



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

<b>Case Reference</b>	:	CHI/00HE/LAM/2020/0012
<b>Property</b>	:	The Old Foundry, Roseland, Liskeard, Cornwall, PL14 3PQ
<b>Applicant</b>	:	Geoffrey Mottram and Estella Mottram (Flat 3)
<b>Respondent</b>	:	Andrea Glanville (Flat 1) David John Martin and Jayne Alison Martin (Flat 2) Donald Ian Gerrard (Nominated Manager)
<b>Type of Application</b>	:	Appointment of a manager – Section 24 Landlord and Tenant Act 1987 (the Act)
<b>Tribunal Members</b>	:	Judge C A Rai (Chairman) Mr D Banfield FRICS Regional Surveyor
<b>Date type and venue of Hearing</b>	:	22 April 2021 CVP Virtual by Video (V)
<b>Date of Decision</b>	:	24 May 2021

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**MANAGEMENT ORDER**

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1. In accordance with section 24(1) of the Act Donald Ian Gerrard of Freehold Management Services Limited 22b Weston Park Road Peverell Plymouth Devon PL3 4NU is appointed as manager of The Old Foundry Roseland Liskeard Cornwall PL14 3PQ (the Property).
2. The appointment shall start on 1 July 2021 (the start date) and shall end on 30 June 2023 (the end date).

3. The purpose of the Management Order is to provide for adequate management of the Property which will include taking steps to resolve the following problems of inadequate management identified by the Tribunal.
  - a. Lack of buildings insurance.
  - b. Lack of compliance with current fire and electrical safety requirements.
  - c. Absence of an integrated fire alarm system.
  - d. Defects and issues remaining unresolved after fire damage to the Property.
  - e. Water ingress through the defective structure of the Property.
  - f. Neglect of decoration and repair of other common parts including common services of the Property.
  - g. Absence of a planned maintenance programme.
  - h. Absence of provisions in the leases of the flats enabling recovery of service charges.
  - i. Missing freeholders.
  
4. In accordance with section 22(3) of the Act the Tribunal dispenses with the requirement for the Applicant to serve a notice under section 22 of the Act because it has not been possible for the Applicant to locate three of the four jointly named freeholders. The Tribunal is satisfied that it would not be reasonably practical for the Applicants to serve such a notice on all the parties jointly named as the landlord.
  
5. The manager shall manage the Property in accordance with the duties of a Manager set out in the Service Charge Residential Management Code, 3<sup>rd</sup> edition (the RICS 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 of the Leasehold Reform Housing and Urban Development Act 1993.
  
6. The manager must perform his duties under this Order independently and has an overriding duty to this tribunal.
  
7. The following provisions of the leases of all the flats at the Property are varied as follows:
  - a. Two additional recitals are added as sub-clause (1)(f)
 

**“The Service Charge” means 33% of the costs incurred by the Lessor in-**

    - i. Maintaining repairing and redecorating those parts of the Flats which are Common Property which for the avoidance of doubt includes all parts of the Property not demised by the leases of Flats 1, 2 and 3 and all sewers

drains pipes wires ducts and conduits used by more than one the Flats.

- ii. Insuring the Property against the losses referred to in paragraph 2 of the Fifth Schedule. and sub-clause (1)(g)

“The Service Charge Year” means 1 July until 30 June or such other annual period as the Lessor and the Lessees shall hereafter agree.

- b. Paragraphs 2 of the Fifth Schedule to the Lease shall be deleted and replaced with the following obligation.

“The Lessor shall insure the Property against loss or damage by fire aircraft lightening thunderbolt storm and other comprehensive risks to provide adequate protection from all perils against which a prudent property owner would normally insure in the full replacement value thereof and produce evidence of the insurance and the premium paid to the Lessees on request but not more than once during any Service Charge Year”.

- c. Paragraph 6 of the Fifth Schedule to the leases shall be deleted and replaced with the following obligation.

“The Lessee shall pay the Lessor the greater of £500 per annum (the initial Service Charge) or the sum demanded by the Lessor on or before the 1 June by two equal instalments payable on 1 June and 1 November on account of the estimated Service Charge for the current Service Charge Year”.

8. The initial service charge year shall be the period between 1 July 2021 until 30 June 2021.
9. The manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.
10. The manager shall register the Order against the Registered Title to the freehold of the Property as a restriction under the Land Registration Act 2002 or any subsequent Act in accordance with section 28(4) of the Act.
11. 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.
12. The manager shall act fairly and impartially in his dealings in respect of the Property.

13. When performing his functions under this Order, the manager shall 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 proper performance of the said functions.
14. From the date of his appointment and throughout the appointment the manager must maintain appropriate professional indemnity insurance cover of at least One Million Pounds (£1,000,000) and shall provide copies of the certificate of the liability insurance together with a copy of the policy document to the Tribunal within 14 days of the date of this decision. The certificate must specifically state that it applies to Donald Ian Gerrard's duty as a Tribunal appointed manager. In addition, the manager shall supply the Tribunal with a signed letter from his insurer confirming that it has received notification of the appointment as manager of the Property. All correspondence and documents must be sent to the Tribunal in an electronic form.
15. The manager shall apply all amounts received by him in the performance of the Landlord's covenants under the leases of the flats within the Property.
16. The manager shall be entitled to apply to the Tribunal for further directions.
17. The manager shall inform the lessees of his appointment and his powers under the Order within 14 days from the date of his appointment.
18. 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.
19. Any application to extend or renew this order should be made at least three months before the end date and must include a report of the management of the Property during the period of the appointment (from the start date to the date of the application).
20. The manager is granted the following functions and owes the following duties relating to the management of the Property.

## **Functions and Duties**

### **Insurance and Service Charges**

1. The manager shall obtain and maintain appropriate building insurance for the Property and ensure that

manager's interest and the lessees' interest is noted on the insurance policy.

2. The manager must prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees as if such provisions were contained in the leases.
3. Following a meeting with the lessees whether "virtual" or face to face, the manager shall set, demand and collect service charges (including, if agreed, contributions to a sinking fund), insurance premiums and any other payment from the lessees reasonably needed to insure and maintain the building.
4. The manager shall collect all service charges and insurance premium contributions payable under the leases as varied by the Order. For the avoidance of doubt this Order does not displace covenants in the leases and the lessees remain bound by them.
5. To ensure that the manager has adequate funds to manage the Property the manager may immediately collect £500 from each lessee.
6. The manager may demand additional payments on account of the Service Charge during the Service Charge Year if the cost of complying with his obligations exceed the Service Charges already collected during the relevant Service Charge Year.
7. The manager may recover one third of all costs reasonably incurred in managing the Property from each of the three lessees who shall contribute in equal one third shares to all costs incurred by the manager in carrying out his management obligations during the term of the management Order.
8. The manager shall have no obligation to commission or carry out any work at the Property until the Lessees have put him in funds to cover the costs of those works by collectively paying the sums, he has demanded.
9. All monies received by the manager in respect of the Property shall be held in a designated trust account.
10. The manager has the right to enforce payment of the service charges and may instruct solicitors to recover unpaid rents and service charges and any other monies properly demanded by the manager and due to him including if appropriate where liability arises prior to his appointment.
11. All rights and liabilities of the Landlord arising under any contracts of insurance, and/or contracts for the provision of services to the Property shall upon the date of the appointment become rights and liabilities of the manager.

12. The manager shall 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**

13. The manager shall:-
- a. Prepare and submit to the three lessees, at the same time, an annual statement of account detailing all monies received and expended. The accounts may be certified by an external auditor, if required by the manager or the lessees.
  - b. Maintain efficient records and books of account which are open for inspection by the lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
  - c. 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. [See section 42 of the Landlord and Tenant Act 1985.]
  - d. Account for all monies collected from the lessees in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors. All service charge accounts should comply with Tech 03/11.

### **Maintenance**

14. The manager shall :-
- a. Subject to collecting sufficient prior funds carry out all required repair and maintenance issues relating to the Property including instructing contractors to attend and rectify problems and is entitled to recover the cost of doing so as service charges payable under the leases.
  - b. Deal with all other building maintenance relating to the services and structure of the Property. All works to be carried out to the Property must be undertaken in the interest of good estate management and he must make appropriate recommendations to the lessees.
  - c. Set up a planned maintenance programme for the period of his appointment which shall be agreed with the lessees and copied to them to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property including all communal services.

### **Fees**

15. The manager's fees for the above mentioned management services will be a basic fee of £300 per annum per flat for the first year of his appointment and thereafter subject to an annual review. Those services shall include the services set out in paragraph 3.4 of the RICS Code.
16. The hourly rate for any additional works not covered by the basic fee will be £55 per hour but the manager will not make this charge without

first giving written notice to all the lessees as to the reasons an additional charge will be levied.

17. Commissioning and supervising 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) may be charged for on a time basis at the hourly rate disclosed.
18. Any charges by the manager for dealing with solicitors' enquiries on transfer will be made on a time related basis and charged to and will be payable solely by the outgoing lessee.
19. VAT will be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing
20. The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above may be charged for on a time basis at the hourly rate disclosed.

### **Reporting**

21. By no later than 1 June 2022, 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, providing a copy to the lessees of the Property at the same time.

### **End of Appointment**

22. 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 lessees who may raise queries on them within 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 on the application by an interested party.

### **Disputes**

23. In the event of a dispute about whether a service charge demanded by the manager is payable, a lessee or the manager is entitled to make an application to this tribunal under section 27A of the Landlord and Tenant Act 1985.
24. In the event of a dispute regarding any sum payable under this Order, rather than under the lease (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 as to whether the sum in dispute is payable, and if so, in what amount.

### **Judge C A Rai**





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**DECISION AND REASONS**

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1. This decision was made following a remote Hearing which was not objected to by the parties. It was attended by Mr Gerrard the nominated manager and the Tribunal members by video and Mr and Mrs Mottram by telephone. A face to face hearing was not held as it was not practicable. The documents that we were referred to at the Hearing were in 6 bundles which comprised:-
  - a. The Application and supporting documents **Bundle 1** (58 pages)
  - b. Copies of two sets of Directions dated 28.10.2020 and 10.02.21 (12 pages)
  - c. The Applicants statement in response to the second directions (36 pages) **Bundle 2**
  - d. Reply Form completed by Mrs Glanville (Flat 1) (1 page)
  - e. Letter to the tribunal from Mr Gerrard (4 pages)

- f. Copies of emails received from the Applicants and Mrs Glanville and Mr and Mrs Martin and Mr Gerrard. (11 pages)

The Tribunal also received a copy of an indemnity insurance schedule for Freehold Manager

2. The Applicants made an application to the Tribunal for the appointment of a manager of the Property. They said that they were unable to serve a notice under section 22 of the Act on all the four named freeholders because apart from Mr Mottram who is one of them, the addresses or whereabouts of the other three freeholders is unknown.
3. None of the Respondents know the addresses of the other freeholders or possess any information which would enable them to be traced.
4. The Tribunal accepted that:-
  - a. there is little prospect of finding any of the other three freeholders; and
  - b. that if found they would have no interest in the management of the Property.
5. The Property was probably converted into flats in or about the late 1980's. Its name suggests that its former use may have been non-residential. The Applicants are joint lessees and occupiers of Flat 3.
6. When the Applicants purchased Flat 3 in or about 2001 their solicitors omitted to register their interest as joint freeholders at the Land Registry at the same time as they were registered as lessees. Some years later Mr Mottram was registered as a joint freeholder with Rachel Elizabeth Summers, Christopher Ian Sibley, and Julia Joan Hainsworth at the Land Registry as evidenced by the official copies of the register of title for title number CL39451 extracted on 16 November 2020 [B2 Page 26].
7. The freehold title to the Property contains a reference to a covenant benefitting the leasehold interests of the three flats which states that no freehold of an individual flat can be transferred (as opposed to the entirety thereof) and that the freehold interest may only be transferred to such persons as simultaneously or immediately following such transfer have become the proprietor of the leasehold interest in a flat. The wording of the covenant is not particularly clear and the Applicants confirmed that it has not been complied with as, apart from Mr Mottram, the named freeholders on that title are not the lessees of the other flats in the Property.
8. Two previous managers were appointed by the Tribunal. Neither manager was successful in obtaining the co-operation of all the lessees for a sufficient period to enable improvements to be made to the Property.
9. In recent years it has been impossible to obtain a buildings insurance policy. This appears to have been a consequence of the failure to comply with the last insurer's requirements

regarding fire and electrical safety. Whilst the lessees have endeavoured to cooperate with each other the Applicants have concluded that the Property cannot be managed properly without professional assistance. There is no evidence before the Tribunal that either of the other two lessees wish to manage the Property on behalf of all the lessees.

10. The Tribunal have been told that that the three leases are in similar form and contain unsatisfactory provisions requiring the lessees to pay regular service charges to enable the Property to be maintained. Whilst some service charge contributions have been paid by all the lessees there appears to have been little agreement between them about the priority of any necessary works. The failure to obtain the co-operation of all the lessees resulted in the discharge of one of the former managers.
11. The current leaseholder of Flat 1 is Ms Glanville and the joint lessees of Flat 2 are Mr and Mrs Martin. Those three lessees are named as Respondents to the Application and received notice of it and the proposed appointment of Mr Gerrard. Evidence of their respective ownership has been provided to the Tribunal [Bundle 2 pages 21 and 23].
12. Mr Gerrard confirmed that he has agreed to take on the management of the Property. He told the Tribunal that he had been appointed by it before in relation to a large block of flats in Plymouth. He provided details of his experience and stated that his company currently manage more than eighty blocks of flats with approximately 800 leaseholders.
13. His company is a member of the Association of Residential Managing Agents (ARMA) and past recipient of an excellence award for services provided to leaseholders.
14. Mr Gerrard said that 50% of his current portfolio is buildings which are similar to the Property. He told the Tribunal that he has formulated “a bit of plan” which he hopes will enable him to improve the building and he employs an experienced maintenance team. Whilst he has not seen the Property this year, he looked at the exterior when it was first mooted that he might be approached to manage it in 2019. He said that the co-operation of the leaseholders is key to the success of management. He has spoken to the last manager who blamed his difficulties on disagreement between the three leaseholders. It will be a priority for him to meet with all the leaseholders as soon as practical and explain his plan.
15. Mr Gerrard said that his priority will be to obtain insurance and undertake a building survey so he can assess the urgency of necessary works and prepare a plan and schedule for the works. He has seen a copy of the lease of flat 3 and accepted that it was poorly drafted. He acknowledged that the current leases contain no effective service charge provisions and that he will need the support of the leaseholders of all the three flats to effectively manage the Property.

16. Mr Gerrard said his “fall back” plan will be to try and persuade the leaseholders to cooperate and support him as it will be in their interests to sustain and improve their investment in their respective properties.
17. He asked that any management order given him powers to recover arrears if payments are demanded and not paid.
18. He said that the minimum term of the appointment should be two years as it would be difficult to achieve any effective management over a shorter period. If the Tribunal think it appropriate, he will accept a review after 18 months.
19. He confirmed that his annual fee will be £300 per flat plus a charge for any additional work which is currently £55 an hour. However, he does not think that the additional hourly rate quoted will “kick in” unless he encounters unforeseen problems.
20. The Tribunal asked Mr Gerrard if he had taken into account the history disclosed of previous management of this property and the difficulties identified from his conversation with the last manager. He confirmed that he had and that he will follow the RICS Code and the ARMA Consumer Charter and Standards. He believed that he has the knowledge coupled with sufficient practical experience to comply with his duties to the Tribunal if appointed as manager of the Property.
21. Mrs Mottram said that she is extremely worried about building maintenance. She has been unable to “force” the other lessees to contribute towards maintenance and repair. She also said that she wanted to surrender the responsibilities which she and Mr Mottram had undertaken since they bought their flat.
22. Ms Glanville provided written confirmation that all the lessees agreed to the appointment of Mr Gerrard in 2019. She expressed her concerns about his “additional” hourly charge of £55.
23. Mrs Martin confirmed agreement to the appointment of a manager but expressed her concern that complete control over costs should not be given to Mr and Mrs Mottram, because they (Mr Mottram) own a share of the freehold.
24. Having considered the circumstances of the application and heard from Mrs Mottram and Mr Gerrard the Tribunal decided that since the lessees of Flats 1 and 2 also agree that it is necessary to appoint a manager of the Property it is just and convenient to make an order appointing Mr Gerrard as manager of the Property for two years.
25. If any lessee of a flat within the Property finds that his management of the Property is unsatisfactory, he or she will

independently be able to apply to the Tribunal under section 24(9) of the Act for a variation or discharge of the management order.

26. Mr Gerrard will be required to adhere to the RICS Management Code and consult all the lessees before incurring any substantial expenditure. He confirmed that he understood these obligations during the Hearing.

### **Judge C A Rai (Chairman)**

### **Appeals**

1. A person wishing to appeal this decision to the Upper 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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
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.