

12165



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

**Case reference** : LON/00BE/LVM/2017/0001

**Property** : Flats 1-15 Shawbury Court , 99-115  
Lordship Lane London SE22

**Applicants** : The Leaseholders of Shawbury  
Court (as per the Appendix)

**Representative** : Ms Madeleine Worrall –  
leaseholder Flat 8

**1st Respondent** : Almond Land Limited (Head  
leaseholder/landlord)

**Representatives** : Mr Eyvind Andresen Solicitor and  
Mr Andrew Smillie of Home  
Ground Management Limited

**2nd Respondent** : British Overseas Bank Nominees  
Ltd and WGTC Nominees Ltd  
(Freeholder)

**Representative** : Mr Rupert Calvocoressi –  
Chartered Surveyor and Ms Hailey  
Bellerby of Lambert Smith  
Hampton Surveyors

**Type of application** : Variation (extension) of an order  
for the Appointment of Manager

**Tribunal member(s)** : Judge N Haria  
Mr P Casey MRICS  
Mrs L Walter MA(Hons)

**Venue** : 10 Alfred Place, London WC1E 7LR

**Date of decision** : 2 May 2017

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**DECISION**

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**Background**

1. On 12 December 2008 a Tribunal made an order appointing Prior Estates as manager and receiver of the Property (being the residential

part of Shawbury Court) for a period of 3 years from 16 January 2009 (Ref: LON/00BE/LSC/2008/0346).

2. On 9 January 2012 a Tribunal extended the order appointing Prior Estates Ltd as manager and receiver of the Property for a further 5 years with effect from 16 January 2012 (Ref: LON/00BE/LVM/2011/0011).
3. The Applicants submitted an application seeking a further 5 year extension of the appointment of Prior Estates Ltd as manager. Directions were issued on the 3 February 2017.

### **The Hearing**

4. A hearing took place on 10 March 2017. The parties were represented at the hearing and Mr Andrew McKeer the person dealing with the matter at Prior Estates Ltd attended the hearing. The Tribunal heard from Ms Worrall on behalf of the Applicants and Mr Andresen on behalf of the First Respondents. The Tribunal also heard from Mr Andrew McKeer.
5. All parties were in agreement that the Prior Estates Ltd had been managing the Property effectively and efficiently and their appointment should be extended, the only issue being the period of the extension.
6. The Appellant's sought an extension for a period of 5 years as they considered that Prior Estates Ltd through Mr Mckeer had a cooperative and constructive approach to the management of the Property and this had resulted in significant improvements in the Property. Ms Worrall stated that the Applicants valued the stability and continuity provided by Prior Estates Ltd acting as the Managing Agent.
7. The Tribunal heard that the first Respondent had acquired its interest in the Property in 2014 with the Management Order already in place. The Tribunal was informed that Homeground Management Ltd does not manage property but appoints managers to manage their portfolio of properties. It was confirmed that Homeground Management Ltd did not oppose the making of a further Management Order as they recognised that the leaseholders at the Property needed to be satisfied with the overall management of the building. The Respondents conceded an extension of the Management Order for a period of 3 years was reasonable.
8. Mr Andresen stated that although the current Management Order requires the Manager to collect ground rents, these are in fact collected by the first Respondent and he requested that the Management Order is varied accordingly.

### **Determination**

9. The Tribunal having heard from the parties and having considered the evidence was satisfied that a discharge or other cessation of the current Order would be likely to 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 to extend the appointment of Prior Estates Ltd as Managing Agent for a further period of 3 years on the terms and conditions contained within this Decision and set out in the Directions and Schedule of Functions and Services in this Decision.

10. The appointment of a Managing Agent by the Tribunal is a draconian step against the rights of both Respondents over the control of the Property. Since 2008 the Property has been managed by a Managing Agent appointed under a Tribunal Order. The Tribunal considered that the appointment of a Managing Agent under a Tribunal Order for a further 3 years to be just and convenient in all the circumstances as this would allow adequate time for the Managing Agent to put in place (if not complete) a program for the intended terrace and roof repairs and also for the 1<sup>st</sup> Respondent who acquired its interest in 2014 to familiarise itself with the Property and its management.
11. The Order within this Decision replaces the previous 2008 Order as it is clear that the Managing Agent is not in fact required to undertake all the functions specified in the 2008 Order. This new Order has been put in place to reflect the actual terms under which the Managing Agent is appointed and the terms were put in place in consultation with and with the agreement of the parties.
12. In accordance with section 24(1) Landlord and Tenant Act 1987 Prior Estates Limited of 7 Newman Road Beckenham Kent BR31RF ('the Manager') is appointed as manager of the property at 1-15 Shawbury Court, 99-115 Lordship Lane, London, SE22 9DQ ('the Property').
13. This order shall continue for a period of 3 years from 16 January 2017 until 15 January 2020. 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.
14. The Manager shall manage the Property in accordance with:
  - (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.
15. 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.

16. 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.

**Name:** Judge N Haria

**Date:** 02/05/2017

## **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).

## 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. That no later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 16 January 2017 become rights and liabilities of the Manager.
4. 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.
5. 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.
6. The Manager shall be entitled to apply to the Tribunal for further directions.

## **SCHEDULE OF FUNCTIONS AND SERVICES**

### **Insurance**

- (i) Discharge the Head Lessor's obligations for payment of premiums for insurance via funds collected for service charge.
- (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 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) Instruct solicitors to recover unpaid service charges and any other monies due to the 1<sup>st</sup> Respondent in connection with the Managers functions set out herein.
- (iv) 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.

### **Accounts**

- (i) Prepare and submit to both Respondents 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 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 Codes of Practice and regulations as issued from time to time by the Royal Institution for Chartered Surveyors.

### **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 1<sup>st</sup> 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 £225.00 per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (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 net cost. This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (iv) The undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.

### **Complaints procedure**

- (i) The Manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors.



## APPENDIX

### List of Applicants

Mountview Properties (Fao Barry Paris) Flat 1  
Mr & Mrs Purdy Flats 2 & 3  
Mr & Mrs Wallis Flat 4  
Mr & Mrs Saunders Flat 5  
Mr & Mrs Kiely Flat 6 & 7  
Ms Madeleine Worrall Flat 8  
Mr & Mrs Efobi Flat 9  
Mr Nikos Art Flat 10  
Mr McLennan & Ms Janega Flat 11  
Mrs Cambridge Flat 12 & 15  
Ms A Jenkins Flat 13  
Mr & Mrs Redish Flat 14