



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

Case Reference : CHI/45UC/LAM/2021/0003

Property : 22 The Steyne Bognor Regis PO21 1TP

Applicants : Emma Louise Penhaligon

Representative : Bate and Albon Solicitors

Respondent : Robert Brian Mortlock

Representative : Wannops LLP

Interested Persons : Keith Nigel Mortlock (Lessee of Flat 2)
Sarah Jane Elliott (Lessee of Flat 3)

The Manager : Gary Pickard

Tribunal members : Judge J Dobson
Mr S Hodges FRICS
Ms P Gravell

Date of Order : 2nd September 2021

MANAGEMENT ORDER

Interpretation

1. In this Order:

“The Property” means the flats and other premises known as known as 22 The Steyne Bognor Regis PO21 1TP and registered at HM Land Registry under title number WSX41045 and shall include the building, flats, outhouses, gardens, amenity spaces, drives, pathways, landscaped areas, flower beds, passages, bin-stores, common parts and all other parts of the property.

“The Landlord” shall mean Robert Brian Mortlock or their successors in title to the reversion immediately expectant upon the Leases.

“The Lessees” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and "Lessee" shall be construed accordingly.

“The Leases” shall mean all leases and/or underleases of flats in the Property.

“The Manager” means Gary Pickard.

ORDER

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) Gary Pickard is appointed as Manager of the Property.
3. The Manager’s appointment shall start on 6th September 2021 (“the start date”) and shall end on 31st August 2024 (“the end date”).
4. For the avoidance of doubt this Order does not displace covenants under the Leases and the Lessees remain bound by them.
5. The purpose of this Management Order is to provide for adequate management of the Property which includes taking steps to resolve the following problems of inadequate management identified by the Tribunal:
 - (a) lack of service charge accounts for the years ended March 2007 to March 2020;
 - (b) failure to comply with repairing and decorating obligations, including specifically but without prejudice to the generality of the above, a failure to investigate water ingress in Flats 1 and 3 in a timely manner;
 - (c) failure to produce insurance details/documents when requested to do so and failure to ensure appropriate insurance cover;

- (d) failure to assess and attend to requirements of fire safety and of health and safety more generally; and
 - (e) failure to maintain appropriate communication with the Lessees.
6. The Manager shall manage the Property in accordance with:
- (a) the terms of this Order and the Directions set out in below;
 - (b) the respective obligations of the Landlord and the Lessees whereby the Property is demised by the Landlord (save where modified by this Order) except that consent to structural alterations, power to grant prospective and retrospective consents, collection of ground rents and dealing with lease extension or enfranchisement claims are retained by the Landlord;
 - (c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development act 1993; and
 - (d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.
7. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
8. The Manager must act fairly and impartially in the performance of his/her functions under this Order and with the skill, care and diligence to be reasonably 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. The Manager’s overriding duty to this Tribunal.
9. Where there is a conflict between the provisions of the Management Order and the Leases, the provisions of the Management Order take precedence.
10. The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
11. Any application to extend or renew this Order must be made before the end date, preferably at least three months before that date, and supported by a brief report of the management of the Property during the period of the appointment and giving reasons for an extension being sought and the applicant’s understanding of the Respondent’s position in relation to such extension. Where an application for an extension or renewal is made prior to the end date, then the Manager’s appointment will continue until that application has been finally determined.

12. The Manager may apply to the First-Tier Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
 - (a) any failure by any party to comply with an obligation imposed by this Order; and
 - (b) circumstances where there are insufficient sums held by him/her to discharge the Manager's obligations under this Order and/or to pay the Manager's remuneration.

Contracts

13. Rights and liabilities arising under contracts, including any contract of insurance and/or any contract for the provision of any services to the Property, to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:
 - (a) the Landlord shall indemnify the Manager for any liabilities arising before commencement of this Order; and
 - (b) the Manager has the right to decide in his/her absolute discretion the contracts in respect of which he/she will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date this order.
14. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.
15. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

Legal Proceedings

16. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and may continue to bring or defend proceedings commenced during the appointment, after the end of his/her appointment.
17. Such entitlement includes bringing proceedings in respect of arrears of service charge and rent attributable to any of the Flats in the Property, including, where appropriate, proceedings before this tribunal or the courts under section 27A of the Landlord and Tenant Act 1985 or section 168(4) and schedule 11 of the Commonhold and Leasehold Reform Act 2002 and shall further include any appeal against any decision made in any such proceedings.

18. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so. If costs are recovered direct from a defaulting Lessee, those costs should be refunded to the service charge account.
19. The Manager shall also be entitled to an indemnity from the service charge account for any adverse costs order made against him within such proceedings.

Remuneration

20. The Lessees are responsible for payment of 100% of the Managers' fees, which are to payable under the provisions of this Order, but which may be collected under the service charge mechanisms of their Leases.
21. The sums payable are:
 - (a) an annual fee of £350 per flat for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable);
 - (b) any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code (so far as applicable); and
 - (c) VAT on the above fees.
22. The annual fee and additional charges may be increased annually, on the anniversary of Manager's appointment, in line with inflation.

Ground Rent and Service charge

23. The Manager shall not collect the ground rents payable under the residential Leases.
24. The Manager shall prepare an annual service charge budget for the service charge year commencing in 2022 and onward, administer the service charge and prepare and distribute appropriate service charge demands to the Lessees.
25. The Manager shall collect all service charges and insurance premium contributions payable under the Leases and this Order, in accordance with the terms and mechanisms in the Leases.
26. The Manager shall have the authority to:
 - (a) demand payments in advance and balancing payments at the end of the accounting year;

- (b) raise advance variable service charge demands quarterly on the quarter days immediately following the start date of this Order, which shall be payable within 21 days of the date of the demands.
 - (c) establish a reasonable sinking fund to meet the Landlord's obligations under the Leases;
 - (d) allocate credits of service charge due to Lessees at the end of the accounting year to the sinking fund;
 - (e) alter the accounting year and to collect arrears of service charge and insurance that have accrued before his appointment; and
 - (f) instruct solicitors to recover unpaid service charges, insurance premiums and any other sums due from the Lessees;
 - (g) instruct a building surveyor as reasonably required in connection with any matters relating to the repair and maintenance of the Property
27. To ensure that the Manager has adequate funds to manage the Property the Manager may immediately collect £1500 from each Lessee.
28. The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by him/her whilst carrying out his/her functions under the Order.
29. The Manager to appoint any agent or servant to carry out 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.

Administration Charges

30. The Manager may recover administration charges from individual Lessees for his/her costs incurred in collecting service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Disputes

31. In the event of a dispute regarding the payability of any sum payable under this Order, rather than under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Lessee, or the Manager, may apply to the tribunal seeking a determination under section 27A of the Landlord and Tenant

Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.

32. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Lessee, or the Landlord may apply to the tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

DIRECTIONS TO LANDLORD

33. The Landlord must comply with the terms of the Order above.
34. On any disposition [other than a charge] of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager, that the said person will (a) comply with the terms of this Order; and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed.
35. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of his/her functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.
36. The Landlord is to allow the Manager and his employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform his functions and duties and exercise his powers under this Order.
37. By 30th September 2021 the Landlord must provide all necessary information to the Manager to provide for an orderly transfer of responsibilities, to include the transfer of:
 - (a) all accounts, books and records relating to the Property, including a complete record of all unpaid service charges;
 - (b) all funds relating to the Property including uncommitted service charges and any monies standing to the credit of a reserve or sinking fund.

DIRECTION TO CHIEF LAND REGISTRAR

38. To protect the direction in paragraph 34 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate under title no(s) WSX41045. The restriction is to have overriding priority against any search with priority or pending application for a disposition of the registered estate (other than a charge) that has been lodged after the 1st day of December 2020.

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration [or their conveyancer] that the provisions of paragraph 38 of an Order of the Tribunal dated 2nd September 2021 have been complied with” .

DIRECTIONS TO MANAGER

39. The Manager must adhere to the terms of the Order above.

Registration

40. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 38, by 17th September 2021.

Complaints

41. The Manager must operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.

Insurance

42. The Manager must obtain, if investigations reveal such is not already in place, and maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.
43. From the date of appointment, and throughout the appointment, the Manager must ensure that he/she has appropriate professional indemnity insurance cover in the sum of at least £1 million and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Lessee or the Landlord. The Certificate should

specifically state that it applies to the duties of a Tribunal appointed Manager.

Accounts

44. The Manager must:

- (a) prepare and submit to the Landlord and the Lessees an annual statement of account detailing all monies receivable, received and expended. The accounts are to be certified by the external auditor, if required under the Leases;
- (b) maintain efficient records and books of account and to produce for these for inspection, to include receipts or other evidence of expenditure, upon request by the Landlord or a Lessee under section 22 Landlord and Tenant Act 1985;
- (c) maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and
- (d) hold all monies collected in accordance with the provisions of the Code.

Repairs and maintenance

45. The Manager must:

- (a) by 31st October 2021 draw up a planned maintenance programme for the period of the appointment allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property and shall send a copy to every Lessee and to the Landlord;
- (b) subject to receiving sufficient prior funds:
 - (i) carry out all required repair and maintenance required at the Property, in accordance with the Landlord's covenants in the Leases, including where appropriate major works required, instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the Leases or in accordance with the Order;
 - (ii) arrange and supervise any required major works to the Property, including preparing a specification of works and obtaining competitive tenders;
 - (iii) arrange for the undertaking of temporary repairs where necessary to avoid ongoing loss and damage

in advance of long-term repair and maintenance works;

(c) liaise with all relevant statutory bodies in the carrying out of his/her management functions under the Order; and

(d) ensure that the Landlord, and the Lessees, are consulted on any planned and major works to the Property and to give proper regard to their views.

46. The Manager has the power to incur expenditure in respect of fire safety and health and safety equipment reasonably required to comply with regulatory and statutory requirements.

Reporting

47. By no later than six months from the date of appointment (and then annually) the Manager must prepare and submit a brief written report to the Tribunal on the progress of the management of the Property up to that date, providing a copy to the Lessees and the Landlord at the same time.

End of Appointment

48. No later than 56 days before the end date, the Manager must:

(a) apply to the Tribunal for directions as to the disposal of any unexpended monies;

(b) include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a "Final Report"); and

(c) seek a direction from the Tribunal as to the mechanism for determining any unresolved disputes arising from the Manager's term of appointment (whether through court or tribunal proceedings or otherwise).

49. Unless the Tribunal directs otherwise the Manager must within two months of the end date:

(a) prepare final closing accounts and send copies of the accounts and the Final Report to the Landlord and Lessees, who may raise queries on them within 14 days; and

(b) answer any such queries within a further 14 days.

50. The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed Manager within three months of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.

Schedule of Additional Fees

51. A one-off set up fee of £1000 plus VAT to cover 10 hours work, plus an hourly rate of £100 plus VAT for any additional time reasonably required to complete the following tasks:
 - (i) initial inspections of the Property,
 - (ii) consideration of documents, and
 - (iii) preparation of the initial planned maintenance programme.
52. Additional fees at the rate of 5% plus VAT and disbursements on any works over £750 (Seven Hundred and Fifty Pounds) to include, where required, the preparation and service of any consultation notices pursuant to section 20 of the 1985 Act. For the avoidance of doubt these fees are payable in addition to costs of any professional person for the preparation of specifications and/or schedules of works, including the obtaining of tenders by them and contract administration.
53. The Manager shall be entitled to receive a share of the broker's fee for the arrangement, claims handling and brokerage of insurances for the Property, public liability, engineering and employee cover if the insurance is brokered and handled by brokers for whom Jacksons are authorised representatives in accordance with the requirements of the Financial Conduct Authority.
54. A reasonable additional charge for dealing with solicitors' enquiries on sales and transfers of the flats at the Property, payable by the outgoing Lessee.
55. Other tasks which fall outside of set-up requirements, or the Standard Management Fee may be charged separately at £100 plus VAT per hour.
56. The recovery of outstanding service charges shall give rise to an administration charge payable by the defaulting Lessee of £30 plus VAT for each letter written.
57. The registration of dispositions shall give rise to a reasonable charge to be levied by the Manager's nominated solicitors.