1 Palace Gate to the year May 2021 is £175,328 (including the reserve fund contributions). Therefore, on the grounds of proportionality the Manager submits that £1 million professional indemnity cover is sufficient.
 - (v) The Manager provided a copy of his professional indemnity cover note and confirmed that the costs of this application would not be added to the service charge account.
- 5) Notice of the application was served on all the leaseholders of 1 Palace Gate, none of whom have objected to the application.

The Law

- 6) 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.”*

Deliberation and Decision

- 7) The tribunal is satisfied that the variation of the Order will not result in a recurrence of the circumstances which led to the Order being made and that it is just and convenient in all the circumstances of the case to vary the Order as requested.
- 8) This is because the alternative is likely to result in either a substantially increased management fee, that is arguably disproportionate to the level of risk covered by the policy, or, a request to discharge of the current Management Order.

- 9) The tribunal is not aware of any change in circumstance in relation to the management of the Property, that might give it confidence that a discharge of the current Order would not result in the recurrence of the circumstances which led to the Order being made. It is therefore satisfied that the Order should be varied as requested, to avoid this possibility.

Judge D. Barlow

Date: 6 October 2021

Rights of Appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.