

12283



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

Case reference : LON/00AP/LVM/2017/0006

Property : 28 Shepherds Hill, Highgate,
London, N6 5AH
(1) Mr A Press- Flat 1
(2) Ms K Cooney & Mr A Holden –
Flat 2

Applicant : (3) Ms J Rances & Mr D Simpson –
Flat 2A
(4) Mr C Balmond & Ms S Balmond
– Flat 3
(5) Mr G Agathangelou – Flat 3A

Representative : Mr Paul Cleaver, Urang Property
Management Ltd

Respondent : Meadowview Property Limited
("the landlord")

Representative : In Person

Type of application : Variation of an order appointing a
manager
(1) Judge Amran Vance
(2) Judge Ruth Wayte
(3) Mr N Martindale, FRICS

Tribunal member(s) :

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 12 July 2017

DECISION

Decisions of the tribunal

1. We determine it to be appropriate to vary the previous order made by this tribunal on 18 August 2015, appointing Mr Paul Cleaver of Urang Property Management Ltd (“Urang”) as manager of 28 Shepherds Hill, Highgate, London, N6 5AH. The terms of the varied Management Order are attached to this decision at Appendix 2.
2. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) so that none of the landlord’s costs of the tribunal proceedings may be passed to the lessees through any service charge.

Introduction and Background

3. This is an application for variation of the order made by this tribunal on 18 August 2015 in which it appointed Mr Cleaver as manager of 28 Shepherds Hill, Highgate, London, N6 5AH (“the Property”) pursuant to Section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”) for a two-year term expiring on 18 August 2017.
4. The Property is a Victorian terraced house which has been converted into eight residential flats. Five of the flats are let to long lessees and the remaining three have been retained by the landlord. The applicants are the long leaseholders of flats 1, 2, 2A, 3 and 3A, in the Property. All five long leaseholders are parties to this application. The respondent is the freeholder of the Property and has retained Flats 28A, 28B and the basement flat (“the Retained Flats”).
5. This application was made on 12 May 2017. Directions were issued by the tribunal on 23 May 2017 providing for the application to be listed for hearing on 12 July 2017, and for the respondent to send a statement in response to application to the tribunal and to the applicants by 30 June 2017, indicating whether it objected to the continued appointment of Mr Cleaver. The respondent did not comply with this direction and has not communicated at all with the tribunal in respect of this application.

The Hearing

6. The hearing on 11 July 2017 was attended by Mr Cleaver on behalf of the applicants and by Mr Agathangelou. The respondent did not attend.

7. At the hearing Mr Cleaver provided a copy of the policy schedule for his current professional indemnity insurance and a copy of the service charge accounts for the service charge year ending 24 March 2017.
8. He also provided a copy of an email dated 14 June 2017 sent to him by Phil Day of Golden Square Group, the respondent's managing agents, suggesting that to obviate the need for the tribunal's involvement, the respondent was willing to appoint Urang as its managing agents.
9. Mr Cleaver informed us that the applicants preferred for him to be instructed by way of a tribunal appointment because of concerns that if Urang were appointed directly this could, potentially, lead to problems in recovering service charges from the respondent in respect of the Retained Flats. He stated that the respondent had paid all service charges demanded from it in full and that the applicants were keen not to disrupt the current arrangements.

Inspection

10. Neither party requested an inspection and the Tribunal did not consider one to be necessary or proportionate, especially given the lack of active opposition from the respondent to the application.

The law

11. The relevant parts of Section 24 of the 1987 Act are set out in Appendix 1 to this decision.

The Applicants Case

12. When their original application was made the applicants asserted that the Property was in a considerable state of disrepair, including, amongst other matters, that damp was affecting several of the flats; a brick pillar was collapsing; roof tiles had blown off; the septic tank required drainage; and that a rodent infestation problem was present in the Property.
13. In support of the original application Mr Cleaver had provided a proposed maintenance plan in which he set out his plans for remedying these problems. In his updated management plan, submitted in support of the current application, he explained that two years had not been long enough to get to grips with all the problems in the Property. He informed us that he had served three statutory notices under section 20

Landlord and Tenant Act 1985 concerning: (a) full exterior repairs and redecoration; (b) works required to the collapsed drains; and (c) electrical works including installation of a fire alarm. The anticipated costs for all the planned works is £100,000. His plan is to carry out the work in stages, over a two-year period, thereby allowing the cost to the lessees to be spread over time. The electrical works were his priority. In his submission, given the extent of the remedial works required and the lack of interest shown by the respondent in regaining management of the Property, it was appropriate for the tribunal extend his appointment for a minimum term of 5 years.

14. Mr Cleaver also sought a variation to the existing management order to remedy a problem that had been identified since his initial appointment. This concerned the apportionment of service charge contributions between the lessees. Clause 3(25(c) of the lessee's leases provide for expenses and outgoings incurred by the landlord to be apportioned by reference to the rateable values of the flats in the Property. Mr Cleaver's evidence was that following his appointment he contacted Thames Water who provided him with a breakdown of the rateable values of all of the flats except for the basement flat for which none was available. Mr Cleaver adopted the rateable values supplied by Thames Water and, following discussion with the lessees, applied a rateable value of 210 for the basement flat to bring the total service charge percentages up to 100%. This led to him applying the following percentage apportionments when demanding service charges from the lessees.

Flat	Rateable Value	Service Charge %
1	355	16.8967
2	306	14.5645
2A	355	16.8967
3	230	10.9472
3A	230	10.9472
28A	240	11.4231
28B	175	9.9952
Basement	210	
	Total	100%

15. However, Mr Cleaver subsequently identified that the rateable value for Flat 2A did not properly reflect its size and value when compared to the other flats in the Property. Mr Cleaver informed us that enquiries had revealed that in 1972 the ground-floor flat and the first-floor flat in

the Property were the same size and had the same rateable value of 355. Although the ground-floor flat remains the same size, at some point after 1972, the first-floor flat was converted into flats 2 and 2A. In addition: a basement flat was created; the second-floor flat was converted into Flats 3 and 3A; and flats 28A and 28B were created in the space previously used as a garage

16. Mr Cleaver was of the view that the existing apportionment was unfair given that the owner of Flat 2A was paying a contribution based on a rateable value of 355 despite the conversion of the first-floor flat into two flats. He discussed this situation with the lessees and proposed that all the upper floor flats be treated as having rateable values of 230 which would result in the following apportionment, which he suggested should be inserted into a varied Management Order.

Flat	Rateable Value	Service Charge %
1	355	18.6842
2	230	12.1053
2A	230	12.1053
3	230	12.1053
3A	230	12.1053
28A	240	12.6316
28B	175	9.2105
Basement	210	11.0526
	Total	100%

17. Mr Agathangelou agreed that the current arrangement was unfair and supported Mr Cleaver's proposal even though it meant that his service charge percentage would increase. He confirmed that Mr Press, the owner of Flat 1 was opposed to the proposed change but that there were no objections from any of the other lessees.

The Respondent's Case

18. The Respondent has played no part in these proceedings. Mr Cleaver confirmed that a copy of the hearing bundle had been sent to Golden Square Property and to the respondent's registered office address in Guernsey.

Decision and Reasons

19. We are satisfied that it appropriate to vary the existing Management Order, extending Mr Cleaver's appointment for a further five years, ending on 18 August 2022.
20. The respondent has not engaged with this application and there is no reason to doubt Mr Cleaver's evidence that it has shown no interest at all in managing the Property. Given the respondent's proposal that it appoint Urang directly, we infer that it is content with Mr Cleaver's management to date. We are satisfied that given the respondent's disengagement and the evident need for a competent manager of this Property that it is appropriate for Mr Cleaver's appointment to continue. Considering the extensive remedial works identified by Mr Cleaver we agree that 5-year term is appropriate allowing him to phase these works over the course of several years and for the cost to the lessees to be spread over time.
21. We are satisfied that Mr Cleaver has performed his duties as a tribunal-appointed manager to a satisfactory standard. He provided us with copies of the certified accounts for the Property for the service charge years ending 24 March 2016 and 24 March 2017 and we note that the 2017 accounts show that he successfully collected in service charges of £72,562.99 that year which ended with a healthy reserve fund balance of £52,234.35. He also provided us with a copy of his current professional indemnity insurance certificate showing an insured sum of £3 million for any one claim.
22. We also agree that it is appropriate to include in the varied management order provision for service charge contributions to be payable by the lessees using the adjusted rateable values and in the percentages proposed by Mr Cleaver. We accept his oral evidence, corroborated by Mr Agathangelou, that Flat 2A is considerably smaller than Flat 1 as well as his explanation that this is due to the conversion of the first-floor flat into two flats. Having regard to the conversion, since the 1972 ratings, of both the first and second floor flats and the creation of the basement, it seems to us that Mr Cleaver's proposals are eminently sensible and address what would appear to be a clearly unfair situation if the rateable values as provided by Thames Water were to continue to be used. The adjustment is not retrospective and takes effect from 18 August 2017.

23. We therefore approve the varied management order in the form attached to this decision at Appendix 2. This includes an increase in Mr Cleaver's basic management fee from £300 to £325 per annum per flat which we consider reasonable.

S.20C Application

24. In their application form the applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Amran Vance

Dated: 19 July 2017

APPENDIX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

APPENDIX 1

Landlord and Tenant Act 1987

Section 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) . . .
 - (iii) 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;

(abb) [...]

(ac) [...]

or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

[...]

(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.

APPENDIX 2

Terms of Management Order



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

Case reference : LON/00AP/LVM/2017/0006

Property : 28 Shepherds Hill, London N6 5AH

Applicant : Mr A Press
Ms K Cooney
Mr A Holden
Ms J Rances & Mr D Simpson
Mr C Balmond & S Balmond
Mr G Agathangelou
Leaseholders

Representative : Urang Property Management Limited

Respondent : Meadow View Property Limited

Representative : *IN PERSON*

Type of application : Appointment of Manager

Tribunal member(s) : ~~VT-Barran~~

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : *12 JULY 2017*

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Paul Cleaver of Urang Property Management Ltd ('the Manager') is re-appointed as manager of the property at 28 Shepherds Hill, London N6 5AH ("the Property").
2. The order shall continue for a period of 5 years from *18 AUGUST 2017*, ~~to be extendable by a further two years following approval by the Tribunal.~~ If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.
3. The Manager shall manage the Property in accordance with:

5. The percentages payable by each flat for all works shall be set as if the rateable values were as follows:

Flat	Rateable value	Inferred %
1	355	18.6842%
2	230	12.1053%
2A	230	12.1053%
3	230	12.1053%
3A	230	12.1053%
28A	240	12.6316%
28B	175	9.2105%
Basement	210	11.0526%
Total	1900	

6. Service charges will be payable half yearly in advance on 25th March and 29th September in accordance with the leases
7. 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.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts at year end to the lessees.
- (ii) Set demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Set demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Manager..
- (v) 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.

- (a) The Directions and Schedule of functions and services attached to this order;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') 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.
4. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
 5. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.

DIRECTIONS

1. 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 £1,000,000 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.
2. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
3. 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.
4. The Manager shall be entitled to collect a sinking fund for the property, in accordance with the leases, in order to be able to carry out necessary repair works across several years if appropriate.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external accountant, 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.

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. Comply with all relevant health and safety law and regulations from time to time.
- (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.

Fees

- (i) Fees for the above mentioned management services will be a basic fee of £325 per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS. Such fee may increase year to year based on inflation and actual management costs
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the cost (subject to a minimum fee of £500), excluding the cost of the specification. This is in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis. Time will be charged at £125 per hour for a

property manager, £150 per hour for a senior property manager or head of finance or legal and £200 per hour for the director of Urang. This will include for time spent on any issues that do not constitute normal day to day management and/or that pre-date this appointment, including fees charged to the Applicant for preparing for this appointment

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Association of Residential Managing Agents.