FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/LAM/2021/0002**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**Norway Wharf, Wharf Lane, London E14 7HW**
Applicants	**:**	**Martin Allchurch and James Mack**
Representative	**:**	**In person**
Respondent	**:**	**Flambayor Limited**
Representative	**:**	**Simon Allison of Counsel**
Type of Application	**:**	**Appointment of Manager**
Tribunal Members	**:**	**Judge P Korn Mrs A Flynn MRICS Miss J Dalal**
Date of Hearing	**:**	**12th July 2021**
Date of Decision	**:**	**29th July 2021**

DECISION ON A PRELIMINARY ISSUE

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Description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in electronic bundles, the contents of which we have noted. The decisions made are set out below under the heading "Decisions of the tribunal".

Decision of the tribunal

The tribunal does not have jurisdiction to hear the Applicants' substantive application for the appointment of a manager for the reasons set out below.

Introduction

1. The First-tier Tribunal ("**FTT**") has received a joint application from the Applicants under section 24 of the Landlord and Tenant Act 1987 ("**the 1987 Act**") for an order appointing a manager over the Property. The Applicants are joint tenants (under a long lease) of 4 Lime House Court, which forms part of the Property.

2. Section 22 of the 1987 Act states that prior to making an application for the appointment of a manager a tenant wishing to make such an application must serve a notice on the landlord and on any other person by whom management obligations are owed to the tenant. The purpose of this notice (the "**section 22 notice**") is essentially to alert the recipient(s) to the grounds for the proposed application and to afford the recipient(s) an opportunity to address the concerns raised.

3. The Section 22 Notice must specify certain matters. The FTT has the power in limited circumstances to make an order appointing a manager despite the notice being defective in one or more respects or even to dispense altogether with the requirement to serve a notice.

4. A preliminary issue has arisen for determination, as the Respondent contends that the section 22 notice is not valid and that there is no proper basis for the FTT to waive that invalidity and to proceed to hear the substantive application.

5. By a letter dated 1st July 2021, Judge Powell of the FTT directed that the preliminary issue referred to above be dealt with at the start of the hearing on 12th July 2021, with the parties to file skeleton arguments on the preliminary issue in advance.

Respondent's case on the preliminary issue

6. The Respondent notes that Part II of the 1987 Act is a complete statutory scheme for the appointment of a manager. The effect of the appointment of a manager is to remove the right of the freeholder to manage its own property, and that should only occur in the circumstances and manner prescribed by the 1987 Act.

7. Under section 21(1) of the 1987 Act, the tenant of a flat contained in any premises to which Part II applies can apply to the FTT for an order to appoint a manager to act in relation to those premises. Under section 21(2), Part II applies to premises "*consisting of the whole or part of a building if the building or part contains two of more flats*". The Respondent notes that the application relates to Lime House Court together with two other buildings, and it accepts that each of the three buildings contains two or more flats.

8. Whilst an application can be made in respect to two or more premises (i.e. two or more buildings or parts of buildings) under section 21(4)(b), a tenant of each of the premises in question must be an applicant (see section 21(4)(a)), as a tenant applicant must under section 21(1) be a tenant of a flat contained in the premises in question.

9. No application can be made unless a notice pursuant to section 22 is served on (in this case) the Respondent: see section 22(1). Again, the 1987 Act specifically refers in section 22(1) to the application being made in respect of premises to which Part II applies and to the application being made by a tenant of a flat contained in those premises. Section 22(2) sets out what must be contained in that notice.

10. Whilst the FTT can dispense with the requirement to serve a notice under section 22(3), the circumstances in which it can do so are very limited and do not apply here. Unless a (valid) section 22 notice is served (or the requirement dispensed with by the FTT), no application under section 24 can be made, as is apparent from section 23(1).

11. Under section 24, the FTT may *"on an application for an order under this section, by order… appoint a manager to carry out in relation to any premises to which this Part applies… [management functions]"*. In order to do so, the FTT must be satisfied of a relevant breach and that it would be just and convenient to make the order in all the circumstances of the case: see section 24(2).

12. The section 22 notice served by the Applicants describes the premises as "Norway Wharf, Wharf Lane, London E14 7HW". Norway Wharf consists of four blocks (one being a housing association block, attached to Park Heights, which was then excluded as part of the application). As stated by the Applicants on their own application form, "Norway

Wharf comprises three buildings: Lime House Court, Grosvenor Court and Park Heights Court (there is a fourth building, Docklands Court, which is separately managed by a housing association and is not part of this application)." Paragraph 5 of Mr Mack's witness statement also confirms that "Lime House Court is one of four buildings making up the development known as Norway Wharf".

13. The section 22 notice has been served solely by the Applicants, they being the joint leaseholders of 4 Lime House Court, one of the three buildings identified by them in their application. No leaseholder of Grosvenor Court or Park Heights Court has served a section 22 notice.

14. The section 22 notice explains that the Applicants intend to apply to the FTT for an order to appoint a manager "in respect of the Property". There is no dispute that each of the three blocks subject to the application are premises to which Part II of the Act applies, nor is there any dispute that a section 22 notice (and subsequent section 24 application) could be served with respect to all three blocks / buildings. However, any such notice would have to be served by at least one leaseholder from each building: see section 21(1). Whilst the Respondent suggests that this is an obvious point on reading the 1987 Act, it notes that this view is shared by the authors of Service Charges and Management, 4th ed, (Sweet and Maxwell) at 23-11, who state: *"Landlord and Tenant Act 1987 s.21(4)(b) expressly permits an application to appoint a manager to be made in respect of two or more premises provided they are premises to which the Landlord and Tenant Act 1987 Pt II applies. Such an application would of course need to be made jointly by at least one tenant in each of the premises"*.

15. Where there has been a failure to comply with the requirements of a statutory scheme, the question is whether Parliament could be said to have intended total invalidity of the claim to be the result; this is not a question of whether there has been any actual 'prejudice' or 'substantial compliance', but a question of construction in light of the failure itself: see *Elim Court RTM Co Ltd v Avon Freeholds Ltd [2018] QB 571 (CA)* at paragraphs 51-56. Parliament can never have intended that a notice to appoint a manager in respect of three buildings could be served by the leaseholders of one, as that would run wholly contrary to the express wording of the 1987 Act.

16. Therefore, according to the Respondent, the section 22 notice and the application are invalid. It is simply not open to the Applicants to obtain an order to appoint a manager in respect of premises in which they have no interest where no other leaseholders have served a section 22 notice. There is also no power to amend or add to the section 22 notice. Section 22(3), containing the power of the FTT to dispense with the requirement for a section 22 notice to be served, is limited in its extent and does not assist the Applicants. To make such an order to dispense, the FTT would need to be satisfied that it would not be reasonably

practicable to serve a section 22 notice on the person. It would plainly be reasonably practicable to do so here – the Respondent's identity is known and has always been known, and no application asserting such imminent urgency that an interim order should be granted has been made.

17. Section 24(7) provides the FTT with a power to, if it thinks fit, make an order appointing a manager notwithstanding that the section 22 notice failed to comply with any requirement contained in section 22(2). Whilst this is a relatively wide, albeit discretionary, power, it cannot save every notice. It is a fundamental requirement in section 22(1) that the tenant of a flat contained in the premises serves a notice. Only the Applicants served a section 22 notice. The Applicants are only tenants of one of the three buildings specified as being the 'premises'. The failure is not one within section 22(2) but a fundamental underlying requirement of the 1987 Act. Furthermore, the Applicants have actually complied with section 22(2) – there is no defect under section 22(2). The premises are specified as required and intended, and they intentionally specify the premises as being the three buildings. That is permissible under the 1987 Act: see section 21(4)(b). The difficulty is that the notice was not served by tenants of all of the buildings / premises, and that is a failure to comply with section 22(1), which cannot be cured.

18. The application is therefore fatally flawed. The Applicants cannot seek an order to appoint a manager in respect of three buildings when they are only tenants of the one. If they wished to do so, they should have sought the support of tenants in the other two buildings so that a section 22 notice could be served by them all jointly. Alternatively, they could simply have sought the appointment of a manager in respect of their own building.

Applicants' case on the preliminary issue

19. The Applicants deny that the section 22 notice is invalid or that the proceedings are invalid, and they therefore submit that the FTT is properly seized of a valid application and can proceed to determine the application.

20. The Applicants agree that the premises that are the subject of the application comprise of three blocks (Lime House Court, Grosvenor Court and Park Heights Court), these blocks together being commonly known as Norway Wharf.

21. As regards the chronology, on 27th October 2020 the Applicants served a section 22 notice on the Respondent, which the Respondent acknowledged on 24th December 2020 but declined to discuss. On 24th February 2021 the Applicants commenced proceedings in the FTT against the Respondent under Part II of the 1987 Act. On 16th June

2021 the Respondent served its response to the application, raising for the first time the question of the validity of these proceedings and the validity of the section 22 notice.

22. Part II of the Landlord and Tenant Act 1987 confers on the FTT a statutory power by order to appoint a manager in relation to buildings containing flats.

23. There is no legal or factual foundation for the Respondent's statement that the section 22 notice is invalid by virtue of the Applicants only holding an interest in Lime House Court. Section 22(1) of the 1987 Act requires that a tenant of a flat, before making an application to the FTT, must serve a preliminary notice on the landlord and on those to whom obligations relating to maintenance attach. The Applicants have complied with this requirement: the preliminary notice was served on the Respondent, on Kinleigh Limited and on Estates & Management Limited.

24. Section 22(2) of the 1987 Act sets out requirements relating to the form and content of the preliminary notice. These requirements have also been complied with. Section 22 sets out in totality the requirements for a preliminary notice to be valid under the 1987 Act. The Respondent does not argue that the Applicants have not complied with the requirements in section 22 of the Act. Instead, the Respondent seeks to import a new requirement into section 22 of the Act, namely whether a tenant has an *"interest"* in a *"block'*. This is not a requirement found in the 1987 Act and, therefore, is irrelevant to the FTT's determination of the validity of the notice. The Respondent's submission is therefore bound to fail.

25. The Respondent also submits that the section 24 application is invalid, on the basis that *"it is patently clear that any application made under section 24 must include qualifying leaseholders for each block"*. The Respondent refers to section 24 of the 1987 Act and cites an extract from a textbook in support of this claim. However, section 24 contains no test of the type suggested by the Respondent. The extract takes the Respondent's argument no further forward, as it is simply not relevant to this application: it discusses the appointment of a manager for two or more premises. However, this application, as is agreed between the parties, relates to only one premises (Norway Wharf). This submission can therefore not be sustained.

26. The Applicants state that they have not invited the FTT to – and do not consider that the FTT needs to – exercise its power at section 24(3), as the Respondent has failed to make its case that the section 22 notice or proceedings are invalid. However, the Applicants submit that the FTT is able in these proceedings to exercise its section 24(3) power if it sees fit: there is no basis for the Respondent's argument that the FTT can

exercise this power only if qualifying leaseholders from one or more specified blocks are parties to a preliminary notice or an application.

27. The Respondent submits that the FTT may exercise its dispensation powers in two sets of circumstances, but the Applicants submit that this is simply incorrect and arises from a misreading of Part II of the 1987 Act. The circumstances to which the Respondent refers relate to the FTT's power, at section 22(3) of the Act, to dispense with the service of a preliminary notice. The FTT's power at section 24(3) of the 1987 Act is, though, not restricted to the two circumstances cited by the Respondent.

Discussion at the hearing

28. At the hearing Mr Mack for the Applicants said that the estate had interlinked buildings, that there was a common service charge and a common tendering process and that therefore it could be argued that the three buildings were actually one building. He also said that "premises" was not a defined term in the 1987 Act and that section 21(2) was not interpretative of the word "premises". Furthermore, the Interpretation Act 1978 allowed for the plural to be included in the singular.

29. In response, Mr Allison said that the Respondent did not agree that Norway Wharf was a single set of premises for the purposes of the 1987 Act. As regards section 21(2) of the 1987 Act, the Interpretation Act 1978 only allows for the plural to be included in the singular where the statute in question does not show a contrary intention, and here the contrary intention is clear from section 21(4).

30. As regards the suggestion that Norway Wharf is all one building, it is generally the case on an estate that buildings will have some shared services but that does not make them one building. Furthermore, in his own witness statement Mr Mack describes his own block, Lime House Court, as being one of four buildings making the development known as Norway Wharf.

31. In a further response, Mr Mack submitted that – in the alternative to his primary arguments – section 21(1) of the 1987 Act first refers to *"the tenant of a flat contained in any premises to which this Part [of the 1987 Act] applies"* and then goes on to permit such a tenant to apply for an order appointing a manager to act *"in relation to those premises"*. He argued that the phrase "in relation to" allowed for the possibility that the order sought could be in respect of a wider set of premises if necessary.

Relevant statutory provisions

32. Landlord and Tenant Act 1987

Section 21

(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.

(2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.

(3) *[Agreed not to contain matters relevant to the present case.]*

(4) An application for an order under section 24 may be made –

(a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and

(b) in respect of two or more premises to which this Part applies;

and, in relation to any such joint application, as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly

....

Section 22

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on— (i) the landlord, and (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve

notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;

(c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

....

Section 23

(1) No application for an order under section 24 shall be made to the appropriate tribunal unless—

(a) in a case where a notice has been served under section 22, either—

(i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or

(ii) that paragraph was not applicable in the circumstances of the case; or

(b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—

(i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or

(ii) no direction was given by the tribunal when making the order.

Section 24

(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.

……………………

(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.

……………………

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

……………………

FTT's analysis

33. We note that the sole Applicants are the joint leaseholders of a flat within Lime House Court. We also note that the section 22 notice relates to three blocks – Lime House Court, Grosvenor Court and Park Heights Court – these blocks together being commonly known as Norway Wharf.

34. As observed by the Respondent, Part II of the 1987 Act is a complete statutory scheme for the appointment of a manager. The preliminary issue before us concerns the validity of the section 22 notice, but the question needs to be approached by considering not only section 22 itself but also the other relevant surrounding provisions.

35. Section 21(1) provides that *"the tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises"*. Section 21(1) is therefore to be read subject to the other subsections of section 21 and also subject to the other sections within Part II.

36. Section 21(2) states that, subject to section 21(3) which is agreed not to be relevant to this case, *"this Part [i.e. Part II] applies to premises consisting of the whole or part of a building if the building or part contains two or more flats"*. The Applicants submit that this provision is not interpretative of the word "premises", but we disagree. Section 21(2) states that the "premises" to which it is referring, and to which section 21(1) and the rest of Part II are referring, consist of either one whole building or part of one whole building. "Premises" in the context of Part II therefore does not mean more than one building.

37. The above point is reinforced by the provisions of section 21(4)(b), which states that *"an application for an order under section 24 may be made … in respect of two or more premises to which this Part [i.e. Part II] applies"*. It would be superfluous to state that an application could be made in respect of two or more premises if the concept of "premises" was unlimited, and we do not see any basis for arguing – for example – that section 21(4)(b) refers only to two sets of premises where those premises are in entirely separate geographical locations and that the word "premises" includes for the purposes of Part II any group of buildings within the same estate.

38. Going back to section 21(1), it refers to the tenant of a flat contained in any premises to which Part II applies, i.e. a tenant of a flat within a particular building. Such a tenant may *"apply … for an order … appointing a manager to act in relation to **those premises**"* (our emphasis). Therefore, the tenant in question can only make an application in relation to the building in which that tenant's flat is

situated. The Applicants have sought to argue that the phrase "in relation to" widens this beyond the building itself, but in our view that is a very forced reading of these words and there is no proper basis for importing such a forced reading. Section 21 forms part of the gateway to the making of an application. The question of whether an order can be made in respect of a larger area or wider set of buildings than just the premises specified in the tenant's section 22 notice is expressly covered by section 24(3) and forms part of the tribunal's discretion if and when a valid application has been made. But in order to be valid the application needs to be in relation to "premises" falling within the wording of section 21(2).

39. Furthermore, in our view very clear statutory wording would be needed to permit a tenant of one building to apply for the appointment of a manager over a separate building. The effect of an order for the appointment of a manager is to remove from the property owner (or other person with management responsibilities) the right to manage their own property, and conceptually it seems wrong that a tribunal could be entitled to strip from that person the right to manage their building at the behest of a tenant of a different building.

40. At the hearing, although not in his skeleton argument, Mr Mack for the Applicants cited section 6(c) of the Interpretation Act 1978 which states that *"In any Act, unless the contrary intention appears, … words in the singular include the plural …"*. We do not accept that this rule of interpretation requires or even entitles one to read the reference in section 21 to "premises" as including more than one building as, for the reasons given above, a contrary intention does appear in section 21.

41. We do accept that there can be a logic in having the management of different buildings on the same estate in the same hands, but the way to do this under Part II of the 1987 Act is for at least one tenant from each building to make a joint application. This is expressly allowed by – and is in our view one of the main points of – section 21(4) taken as a whole, which reads: *"an application for an order under section 24 may be made (a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and (b) in respect of two or more premises to which this Part applies; and, in relation to any such joint application, as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly"*.

42. The Applicants argue that they have complied with sections 22(1) and 22(2) of the 1987 Act, but the problem with that argument is that there is a stage before considering whether those subsections have been complied with, namely whether the application meets the gateway validity test contained in section 21.

43. Section 22(3) sets out the circumstances in which the FTT can dispense with the requirement to serve a section 22 notice, but this is not a case in which no notice has been served. In any event, in order to dispense the FTT has to be *"satisfied that it would not be reasonably practicable to serve such a notice"*, but clearly in this case it was practicable to do so as the Applicants did in fact serve a notice. The issue here is the validity of that notice.

44. Section 24(3) states that *"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"*, but as noted above this provision does not have the effect of rendering valid an invalid application. Its purpose is to allow the FTT some leeway in deciding what order to make having first received a valid application (subject to section 24(7), as to which see below).

45. Section 24(7) allows the FTT to make an order where an application is preceded by a section 22 notice *"notwithstanding— (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3)"*. The scenario set out in (a) is not relevant as the reasonableness or otherwise of the period specified in the notice is not the issue here. As for (b), the basis on which the FTT can make an order notwithstanding a defect in the section 22 notice is only where the defect consists of a failure to comply with the requirements of section 22(2) or 54(3) of the 1987 Act. However, the requirements of section 22(2) are also not the issue here; the issue is that the application relates to more than one set of premises, that there is no applicant from the other premises and that accordingly the application does not pass through the gateway for a valid application under section 21. Section 54(3) relates to any additional regulations prescribed by the Secretary of State, and non-compliance with any such regulations is again not the issue here.

46. At the hearing, although not in his skeleton argument, Mr Mack for the Applicants argued that the three buildings are interlinked. However, in his own witness statement Mr Mack describes his block as being one of four buildings making the development known as Norway Wharf and the Applicants have not offered any persuasive evidence to show that all three buildings which are the subject of the application are in fact all one building.

47. Accordingly, the section 22 notice is invalid and – for the reasons set out above – there is no proper basis for the FTT to proceed to hear the substantive application for the appointment of a manager.

Applicants' further application and decision thereon

48. The FTT's decision on the preliminary issue was communicated to the parties orally at the end of the hearing, with written reasons to follow. In response, Mr Mack for the Applicants requested permission to serve a fresh section 22 notice on the Respondent within half an hour on the basis that it would be immediately followed by the making of a fresh section 24 application which could then be heard that same afternoon. The notice and application would just relate to Lime House Court. Mr Allison objected to this approach on behalf of the Respondent.

49. As again communicated to the parties orally, this request was refused by the FTT. The original section 22 notice has been declared to be invalid, and the Applicants wish to serve a new notice relating just to Lime House Court rather than to three out of the four buildings comprising Norway Wharf. Due and fair process requires that the Respondent be afforded a reasonable amount of time to consider any fresh notice, particularly as it would now relate just to one building. The Respondent would need to consider the fresh notice and take advice on it and in principle would need to be given an opportunity to comply with it.

50. The Applicants argue that it is essentially the same notice, but even leaving aside the points made above the Applicants have to demonstrate that the FTT (a) has the power to and (b) should exercise its discretion to allow a fresh application to proceed on this basis.

51. Any fresh notice served on the basis proposed by the Applicants is incapable of specifying a reasonable period for compliance as referred to by section 22(2)((d) of the 1987 Act. Section 22(3) specifies circumstances in which the FTT can dispense with the serving of a notice, but the Applicants are not seeking to dispense with a notice altogether but instead are looking dramatically to truncate the deadline for remedying the matters specified in the notice. In any event, section 22(3) relates to a situation in which it is not reasonably practicable to serve a notice on the Respondent, but in this case it is a simple matter to serve a notice on the Respondent.

52. Section 24(7)(b) permits the FTT, if it thinks fit, to make an order for the appointment of a manager *"notwithstanding … that the notice failed in any … respect to comply with any requirement contained in [section 22(2)] …"*. For the reasons already outlined above, we are not persuaded that we should exercise our discretion to proceed on this basis. There is a purpose to the requirement to serve a section 22 notice and to afford the addressees a proper opportunity to consider the matters complained of and to remedy them if they indeed require remedying. The addressees of the notice then need a proper opportunity to consider the fresh application itself and to take legal advice. An order for the appointment of a manager is a very serious

encroachment on the right of a landlord or other person with management responsibilities to manage their own property, and we have been offered no compelling reasons as to why we should permit what is arguably a mockery of the section 22 notice process simply so that the Applicants are not prejudiced by their failure to serve a valid section 22 notice in the first place.

Cost applications

53. No cost applications were made at the hearing of the preliminary issue, but the parties reserved their respective positions on costs.

54. If either party wishes to make a cost application then (subject to paragraph 56 below) that party must make an application by email to the FTT at London.Rap@Justice.gov.uk by **12th August 2021** (quoting the address of the Property and the case reference number) with a copy to the other party. The application must clearly state the legal basis for the application and contain relevant supporting information.

55. If either party wishes to oppose a cost application made by the other party it may do so by sending written submissions to the FTT by email as above by **26th August 2021** with a copy to the other party.

56. However, we note that the Applicants have indicated an intention to renew their application for the appointment of a manager. In the circumstances, either party or both parties may wish to defer any cost applications until after any such renewed application is heard if indeed it reaches a final hearing. Therefore, if a party wishes to – or both parties agree that they should – defer any cost applications until a later date an application for permission to do so (together with brief reasons) must be sent to the FTT by **12th August 2021**.

Name: Judge P Korn **Date:** 29th July 2021

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.