FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LVM/2019/0004**
Property	:	**Northwood Hall, Hornsey Lane, London N6 5PG**
Applicant	:	**Triplark Limited**
Representative	:	**Brie Stevens-Hoare QC** **Stan Gallagher (counsel)**
Respondents	:	**(1) Various Long Leaseholders** **(2) Northwood Hall RTM Company** **(3) Mr Bruce Maunder Taylor**
Representative	:	**Edwin Johnson QC (for the Leaseholders)**
Type of Application	:	**Application for the variation of a Management Order**
Tribunal Members	:	**Judge S McGrath** **Mr M C Taylor FRICS** **Mr C Piarroux JP CQSW**
Date of Decision	:	**21st August 2019**

DECISION

Introduction

1. This is an application for the variation of an order made by the First-tier Tribunal in June 2016. The order was made under section 24 of the Landlord and Tenant Act 1987 (the 1987 Act) and appointed Mr Bruce Maunder Taylor as the Manager of premises at Northwood Hall, Hornsey Lane, London N6 5PG (Northwood Hall) for a term ending on 13th September 2019.

2. The history of this application is set out below and concerns the very serious and challenging position in respect of the management of Northwood Hall. The property, which is a large purpose-built block of 194 flats, has been beset with difficulty, mainly relating to an ambitious project to replace the communal hot water and heating system, but also more generally. Those problems have resulted in a serious and damaging break-down in relationships between different factions of leaseholders, the freeholder and the Manager and in costly, prolonged litigation. There is a gap in service charge funds running to several millions of pounds. To adopt a phrase used by counsel: Northwood Hall is in crisis.

3. The Applicant in this case is Triplark Limited (Triplark), the freehold owner of Northwood Hall. Triplark also has an immediate interest in 30 flats. The application itself also named 27 leaseholders said to be in support of the application. However, in the event, it seems that the conduct of the case was solely on behalf of Triplark itself.

4. The First Respondents are 28 other long leaseholders at the property (the Tenants) who had been opposed to the appointment of Mr Bruce Maunder Taylor in the original application. The Second Respondent is a Right to Manage Company which was struck off the Companies Register earlier in 2019 and took no part in the case. The Third Respondent is Mr Bruce Maunder Taylor. On his behalf an indication was given by his solicitors that he would not be taking an active part in the proceedings nor would he seek to resist the application to vary.

5. A hearing of the application was convened at which the Applicant was represented by Brie Stevens-Hoare QC and Stan Gallagher of counsel and the First Respondents were represented by Edwin Johnson QC. We are grateful for their detailed and careful submissions in this intractable matter.

6. The application to vary was made on 2nd February 2019 and as originally framed sought an extension of Mr Bruce Maunder Taylor's appointment beyond 13th September 2019. Following a county court trial of a consolidated action relating to events at the property after the appointment of the manager (described below), the

application was amended seeking instead the appointment Mr Alex Norman of Lewis & Tucker Management Limited as Manager. In response the Tenants do not oppose a variation (subject to a preliminary point of law dealt with below) but seek instead the appointment of Mr David Wismayer as Manager. If the Tribunal declines to vary the order then from 14th September 2014, management will revert to Triplark as freeholder.

7. The background to this case is set out substantially in the county court judgement in the consolidated action where I sat as a Recorder. Notwithstanding that the findings in that judgement are adopted in this decision, we give a relatively lengthy account of the background to this case. We considered this to be necessary to give context to our decision.

The Background

2011 to 2016

8. Between 2011 and 2016, and in the circumstances described below, Northwood Hall was under the control of a Right to Management Company (RTM Company) established under the provisions of the Commonhold and Leasehold Reform Act 2002. Prior to 2011, the property was managed on behalf of Triplark. One of the main purposes for the lessees in seeking to exercise the right to manage was to take forward plans to renew the communal central heating and water system. However, very rapidly, the lessees found themselves out of their depth in seeking to implement a complex new design and to supervise a major works project of this extent.

9. Northwood Hall (the Building) is a purpose-built residential block of 194 Flats, constructed around 1935 in the Art Deco style. It is constructed in a cruciform shape, with four wings and a central core. The Flats are arranged over 8 floors, including a lower ground floor.

10. Until 2016, the freehold interest in the Building was vested in Northumberland and Durham Property Trust Limited. The Building was subject to a Headlease which was granted on 19th January 1977, for a term of 125 years. The Headlease was acquired by Triplark on 22nd May 1978. The Flats in the Building are held on long underleases save for 29 of the Flats which are held in hand by Triplark. A further Flat is said to be held by Triplark on an underlease although there is some dispute about its status. On 20th July 2016 Triplark acquired the freehold interest in the Building by its wholly owned subsidiary, Crownhelm Limited. Crownhelm was

registered as proprietor of the freehold interest on 30th September 2016. In March 2018 Crownhelm transferred the freehold interest to Triplark.

11. As indicated, until January 2011, the management of the Building was in the hands of Triplark through their managing agents OCK. At that time it was clear that the communal heating and hot water system to the building required replacement and OCK had obtained a report on the options for its replacement in 2009 from Hilson Moran, a firm of consulting heating engineers. In that report, two options for the replacement of the original system for heating and hot water were proposed. Option 1 involved the installation of individual 'combi' boilers in each Flat and option 2 involved replacing both the central boilers and communal pipework and installing individual heat exchangers, known as Heating Interface Units ("HIUs") in each Flat. At the end of the report Hilson Moran included a note that "Both options will require variation to the leases. Legal costs will be incurred."

12. In 2011, a number of leaseholders, who were dissatisfied with Triplark's management and in particular with the lack of progress on replacing the heating and hot water system, decided to exercise the Right to Manage. More than 120 lessees voted in support of the proposal. After some inquiries, Canonbury Management (Canonbury) were engaged to undertake all of the administrative work of setting up the RTM Company for free, in exchange for the appointment as the new RTM Company's managing agent. The RTM Company was incorporated in June 2010 and the right to manage was acquired on 12th January 2011.

13. Having secured the right to manage, the RTM Company turned its attention to the heating scheme. The RTM Company agreed that Mr Roger McElroy, who is a Director of Canonbury, should be the Project Manager. In June 2011, CBG Consulting was engaged to produce a design for the heating scheme based on the second option in the Hilson Moran report. Following their appointment, CBG designed some preliminary schemes and documents for a section 20 notification which was completed by 25th March 2013.

14. The CBG design make provision for the new pipework to be distributed on the roof of the Building which would then connect to each Flat via new vertical risers in similar position to the existing vertical risers used by the existing systems (this design is referred to as "the Vertical design"). That design would not have rendered a significant change from the old system (save for the addition of the HIUs) and in particular, the aesthetics of the common parts would not have been materially affected.

15. Following a tendering exercise, Parker Bromley Ltd were appointed as contractors for the work. The contract price was £2,686,022. The commencement date was 13th January 2014 and the completion date was 14th November 2014. The Contract was in the form of a JCT Minor Works Contract (at the trial of the consolidated action both Dr Humphries and Mr Marshall the M&E experts agreed that given the complicated nature of the Project, the JCT Minor works contract was inappropriate). CBG was appointed by Canonbury to provide M&E consultancy services and to act as contract administrator for a fee of £108,000. Canonbury was itself appointed to act as project manager in respect of the Project, for a fee of £250,000.

16. During the course of 2014 a fundamental change to the design of the system was made. It was asserted by Canonbury that the change was necessary for two main reasons. Firstly, it was said that asbestos had been discovered in the vertical risers in the Flats, and secondly, it was said that that the vertical risers in the corridors could not be used because they were not large enough, and additional drilling would need to go through a structural ring beam. There is no evidence at all to support either of those assertions.

17. On 30th July 2014 a communication was sent out to tenants notifying them that the design of the Project was to be changed, from vertical to horizontal pipework (the Horizontal design). In effect although the replacement of the boilers and the installation of HIUs from the Vertical design was to be retained, the route of the pipework was to be altered. The new design required the installation of significant runs of pipework along the communal corridor ceilings and within common parts including the stairwell. The aesthetic impact is significant. It was described in evidence as giving the corridors the appearance of a submarine.

18. By the latter part of 2014 the Directors of the RTM Company were facing serious problems. The design of the Project had been changed and it appeared to be running over time, and over budget. Canonbury was failing to provide information to the RTM directors, or answer their questions. In December 2014 the RTM directors approached David Wismayer for his assistance in addressing the problems with the management of the Building, and principally with the heating and hot water project. David Wismayer has some experience of managing building projects and managing flats. He is, and has for some years been responsible, as a director of Morshead Mansions Limited, for the management of Morshead Mansions, a large block of flats in West London.

19. On 13th March 2015 Mr Wismayer was appointed as a Director of the RTM Company and at his instigation a general meeting of the RTM Company was called for 29th April 2015. On 19th March 2015 the RTM Directors, who now included Mr Wismayer, circulated a report to tenants on the situation in the Building, setting out Canonbury's management failures and the failures in respect of the Project. On 27th March 2015 Mr McElroy of Canonbury circulated an email to tenants, briefing against the Directors of the RTM Company and calling for their removal. The RTM Directors responded with a report to tenants and members of the RTM Company on 27th March 2015.

20. On 24th April 2015 the RTM directors produced a lengthy report to members of the RTM Company and tenants, which explained their recommendations for the way forward in relation to the Project. The recommendations included the reinstatement of the Vertical design. The report also made it clear that it was the Directors' view that the problems with the Building could only be solved if management of the Building was removed from Canonbury. It also considered that litigation was required to compensate for loss. The recommendations of the Directors as to the way forward were embodied in four resolutions, which were to be voted on at the meeting of 29th April 2015. In particular the report recommended the appointment of Mr Wismayer to be the manager of the building.

21. Shortly before the first meeting of the RTM Company in April 2015, Triplark lodged applications for membership of the RTM Company. It was entitled to 30 memberships by virtue of its interest in the 30 Flats. Triplark deployed its block vote at the meeting of 29th April 2015 against the proposals and the resolutions proposed by the directors were defeated. Accordingly, there was no change of management and Canonbury remained in post.

22. In May and June 2015, Mr Wismayer was in negotiation to purchase a flat at Northwood Hall. In June 2015 contracts were exchanged and in July the contract was completed and the vendor moved out. However, the requisite consent for the assignment was not obtained from Triplark as landlord and as a result (and despite litigation) Mr Wismayer's interest has not been registered and he holds the Flat as an equitable tenant.

23. On 24th July 2015 the second general meeting of the RTM Company took place. By this stage Mr Wismayer was the sole RTM Director, all others having resigned. At that meeting resolutions were made firstly for the removal of Mr Wismayer as a Director. The lessees were now clearly in two separate camps: one in

support of Mr Wismayer and the other firmly against. Those positions have remained unchanged for the past four years.

24. The new RTM Directors did not support the proposal that the Vertical design should be reinstated. For the rest of 2015 and into 2016, the Project continued in the Horizontal design. However, management difficulties continued and there was a further polarisation of views between groups of lessees.

25. On 20th January 2016 the RTM Company took advice in conference from Simon Allison of counsel. The advice identified a number of failings in management and in the recovery of service charges by Canonbury. It noted that the RTM Company was considering appointing a new managing agent to replace Canonbury and advised on the option of seeking an appointment instead under section 24 of the Landlord and Tenant Act 1987.

26. In early 2016, Mr Maunder Taylor was approached by the RTM directors. In a letter dated 17th February 2016, he sent the RTM directors a proposal in relation to his appointment as a managing agent. He also included advice about the formal appointment of a manager if the RTM directors were to proceed with an application for him (Mr Maunder Taylor) to be appointed under section 24 of the Landlord and Tenant Act 1987. At that stage Mr Maunder Taylor indicated to the RTM Directors that if he were appointed managing agent he would be willing to work with them on the basis of retaining the Horizontal design and completing the installation of the replacement system including carrying out the necessary works in all Flats to install and connect the HIUs.

27. On 14th April 2016, an application under section 24 was made to the Tribunal. The applicants were a number of leaseholders (including two RTM Directors) together with Triplark in its capacity as a tenant. The First Respondents to the application were the RTM company and the Second Respondents were Triplark as headlessee, the freeholder and a number of the leaseholders. The applicants sought to have Mr Maunder Taylor appointed as manager and the respondent lessees proposed that Mr Wismayer be appointed.

28. The application came before the Tribunal on 18th June 2016. At the hearing the Applicants were represented by leading and junior counsel and the Respondent lessees were represented by Mr Wismayer. It is clear from the Tribunal's decision that one of the main issues in contention was how the heating and hot water Project should proceed.

29. It is necessary now to consider the Tribunal's decision to appoint Mr Maunder Taylor and its reasons for that decision. The hearing took place over two days, the first on 21st June 2016 and the second on 18th July 2016. The Tribunal's decision is dated 26th August 2016 and following receipt of submissions from the parties the management order was made on 14th September 2016.

30. It is clear from its decision that the Tribunal had a reasonable appreciation of the tensions and challenges at Northwood Hall. At paragraphs 5 and 6 they said:

> "5. These proceedings arise out of ongoing disputes relating to the management of the subject property. In particular, renewal of the communal heating and hot water system has met with severe problems. Dramatic variations to the contract as originally consulted upon, and unmet expectations as to the work carried out, have caused much contention within the body of leaseholders. There is also concern about the need for a long term programme of repairs to the property but all other major works are on hold because of the problems that have affected and delayed the replacement of the heating and hot water system.
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> 6. The contract for renewal of the heating and hot water system is part-performed. The Applicants and the Fourth Respondents respectively come with opposing views as to the appropriate way forward for this contract. There are major differences of opinion as to how the grave problems affecting the contract should be resolved. It was submitted that these resolutions can only be found by a manager appointed pursuant to section 24, with additional powers to those contained in the individual flat leases."

31. Having considered the evidence and the submissions the Tribunal decided that it was appropriate to make an order under section 24. They then went on to consider who ought to be appointed to the role of Manager. In addition to their consideration of the respective qualifications of Mr Wismayer and Mr Maunder Taylor, the Tribunal was also conscious of their competing approaches to the resolution of the heating and hot water problems. At paragraph 68 onwards of their decision they said:

> "68. It is unfortunate that there were indications in Mr Maunder Taylor's management plan that he was already persuaded that litigation was not the best option, and that the current contract should be completed. At the hearing the Tribunal expressed to the parties the need for caution in determining to follow the majority view of the best way forward. A majority vote of leaseholders does not relieve a landlord or manager from its covenants owed to each one. The majority wish may be a very significant factor in reaching a

decision between two reasonable options, where both would ensure compliance with the lease obligations and where all relevant information has been obtained and advised upon.

69. The better manager is not the one who acts as standard bearer for the preferred option of one group of leaseholders or another, but the person who is able objectively to gather sufficient relevant information, take appropriate legal and professional advice, and then reach and implement a reasonable decision as to the proper way forward in compliance with the covenants in the leases.

70. Notwithstanding the outcome of the general meetings, the manager to be appointed does not have a mandate to continue with the current contract to completion…."

32. And at paragraphs 83 and 84 they said:

"83. The Tribunal is emphatically of the view that it is not necessary for it to reach a view as to the better way forward in order to identify the appropriate manager. The appropriate investigations, taking necessary specialist and legal advice, and reaching a decision are the role of the manager once appointed. The manager will bear responsibility for performance of the covenants in the lease, and it is the covenantor who therefore has to choose between the available options and decide how a covenant is to be performed.

84. It seems abundantly clear to the Tribunal that the manager would wish reasonably to investigate all available options, including taking legal advice on the merits of litigation and, if so advised, expert opinion on the technical advice acted upon by the former directors of the RTM Company. All of that must be promptly and carefully considered."

33. Under paragraph 1 of the order the manager was given:

"……all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of Triplark Limited and in particular:

(a) To receive all service charges, interest and any other monies payable under the Leases save for the rents reserved by the Leases and any arrears due thereunder

(b) The power and duty to carry out the management functions of Triplark Limited contained in the Leases (the same having been exercisable by the RTM Company upon its acquiring the right to manage the Premises and

having ceased to be exercisable by the RTM Company upon the interim management order dated 24 June 2016 taking effect) and in particular and without prejudice to the foregoing:

i. The obligations to provide services;

ii. The lessor's repairing and maintenance obligations; provided also that the standard of any such work shall have regard to the age, character and prospective life of the premises and the locality in which it is situated;

iii. A comprehensive review of the old heating and communal hot water system and equipment, the Project to renew the same and the incomplete new heating and communal hot water system and equipment and the determination, following such consultation as the Manager deems appropriate and constructive, of the best means of achieving a functioning, disrepair free, heating and communal hot water system taking account of all the circumstances, including the project and running costs, performance and the appearance of the Premises

(c) .....

(d) The power in his own name to delegate to other employees of Maunder Taylor, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.

(e) .....

(f) The power in his own name to investigate, obtain advice upon and bring, defend or continue any legal action or other legal proceedings in connection with the Leases of the Premises and/or work carried out to the Premises pursuant to the Leases or in contemplation of obligations and/or rights to recover costs under the Leases including but not limited to:

i. proceedings against any Lessee in respect of arrears of service charges or other monies due under the Lease;

ii. proceedings against any Lessee in respect of access to their demised premises and/or the completion of works pursuant to the Lease;

iii. proceedings against Canonbury in respect of services provided and not provided by Canonbury when acting as managing agent; and

iv. proceedings against any professional or contractor who was retained to and/or provided services or carried out work to or

connected with the Premises pursuant to the Lessee or in contemplation of the obligations and/or rights under the same; and

v. proceedings to obtain information and/or documentation that is or may be relevant to any other proceedings or legal action he has power to bring, defend or continue. The Manager shall be entitled to an indemnity for his own costs reasonably incurred and for any adverse costs order out of the service charge account."

The Leases

34. Before considering events following Mr Maunder Taylor's appointment it is important to understand that the structure and the provisions of the leases themselves provide a separate and very difficult challenge for any scheme to replace the heating and hot-water system. This is dealt with in the decision in the consolidated action as follows:

"70. As at September 2016 therefore, Mr Maunder Taylor had been in position as manager for about three months. He had a good understanding of the Project and a mandate from the Tribunal to review the most appropriate way forward. I am satisfied that well before September 2016, Mr Maunder-Taylor also had a good understanding of the lease provisions. In respect of the provision of heating and hot water, the leases are in relatively unusual terms. I have been provided with a copy of the underlease for flat LG1 (the Lease) and it is agreed that the relevant terms are common throughout the Building. Clause five of the Lease contains the landlord's covenants. Clause 5(7) provides that the Lessors will:

'(7) Maintain at all reasonable hours a reasonable and adequate supply of hot water to the flat and during the period from the First day of October to the First day of May in every year provide sufficient and adequate heat to the radiators for the time being fixed in the flat (if any) unless the Lessors shall be unable to perform this covenant by reason of the act neglect or default of the Lessee or any mechanical breakdown or interruption of the supply of fuel or current or other cause whatsoever over which the Lessors have no control….

(8) Maintain and renew when required the central heating and hot water apparatus and all ancillary equipment thereto other than that contained in the flat.'

71. Under clause 3(3)(a) of the Lease, the Lessees in turn agree to "Repair maintain renew uphold and keep the flat…water, gas, electrical and central heating apparatus… in good and substantial repair and condition."

72. In cross examination the Manager agreed that he had considerable familiarity with the leases of the flats and the statutory protections afforded by the 1985 and 1987 Acts. He also accepted that he was subject to the provisions of the RICS Residential Service Charge Code and the Technical Release. As to the legal position he accepted that even before the management order, he was aware:

(a) That the apparatus within the Flats was the property and responsibility of the lessee;

(b) That the landlord had no general right of entry to the Flats;

(c) That the landlord had no right to recover the cost of replacing the apparatus as part of the service charge;

(d) That the landlord had no right to compel the tenants to accept the replacement apparatus or to allow entry for it to be fitted."

35. In the county court those propositions were not disputed and it was conceded that they were an accurate reflection of the lease terms. Accordingly, in either the Vertical or Horizontal Design schemes, works within flats and on apparatus within flats:

(a) requires the informed consent of the lessee, firstly for access and secondly for any repair or installation of new equipment (in particular because the apparatus becomes the property and responsibility of the lessee); and

(b) the costs of the apparatus and its installation cannot form part of the service charge costs.

36. At the hearing of the application to vary the management order, a submission was made by Ms Stevens-Hoare, that the findings in the county court on access to the flats was made in error. It is difficult to understand what jurisdiction it is said the Tribunal has to consider the issue but we agreed to give our view on the issue in any event.

37. Ms Stevens-Hoare firstly drew our attention to the first recital which, in effect, defines the Building as the whole of the Block of Flats. She then reminded us of the obligation imposed on the landlord in clause 5(7) to "Maintain at all reasonable hours a reasonable and adequate supply of hot water to the flat and during the period from the First day of October to the First day of May in every year provide sufficient and adequate heat to the radiators for the time being fixed in the flats."

38. She submitted that the duty is not tied exclusively to a particular flat or particular apparatus in a flat. Should the need arise to replace the system it would be the system as a whole. She then referred the Tribunal to the recent Upper Tribunal decision in *London Borough of Southwark v Baharier* [2019] UKUT 73 (LC) which she said was supportive of her submissions.

39. We were then taken to clause 3(10) of the lease which contains the lessee's obligation to allow access to carry out inspections, repair or alteration to any part of the Building and contiguous premises and asked to consider it together with the power of the landlord in clause 5(17) which provides as follows:

> "5 (17) Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessors may be necessary or advisable for the proper maintenance safety and administration of the Building."

This, she submitted was wide enough to encompass works required to fulfil the obligation in clause 5(7).

40. In response Mr Johnson accepted that the clause 5(17) argument had not been advanced in the county court. However, he drew our attention to the tenant's obligation to "repair maintain renew uphold and keep the … gas, electrical and central heating apparatus… in good and substantial repair and condition." In clause 3(3)(a) and the landlord's reciprocal duty in clause 5(8) to "Maintain and renew when required the central heating and hot water apparatus and all ancillary equipment thereto other than that contained in the flat."

41. In his submission it is a suggestion too far that the clause 3(10) right of entry can have been intended to deal with responsibility for repair despite the clear terms of clauses 3(3)(a) and 5(8). Furthermore, he contended that clause 5(17) is a sweeping up clause intended to provide a lessor with the opportunity to deal with matters that had been left out of account in the rest of the lease. Such a clause should not be construed as contradicting other clear rights and obligations between the parties. In his submission the weight sought to be placed on clause 5(17) was a weight that it was not intended to bear and wouldn't bear.

42. On this issue we prefer Mr Johnson's submissions. There is a composite structure to the repairing and renewal obligations for the heating and hot water system. Although it is a fairly unusual division of responsibility, the clear wording of the lease allows of no other interpretation than that the apparatus within the flat belongs to the lessee who has responsibility for that apparatus. If Ms Stevens-Hoare

were correct that the landlord has rights of entry to deal with that apparatus where the whole system is being replaced, it would give the landlord a right to enter the flat, interfere with property belonging to the tenant and additionally the right to impose the ownership and responsibility for new apparatus on the tenant even without their consent. That cannot be correct and we reject that contention.

2016-2019

43. The judgement in the consolidated county court action makes detailed findings about events between 2016 and 2019. We propose only to summarise the main points here.

44. Following his appointment Mr Maunder Taylor had to make a decision about the heating to the building as the old system was due to be switched on for the winter by 1st October, 2016. On 16th September 2016, two days after the final management order took effect, he wrote to the lessees stating that he was seeking legal advice but that his provisional view was that there had been compliance with the lessor's covenants to provide heat to the flats and that the only reason why it might not be provided to some flats was because of the leaseholder's default in either refusing access for internal works to be carried out or not cooperating. He said that his provisional view was also that the old heating system should not be reactivated. That view was maintained and the old system was not switched on. Those lessees who were connected have therefore been without that partial heating since October 2016.

45. At the hearing of the consolidated action a number of lessees who had connected to the new system gave evidence that they had only done so because they believed they had no choice.

46. In October 2016, Mr Maunder Taylor instructed an architect Mr Derek Nicholson, to prepare a report on the heating and hot water system. In November 2016, the report was provided and although he found that the project had been poorly planned and executed, it should continue in its existing form.

47. In November 2016, Mr Maunder Taylor gave written notification that he planned to dismantle the existing hot water system in mid-January 2017, so that "not only will there be no heating through the old heating pipes, there will not be hot water either." In December solicitors acting on behalf of one of the lessees wrote to Mr Maunder Taylor as follows:

> "The withdrawal of essential supplies of heating and/or prospectively hot water contrary to the terms of the lease is nothing short of scandalous and the manner in which you appear to be failing to grasp the nettle of resolving the abortive and defective heating project, which has no proper basis in law, is unacceptable."

48. The Manager did not respond to that letter but on 11th January 2017 wrote to a number of lessees stating that "the old hot water system will be drained down, starting on Monday 13th February, and will be dismantled…" On 12th January solicitors acting on behalf of Mr Maunder Taylor responded to the December letter stating "Your client has been warned by our client of the intention to disconnect the hot water supply from the old hot water system in mid-January. He has not changed his plan in that regard".

49. In February solicitors for the lessees sought an undertaking from the Manager that he would not disconnect the hot water supply to Flats still served by the original system. No undertaking was given and injunctive proceedings were commenced in the High Court. On the return day for the injunction Mr Maunder Taylor gave an undertaking that:

> "he will not until trial or further order whether by himself or by instructing or encouraging any other person disconnect or cause to be disconnected or inhibited or otherwise interfere with the domestic hot water supplies to the flats belonging to the Claimants…"

50. Those proceedings were transferred to the county court and formed part of the consolidated action. In addition to injunctive relief the lessees sought damages for the loss of central heating and the recovery of service charge costs which they alleged should not have been made as they were not due. The other part of the consolidated action concerned claims by Mr Maunder Taylor for alleged service charge arrears and counterclaims for service charge costs said not to have been due.

51. The consolidated action was heard in April 2019 over eight days during which evidence was given by a number of lessees, by Mr Maunder Taylor and a number of experts. The judgement following the hearing speaks for itself but the following passages give some context:

> " 96. I am satisfied that by the time of Mr Maunder-Taylor's appointment, the situation at Northwood Hall was extremely grave. There was deep-rooted ill-feeling in the Building, for example evidence was given by Mr Haggis of the tyres of his car being slashed. The Project had overrun by nearly two years by

September 2016 and costs were escalating on a weekly basis. However, I have seen no evidence that there was a general consensus that the Horizontal Design should continue to its completion. On the contrary, despite efforts by the Saunders Directors, by the summer of 2016 only 77 Flats were connected to the new system and I have no evidence that those who had accepted works to the interior of their Flats did so willingly or whether the works were satisfactory. There is certainly no evidence at all of any agreement or understanding that would give rise to any form of estoppel.

97. Against that background in June 2016, it seems that efforts were redoubled to achieve the works inside Flats. The evidence from the second action tenants was that they believed they had no choice either as a matter of law or because they wanted to avoid losing both their heating and hot water.

98. I do not consider that the situation was made easier by the actions of Mr Wismayer. It is generally accepted that the work carried out by Canonbury on instructions from the RTM company was in some important respects in breach of the leases and also that the manner in which the work was carried out was wholly unsatisfactory. However, Mr Wismayer's approach and in particular that the only solution was litigation was unhelpful and disruptive to say the least. That is not to say that Mr Wismayer was mistaken but his approach was not constructive."

52. At the end of the judgement, the decisions on all aspects of the case were summarised as follows:

> "1. Mr Maunder Taylor, as Manager, is in breach of his obligation under clause 5(7) of the leases, to provide central heating to the first action tenants' Flats and they are entitled to damages and other further relief to be determined;
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> 2. That it is appropriate to make a final injunction requiring Mr Maunder Taylor, as Manager, to maintain a supply of hot water to the first action tenants' Flats;
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> 3. That the cost of the internal works are not recoverable as service charge;
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> 4. That the requirements of section 20 of the 1985 Act were fulfilled in respect of the original design for the heating and hot water system; alternatively that dispensation under section 20ZA of the 1985 Act is granted but only in respect of the boiler replacement works;
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> 5. That a second consultation under section 20 of the 1985 Act was required in respect of the revised design for the common parts pipe work and that no dispensation of that requirement is granted; accordingly, those costs are limited to £250.00 from each leaseholder.

6. That the interim service charge costs from 1st July 2016 until 31st August 2017 are not payable until proper notice under clause 4(i) of the leases has been given;

7. For the avoidance of doubt, the leases make no provision for the accumulation of a reserve fund.

8. That it has not been proved that any service charges for the first period (up to an including the service charge year ending 30th June 2016) are recoverable.

9. That the first action tenants and second action tenants are entitled to recover the mistaken payments to the extent consistent with the above findings, to be agreed or in default of agreement for assessment by the court."

53. It should be noted that the findings in respect of the service charge costs relate both to periods before Mr Maunder Taylor was appointed as Manager and afterwards. A lengthy court order reflecting those findings was drawn up and Mr Maunder Taylor was required to pay substantial costs. Further applications under section 27A for the determination of the payability of other service charge costs are separately under consideration by the Tribunal.

The Application to Vary

54. Triplark's application to vary is made under section 24(9) of the 1987 Act and was issued in February 2019, several months before judgement was given in the consolidated action. The application sought a continuance of Mr Maunder Taylor's appointment and additionally an enhancement of his powers in respect of the property including the attachment of a penal notice "so as to deter future obstruction of the Manager and to, if need be, give the Manager an effective means of enforcement should there be gross obstruction to his management of Northwood Hall".

55. Following the judgement, Triplark sought to amend its application to put forward an alternative Manager. In case management directions dated 24th May, 2019 (two days after judgement was handed down), the application was accepted, Judge Martynksi noting that "The leasehold group opposed to the extension of Mr Maunder Taylor's appointment (and now opposed to the appointment of any other Manager that may be proposed by the Applicant) wish to appoint Mr Wismayer as the new Manager."

56. Before turning to the evidence and submissions on the application it is necessary to consider a preliminary issue raised by Mr Johnson on behalf of the Tenants. It is his submission that, in effect, the application now under consideration by the Tribunal cannot properly be characterised as an application to vary. The application as currently framed is in fact a new application for the appointment of a manager.

57. This is an important distinction. An application for the variation of an order can be made by "any person interested" (section 24(9)) whereas an application for the appointment of a manager can only be made by "the tenant of a flat" in the premises (section 21(1)). It is common ground that a landlord is a "person interested" for the purposes of a variation application. It is disputed whether Triplark is a "tenant of a flat".

58. Shortly prior to the hearing of the application to vary, the solicitors acting for the Tenants made inquiries of the Land Registry as to the status of Triplark in the one flat said to be held on a long lease. It is said that the documentation from the Land Registry indicates that a transaction has taken place and that Triplark's lease no longer exists (possibly by surrender or merger) and/or a new lease has been granted in respect of this title. This was suggested to those instructed by Triplark who responded to the effect that Triplark remains the registered proprietor of a leasehold title of Flat 4/17 and is the legal tenant despite the grant of an undertenancy which is yet to be registered.

59. We do not consider that it has been shown that Triplark would not have the status of a "tenant of a flat" if this had been a new application for the appointment of a manager. In any event, we do not consider that this is a new application. It is an application to vary by substitution of a new manager. This is neither novel or particularly unusual. If Mr Johnson had been correct in his submission it is difficult to see where this would have left the proceedings. He submitted that the application would become a new section 24 application by the Tenants. We do not accept that submission either. If the Tenants wished to bring a new application then it would have been necessary to serve notice under section 22 of the 1987 and to have separated specified and proved grounds under section 24(2). Neither has been done.

The Evidence

60. At the hearing of the application to vary, evidence was given by two lay witnesses and by Mr Norman and Mr Wismayer. We will deal with the lay witness evidence first. Before doing so, the documentary evidence as well as the evidence given at the hearing demonstrated the severe polarisation of the two groups of

lessees who have been most closely involved in the management of Northwood Hall and in the litigation. Serious allegations of dishonesty and manipulation have been made by each side against the other. It is not the role of the Tribunal to adjudicate on any of those matters. It is of great concern that accusation and counter-accusation continue to be made and that entrenched views drive the litigation about the future of Northwood Hall. During the hearing we were reminded that there are 194 flats in the building and that not all lessees are embroiled in the disputes that have continued over the past eight years. The interests of those lessees also need to be considered. On 7th August 2019, Mr Matthew Spring who is a solicitor at Payne Hicks Beach acting for the Tenants, wrote to all lessees seeking, it is said, to redress the balance of information given to leaseholders about the application to vary. He closed the letter with the following:

> "Regardless of the outcome of the hearing, I sincerely wish the best for the leaseholders of Northwood Hall. As an experienced solicitor of some 19 years standing in the field of residential landlord and tenant law, I have seen enough over the past 4 years to know that you all deserve better and I hope that you will soon start to see that happen."

We agree.

The lay witnesses

61. On behalf of the applicants, evidence was given by Tina Harrison who is the sole director and major shareholder of Kirk Parolles Ltd, the registered proprietor of Flat LG9 at Northwood Hall. She is a committee member of the Northwood Hall Leaseholder's Group (which is a residents' association recognised under section 29 of the 1985 Act by Mr Maunder Taylor) and supports the appointment of Mr Norman as manager.

62. Ms Harrison is adamant in her opposition to the appointment of Mr Wismayer as Manager. Her statement details her involvement in Northwood Hall since 2015 when even before she purchased her flat, she had formed a negative view of him. Since that time Ms Harrison has been prominent in opposition to Mr Wismayer and those leaseholders who support him. Part of her animosity stems from comments made about Mr Wismayer in Tribunal decisions made over a period of about 13 years from 1999 in respect of Moreshead Mansions where Mr Wismayer was closely involved in long running management disputes.

63. On a number of occasions Ms Harrison has been less than careful in her use of language. She has accused Mr Wismayer of dishonesty and has also made unfounded accusations against others including the Tenants' professional advisors. During cross examination she vacillated between a justification, reconsideration and retraction of

her views. She accepted that she has a tendency to speak her mind but said that she is not a lawyer and considered that this justified her use of language.

64. Ms Harrison also accused Mr Wismayer of a breach of confidentiality in his disclosure of details of individual's service charge statements. This is said to be contained in an email dated 28th June 2019 and it is contended that disclosure was specifically in breach of an order of the Tribunal. We cannot be satisfied that there was a deliberate breach in this instance although the disclosure of the balance of the service charge accounts of individual leaseholders was less than wise.

65. Ms Harrison also expressed her deep concern about an initiative led in the spring of 2018 by Mr Whale, to collectively enfranchise Northwood Hall. Her initial concern was that there had been no pre-consultation with leaseholders before "We were all just presented with a pack of complicated legal documents, delivered to our addresses, which included unsubstantiated offers of £20-£30K potential development profits per leaseholder." Her later concern was the involvement of Mr Wismayer.

66. Part of the enfranchisement package is the involvement of a "White Knight" investor, Lindmead Limited, brought in to fund the purchase the interests of non-participating lessees (and it seems participators who have insufficient funds to contribute to the purchase price). Her concern is that the director of Lindmead was a co-director of Mr Wismayer at a company called Bestwish Limited.

67. The extent of the concern about the proposed enfranchisement and its corporate structure (which would involve the White Knight investor having a share of the freehold) meant that the Northwood Hall Leaseholder's Group considered they needed legal advice on the scheme. This was provided in November 2018 by Forsters solicitors. It is a comprehensive document which makes a number of observations and warnings about the enfranchisement plan. Funding for the Group to obtain the report from Forsters was provided by Triplark. When asked why Triplark would pay for the advice, Ms Harrison said she could be very persuasive.

68. Ms Harrison expressed a desire to bring all of the leaseholders at Northwood Hall together to resolve its problems in a co-operative way. She said that she had not previously experienced such division as subsists at Northwood Hall. She did not accept that the Northwood Hall Leaseholder's Group was itself responsible for the toxicity of relationships within the Building and considered that her views of Mr Wismayer reflected the views of many other leaseholders less able or willing to put

their heads above the parapet. She was very concerned that she had been maligned to other leaseholders because of her involvement. Although she had tried to offer an olive branch to Mr Whale, this had not been successful.

69. Mr Whale gave evidence on behalf of the Tenants. He had previously given evidence in the consolidated action. He is the joint owner of a flat in Northwood Hall with his wife. He believes in Mr Wismayer and holds him in great respect. In his statement he says that they have worked closely together for the past two and half years and he has seen at first hand his tenacity, honesty and diligence. He considers, as do the other leaseholders in support of Mr Wismayer, that he deserves an opportunity to prove himself and that having been let down by standard professional agents, Northwood Hall needs someone capable of operating at a much higher level of focus and competence.

70. He says that there has been a propaganda campaign to demonise Mr Wismayer and to undermine the standing of the Tenants. He takes the view that Triplark have also been involved in a similar strategy to displace Mr Wismayer. He cites the fact that Triplark paid for legal advice to pursue different courses of action in respect of Northwood Hall including unseating Mr Wismayer and his co-directors from control of the RTM Company. He struggles to see what motivates the Northwood Hall Leaseholder's Group other than an anti-Mr Wismayer agenda.

71. In cross examination, Mr Whale was asked about the enfranchisement scheme. He said that Northwood Hall Leaseholder's Group came out against the scheme within a few days of the letter of invitation being sent out. He said that he personally was accused of criminal activity and fraud, and clearly was very upset by such an accusation which had never previously been made after 30 years as a solicitor.

72. He did not agree with the Forsters' report but considered that some suggestions about the in-balance of voting rights needed to be dealt with. Part of the report related to the question of whether or not a number of garages would be acquired as part of the enfranchisement and he disagreed with Forsters' analysis in that respect.

73. As to the White Knight financing he said that the scheme presented a unique opportunity for lessees to participate in full without contributing up front. Whilst they would have to wait to acquire their 999 year leases, they would otherwise be a full participator. This, he said, is not referred to in the Forsters' report save for an

observation that it was just a way of getting people to sign up. He agreed that Mr Wismayer has a significant involvement in the scheme.

74. Mr Whale was also asked about a leaseholders meeting held on 20th June 2019. Mr Whale had spoken at the meeting as had Mr Wismayer. Additionally, another leaseholder, Mr Haggis, had involved Christian Wolmar to speak about the Berger family whose property portfolio includes Triplark. Mr Wolmar is an investigative journalist who wrote about property matters in the 1980s. Some of what Mr Wolmar said about the Bergers in the meeting was wholly unacceptable, arguably anti-Semitic and unjustified. Mr Whale said that he was unhappy about the comments and had publicly distanced himself.

The candidates for Manager

75. The Tribunal heard first from Mr Alex Norman. He is a Director and Head of Property Management at Lewis & Tucker Chartered Surveyors. He has managed a diverse portfolio of properties including residential blocks, retail sites and office space. He has acted for a wide variety of clients including RTM Companies. He has 18 years' experience in the property industry. Amongst other matters he has overseen the installation of new pipework distribution systems an electrical supply infrastructure within a residential building of 65 flats and has managed communal boiler replacement projects.

76. Although Mr Norman has no formal qualifications in property management and is not a member of the RICS, he is currently studying towards RICS accreditation. Other Directors of Lewis & Tucker have accreditation and they are members of and regulated by ARMA and the FCA. Mr Norman has not previously been appointed as a manager by the Tribunal.

77. It was the Applicant's case that if Mr Norman was not considered suitable to be appointed to be Manager alone, then consideration could be given to making a joint appointment with Mr Clive Lewis BSc FRICS who is the Management Director at the firm with 46 years' experience of working in property.

78. Mr Norman had produced a management plan for the Tribunal's consideration. This was based broadly on an inspection of Northwood Hall and the consideration of a number of documents including: a standard lease; the judgement in the consolidated action; the service charge budget for year end 2019 and the service charge accounts for year end June 2018.

79. In evidence, Mr Norman could not accurately recall when the firm had first been approached about the appointment but possibly late June or early July. He frankly said that he had recently been provided with over 2,000 pages of documentation which he had only had time to scan rather than read. He also had not yet made a detailed inspection of the Building. He had walked around the building and seen the services but had not been inside any of the flats.

80. In his management plan Mr Norman suggested that he would start by obtaining all records from the current managers. He was not aware of the difficulties that Mr Maunder Taylor had encountered in obtaining documentation from Canonbury, or that the information might be incomplete. Furthermore, he was not aware that the service charge records from prior to June 2016 needed, if possible, to be reconstituted.

81. Mr Norman also suggested that he would provide all leaseholders with a statement of account and request up to date contact details. In cross-examination Mr Johnson suggested, and we agree, that this might be a very challenging job partly because of the incidence of accruals and partly because there has not yet been a reconciliation following the county court determination.

82. On the issue of the heating system it was clear that Mr Norman had not yet had an opportunity to come to terms with the legal and M&E complexities affecting the project. Nor was he properly aware of the competing views given by the experts in the consolidated action of the best way to take the project forward. Mr Norman was taken to Dr Humphries report from 1st February 2019 which he had not previously seen. He said that he had seen a report from Stephen Lemmon which he referred to as the "Hollis Report" which was in the bundle sent to him but had not read it in detail and had not had his attention drawn to it specifically. Mr Norman agreed that he had not seen anything else in respect of the heating and hot water and had not read the JCT contract.

83. To be fair to Mr Norman, he had been instructed late in the day but he had not had the opportunity to read the Directors report from April 2015 or any of the other reports from that period. He was not aware that they existed. He did not have an understanding of the legal issues that needed to be resolved. He was not clear on the involvement of Canonbury or CBG. As to the immediate issues to be dealt with he was not familiar with the proposals for the boxing-in of the horizontal pipework and associated fire precaution works which are estimated to cost in the region of £2,000,000.

84. When questioned about his accountancy knowledge, Mr Norman fairly said that he is not an accountant but has some accountancy skills. In respect of legal and accountancy questions, he said that he would take advice from appropriate professionals.

85. When asked about how he would conduct day to day management, Mr Norman explained his understanding of the appointment was that on appointment he could engage managing agents, in his case, Lewis and Tucker to manage the property. He did not personally have Professional Indemnity (PI) Insurance which would cover an appointment as a manager and was not clear whether the firm's insurance covered the post. It was later confirmed by Mr Lewis that it did.

86. On fees, Mr Norman said that the firm's basic fee for the Building was £38,000 but that additional services would attract additional fees. On the second day of the hearing we were provided with a standard Management Agreement which listed those additional services. On the basis of this information it was extremely difficult for the Tribunal to speculate what the full fee was likely to be. Furthermore, Mr Norman had not considered a separate fee in respect of his responsibilities as a Tribunal appointed manager.

87. On questioning it was clear that Mr Norman had some understanding of the need and the challenges in engaging with all stakeholders and in particular the two factions of leaseholders. He said that if appointed, he would be willing to engage with Mr Wismayer and to work with him on issues where Mr Wismayer had special expertise of the building and the issues pertaining to the building

88. Turning now to Mr Wismayer himself. His CV discloses that he has been a chartered accountant since 1975. He has no formal property qualifications but states that he has 27 years' experience in residential property management and 44 years' experience in corporate administration. His CV lists a number of successful ventures he has been involved with including Morshead Mansions.

89. In his management plan he describes himself as having "an encyclopaedic and unique level of knowledge" regarding the documentation relating to the property dating back to 2015 and in some cases earlier. He says that he has acquired a detailed technical knowledge of the heating project, both during his time as a consultant and from the heating project litigation. He is very familiar with the terms of the leases and has written detailed notes as to compliance with the lease provisions.

90. He says that he is very familiar with the leaseholders at the block, their identities and personalities and although he has been the butt of a great deal of negative publicity or orchestrated PR campaigns there is a difference between what he is represented to be and what he actually is. He says he knows what went wrong and why and for that reason he can provide the solutions. He says that he wishes to heal rifts at Northwood Hall by standing up for all the leaseholders and applying the law.

91. So far as Triplark is concerned he says that they are driven not by principle and by the law but by an irrational and visceral opposition to him and anything he does or says. He says that the blind hostility to him from Triplark and the Northwood Hall Leaseholder Group is damaging for the block. He says the block is in a disastrous state and he wants and has the knowledge, experience and expertise to put that right. He says that by the consolidated action he has already achieved more for the leaseholders of Northwood Hall than Mr Maunder Taylor, even without a formal role.

92. He has secured a PI insurance policy in the sum of £5,000,000. Also, he says he does not need an accountant given his own accountancy skills and qualifications although any accounts would be independently audited.

93. His proposed fee is £250,000 net, or such other fee as the Tribunal considers reasonable. He proposes a deferral of 40% of his annual fee to be expressly approved by the Tribunal at a relevant subsequent hearing. He will be at the block every weekday and will be available 7 days a week.

94. In summary on appointment he would:

(a) Assume a managing agency functions, with responsibility for contracts etc, and the production of fair and reasonable service charge estimates and would establish an on-site management office in one of the flats;

(b) Instruct Mr Humphries on resolving the conflict between the old and new heating systems including the integration of the 13 unconnected flats with the new distribution system and advising on the removal and replacement of the horizontal pipework, engaging the required expertise to achieve a resolution;

(c) Instruct a specialist asbestos survey company

(d) Procure a comprehensive fire safety review and take steps to implement recommendations;

(e) Obtain specialist legal advice on the leases to ensure further works carried out in compliance with law and consider what changes might be necessary;

(f) Identify those who have unlawfully defrayed or incurred costs to the service charge funds and take legal advice on potential claims.

95. In cross examination Mr Wismayer was asked to deal with a number of matters but we do not consider it necessary to deal with all of those in detail here. Mr Wismayer has a tendency to give long and sometimes unresponsive replies to questions, with an emphasis on his own views rather than giving an objective assessment.

96. Firstly, he asked about his involvement with the proposed collective enfranchisement. He said that within seconds of walking into Northwood Hall he considered the prospect of enfranchisement. He did not consider that his interest in securing the acquisition of the freehold produced a conflict of interest in his role as manager. In particular he dismissed the suggestion that the condition of the property and work to improve that condition impacted on the conflict question. On the contrary he said that works to improve the property would push up the price. He did however accept that he has known Jeffrey Gale, director of the White Knight company for 30 years. At a meeting held on 24th June 2019, Mr Wismayer said of Jeffery Gale:

> "Yes I know him. I am not going to hide the fact that I know him. Mr Gale makes money in my wake. He makes a fortune renovating properties. It cannot be avoided. So far example at Northwood Hall there are 25 garages in the freehold. Jeffery would take the adjoining five garages, you know he loves garages, he's got 500 garages. I have an interest. Jeffery Gale has an interest that's why he looked to me. Absolutely nothing that will faze me. I obey the law, I stay inside the law, I stick to the letter and they can't criticise and you can't criticise the law. Winning arguments equals restoration of Northwood Hall."

As a manger he said his aim was to establish a corporate democracy and that he is the one person who lives by the law.

97. Mr Wismayer was then referred to a letter written on his behalf by solicitors in April 2016 relating to a proposal where it was contended Triplark was seeking to enter into an unlawful agreement for the extension of a leases of 25 flats together with garages as appurtenant property. In evidence he expressed that view that at the time it seemed that Triplark was trying to smuggle garages into the lease in the hope that the then freeholder would not notice.

98. Mr Wismayer was questioned about his involvement with Morshead Mansions and difficulties with accounts between 2003 and 2007. In summary, this was explained by him as a fallout from the period when Mr Maunder Taylor was in management and the fact that there was no starting point for the preparation of the requisite accounts. He went on to explain that Morshead Mansions expenditure is largely managed through a Precept in its articles. The management through the company in this way does not attract the protection of the 1985 Act. He said that when the enfranchisement of Northwood Hall had been achieved a similar Precept would be introduced.

99. Mr Wismayer was also asked about a private prosecution that had been laid against the RTM Company. It was suggested to him that a prosecution would not serve to move matters forward, in response he said he could not disagree more and that section 21 prosecutions are a very powerful tool that he had used on a number of occasions.

100. Mr Wismayer said that he was the only person who could deliver a solution. This was not just about enfranchisement, he said the fundamental issue was the catastrophic disrepair for which Triplark were wholly responsible. When the right to manage was exercised he commented "they (the Bergers) couldn't wait to give it up to a bunch of amateurs."

101. In fact throughout his cross examination, Mr Wismayer expressed himself in strong terms, speaking of "suing the living daylights" out of those alleged to be liable for the problems at Northwood Hall. He expressed astonishment at the prospect of Mr Norman being appointed as manager and his working with him. Very simply, he would want to be in charge and did not propose agreeing to spending several years of his life being frustrated. He said that Mr Norman patently had limited experience and that in any event "all managing agents are incompetent."

102. As to the day to day management of Northwood Hall he did not accept that he would require assistance from any other person although he was considering the appointment of a trainee. His view was that he could run both Morshead Mansions and Northwood Hall alone. Even with its problems, he assessed that he would only need to devote an average of 30 minutes a day to ordinary management duties at Northwood Hall.

103. As to resolving the hot water and heating problem, he said that he would take expert advice from Mr Humphries with whom he went back a long way. He would consider Mr Humphries report critically and in detail but ultimately what Mr Humphries advised would be what he proceeded with. He said that work was required in every single flat even those already connected to the Horizontal system if only to deal with mistakes in the installation of isolating valves in the corridors and fire safety works to the front doors of each flat.

104. He said that there remained the need to launch ferocious litigation and that doing so was still his plan today. Standing back, he said that it was likely that it would take up to 12 months to develop a complete plan for the building. He made it clear that he would return to the Tribunal for guidance where appropriate and if required, would provide quarterly reports.

105. When questioned by the Tribunal about his fee, he said that £250,000 a year was way below what he is worth and that in fact he was worth about double that amount.

Submissions

106. On behalf of the Applicant Mr Johnson's central submission was that it would be a disaster for the Building and for the leaseholders if management were to revert to Triplark, as he put it, this would create "a management circle of utter futility". He said that two opportunities to put the management of the Building onto a property footing, first in 2015 and then 2016 had been missed. By this we understand him to be referring first, to the opportunity for the RTM company to appoint Mr Wismayer as manager in 2015 which was defeated by the block votes deployed by Triplark and secondly to the decision of the Tribunal to appoint Mr Maunder Taylor rather than Mr Wismayer as Manager in the section 24 proceedings.

107. He pointed out that Triplark has no desire to take back the management of the Building. He said it would be odd and undesirable for the Tribunal to give management to a party which does not want it and that there is no evidence that any of the tenants in the Building want it to revert to Triplark.

108. Leaving the identity of a new Manager aside, Mr Johnson submits also that the problems at Northwood Hall cannot be addressed without the additional powers that the Tribunal is able to confer on a manager over and above those contained in the leases. These include: power to litigate on behalf of the lessees and to recover the costs from the service charges; an adjustment of the dates on which service charges

may be recovered; powers of entry to undertake works and, if necessary, and adjustment to repairing obligations.

109. He submitted that what is required is a person who can be trusted and who knows what might be achieved. He said it would be a tragedy if this opportunity were missed. He dealt first with the position of Mr Norman. He accepted that in a general sense, Mr Norman came across well in cross examination and that he was frank and helpful. However, he said, Mr Norman lacks an understanding or appreciation of the problems at the Building. This he said operated at four levels:

(a) His knowledge of the Building and the current crisis was woefully inadequate. He had been instructed very recently and had no real opportunity to come to terms with the history of the dispute or management problems;

(b) His management plan did not stand comparison with that of Mr Wismayer;

(c) There are material gaps in his experience and skills

(d) He has no previous experience of being a Tribunal appointed manager and did not properly understand the nature of the appointment.

110. As to the evidence of Tina Harrison, Mr Johnson submitted that the value of her evidence is necessarily limited because, as she said, she does not have an understanding of the implications of the judgement in the consolidated action or the technicalities of the problems facing the Building.

111. He urged the Tribunal to take note of the "blind hostility" of the Northwood Hall Leaseholders Group to Mr Wismayer and their attempts to demonstrate support for Mr Norman as the Applicant's nominee. So far as Triplark is concerned, he pointed out that it has consistently opposed Mr Wismayer having anything to do with the Building since 2015. This, he submitted, accounts for the current crisis facing the Building and given the history of the past four years, there is no reason to think that Triplark would be any more capable now of a fair canvassing of views within the Building.

112. So far as Mr Whale is concerned, Mr Johnson said that he came across as he did in the consolidated action, intelligent and credible and his evidence was measured and convincing. He supports Mr Wismayer, believes him and has a lot of respect for him.

113. Turning then to Mr Wismayer. Mr Johnson submitted that his management plan is impressive. He clearly understands what is required. He acts in compliance with the law and the RICS Code. He has got Morshead Mansions working and will seek oversight and support from the Tribunal. He has exceptional ability and the requisite knowledge of Northwood Hall and its history to put an effective plan into action. He has sufficient resources and vision to rescue the position.

114. He submitted that there is no conflict of interest, it was a "red herring". He argued that the proposed enfranchisement is completely separate from the management appointment and that attempts in cross-examination to demonstrate a direct connection with the works to be carried out to the property and its value were unsuccessful. He did not consider that there could even be a perceived conflict where any real interest that Mr Wismayer may have is at best a future interest.

115. In summary Mr Johnson urged the Tribunal not to refuse to vary the 2016 order. He suggested that to do so would be irresponsible and damaging.

116. On behalf of Triplark, Ms Stevens-Hoare also urged the Tribunal to make a variation to the 2016 and to appoint one of the candidates to the post of Manager. Triplark are reluctant to take back management. She acknowledged that Northwood Hall is difficult to deal with but asked the Tribunal to take into account the fact that not all lessees stand at the extremes although there are a significant number of people who are unable to communicate with each other.

117. She reinforced Mr Johnson's point that the additional powers that might be conferred by the Tribunal are required to bring Northwood Hall back from crisis. She said the powers are as follows: the power to litigate; an urgent power to deal with fire safety; access to flats to resolve the heating and hot water issues and the power as manager to make applications in these proceedings.

118. She submitted that Mr Norman should be appointed. Whilst accepting that his level of knowledge did not match that of Mr Wismayer, she said that understanding this building and its history would be a stretch for anyone in the limited time available. However, he has independence and a willingness to comply with his legal obligations. He has the ability to manage people which is a priority for Northwood Hall. He has experience of dealing with complex situations and the support of a senior partner in the firm. He is also able to call on the firm's resources.

119. As to Mr Wismayer, she acknowledged his skill and determination and said that he probably does have more knowledge than anyone else about the physicality of the building and its history. However, she observed that his knowledge will always be tainted by his perception and his belief that he is always right.

120. Ms Stevens-Hoare pointed out that although Mr Wismayer speaks of litigation, he has no real plan as to who might be sued and how. Even in relation to the heating and hot water he could not say definitely how he would deal with the legality issues of works carried out inside flats. Since Mr Wismayer suggested that nothing much would happen within a year, Mr Norman has a year to catch up.

121. She said that there is no doubt about Mr Wismayer's determination to put the property in repair but that this should be understood in the context of his having a financial interest in the collective enfranchisement plan. She made the following specific points:

(a) Mr Wismayer lacks independence and has conflicts of interest both real and perceived. He does not hold the qualities required of a Tribunal appointed manager;

(b) Despite his assertion that he always complies with the law this is not always so and is illustrated by his failure to comply with his legal obligations as an RTM director in respect of his purchase of his flat;

(c) He is very much embedded in the proposed collective enfranchisement. The extent of his interest was not initially clear and is still unclear. As a person seeking to be appointed as manager he should be completely transparent in his dealings.

122. She also highlighted a number of practical difficulties with his appointment:

(a) He is unrealistic about his resource to manage the property alone or even with the assistance of a trainee

(b) She submitted that the proposed fee of £250,000 per annum plus a flat from which to carry out administration is wholly unrealistic.

(c) He is not good at sharing his skills and knowledge unless the other party with whom he is dealing agrees with him;

(d) There is evidence that he has no real understanding of the task and what would be expected of him.

Consideration

123. We start by reminding ourselves of the terms of section 24(9). It provides that:

> "(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section…"

124. The Tribunal therefore has a discretion whether or not to vary or discharge its order. That discretion is fettered in the circumstances set out in paragraph (9A) which provides that the Tribunal shall not vary or discharge an order where the application is made by a "relevant person" unless it is satisfied that the variation or discharge will not 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 of the case to vary or discharge the order. A "relevant person" for these purposes is defined in section 24(2ZA) as a person on whom a notice has been served under section 22. This will usually be the immediate landlord. In this case however, the relevant person was the Right to Manage company (para. 8 of schedule 7 to the Commonhold and Leasehold Reform Act 2002) and therefore does not apply in here whether Triplark's application is made as a lessee or as a landlord.

125. In this type of application where the substitution of a manager and an extension of a management order is sought, the Tribunal has two decisions to make: firstly, whether or not to make the order and if so who to appoint. Mr Johnson submitted that the decision is in fact composite and the two decisions are interdependent. We agree, however, it is important not to lose sight of the fact that the decision in this case is not binary and therefore not simply a choice between Mr Norman and Mr Wismayer.

126. Guidance on the nature of an appointment under section 24 is given by the Court of Appeal in *Maunder Taylor v Blaquiere* [2002] EWCA Civ 1633 where it was said that:

> "the purpose of Part II of the Act is to enable the Tribunal to appoint a manager, who may not be confined to carrying out the duties of a landlord under a lease. The Tribunal is enabled under subsection (1) to appoint a manager to carry out in relation to any premises to which Part II applies "such functions in connection with management" of the premises as the Tribunal thinks fit. It is to be noted that the premises may be two or more (see section 21(4)) and that the manager will carry out functions of management. As subsection (11) makes clear, that includes repair, maintenance or insurance. There is no limitation as to the management functions of the manager; in particular the functions are not limited to carrying out the terms of the leases."

127. The appointment of a manager is essentially a problem-solving jurisdiction. The difficulties between landlords and lessees, or in this case the RTM company and lessees may be intractable and in order to achieve a resolution the Tribunal has power to appoint an independent person to put those management problems right.

128. In our view however, the powers that may be conferred on a manager appointed under section 24 are confined to management powers and do not, in our view, extend to an interference with property rights. Although not deciding the point, as we indicated at the hearing, we consider that it would not be possible for a Tribunal exercising its powers under section 24 to change the demise in the leases or to alter rights of entry.

129. Against that background we are firmly of the view that in this case any manager to be appointed would require a number of particular qualities: Firstly, they must be independent. The scheme for the replacement of the heating and hot water systems initially had the broad acceptance of the leaseholders at the building. From 2014, when the scheme was changed, the polarisation of the interests of the two factions of tenant have had a distorting effect. Moving forward it is vital that the person with responsibility for making decisions about the future of the scheme comes to the question with an open mind. That is not to say they cannot have a view about the appropriate way forward but they must consult and take proper account of representations.

130. Secondly, we consider that a candidate must have a track record and experience either as a Tribunal appointed manager or in practice, of dealing with "problem" buildings.

131. Thirdly, a candidate must demonstrate an ability to work with different groups of stakeholders. They must be able to approach the problems at Northwood Hall inclusively. The solution to the Building may ultimately lie in compromise and agreement. This may not be the most advantageous solution financially but it might be a solution that is both sensible and achievable. It may involve cutting losses and tolerating a building that is less than perfect. It may involve the agreement of leaseholders to suspend their rights under their leases in respect of access for work in order to achieve a lasting resolution to the heating and hot water problem. A manager must be prepared to take advice and to weigh up and decide on different points of view.

132. Fourthly, a manager must be able to give sufficient resource to Northwood Hall and to the leaseholders both initially and throughout any period of appointment. We have no doubt at all that in addition to the heating and hot water problems, that there will be other pressing and urgent issues that require to be addressed and that these problems will have been worsened by the long periods of time when either the Manager was out of funds or the enormity of the problems at the property became overwhelming.

133. We do not consider that either Mr Norman or Mr Wismayer has sufficiently demonstrated these qualities.

134. Firstly, Mr Norman. We are satisfied that Mr Norman is more than competent in his property management work. He has eighteen years of experience and has dealt with some challenging cases. In giving his evidence he came across as straightforward, intelligent and open minded. However, we must agree with Mr Johnson that despite all of these qualities, he is not suitable to be appointed as a Manager of Northwood Hall.

135. In reaching that conclusion we took into account the fact that Mr Norman has had very little time to investigate and learn about the history of Northwood Hall and the challenges it presents. Given his lack of knowledge it is surprising that he was prepared to accept the nomination from Triplark. This might be explicable by his lack of direct experience of working as a Tribunal appointed manager. It was clear to the Tribunal that the extent of the personal responsibility to be taken on by a manager was not something that he fully understood. Also, although Mr Norman has dealt with some problem properties as part of a team, it was not clear how extensive his personal involvement was and what his contribution to achieving a solution entailed.

136. We were also conscious that Mr Norman lacked the level of technical expertise that the Tribunal would expect of any appointed manager but in particular of a manager dealing with a situation quite as difficult as Northwood Hall. For example, in response to questions relating to accountancy and legal issues, he properly said he would take advice, however a manager needs to have sufficient understanding of the issues to give instructions on relevant and difficult matters. We do not consider that he demonstrated sufficient knowledge for this purpose.

137. Finally, we do not consider that Mr Norman had sufficient experience to deal with the vociferous and diametrically opposed factions in this case. The views held

are extreme and the accusations and counter-accusations have done a great deal of damage to individuals and to the culture of the property more generally. We do not believe that any of these issues can be resolved by a joint appointment with Mr Lewis.

138. Turning now to Mr Wismayer. His approach is based on his fundamental belief that he is correct in his understanding of all of the problems at Northwood Hall and that his proposed solutions are the only answer. He has maintained that stance since soon after his involvement in the property at the end of 2014 and has not shifted since. We do not regard his attitude as open minded and consider that it has tainted his independence. In evidence his language in describing those who disagree with him was at times intemperate. He is vocal in his criticisms of Triplark which he considers, with some justification, has campaigned against him since his first involvement with the property. Despite his assertion that he regards the freeholder as an important stakeholder for a Tribunal appointed Manager we consider that any relationship or dealings between Mr Wismayer and Triplark would be fraught with difficulty.

139. We consider that Mr Wismayer stands at one extreme of the polarised factions of the leaseholders. We cannot find that he will be able to redress the imbalance of his views as against those with whom he disagrees. As was noted in the judgement in the consolidated action, this does not mean that Mr Wismayer is technically wrong, it simply means that he does not have the necessary support of sufficient leaseholders to follow through his plans and even given a free reign we do not believe that he would be able to bring others to accept his views. Furthermore, as indicated above, the answer for Northwood Hall may not lie in a strict enforcement of rights and liabilities. Compromise might be required and Mr Wismayer did not demonstrate an appetite for compromise.

140. Furthermore, we are very concerned with Mr Wismayer's attitude to other professionals. As indicated, he made it very clear that he would be unable to work with Mr Norman and takes the view that all managing agents are incompetent. Even in respect of Mr Humphries, of whom he spoke highly, he said he would not accept his advice until he had "interrogated" his report. We considered that Mr Wismayer also does not properly understand the role of a Tribunal appointed manager. Although a manager is put in place to make management decisions that is not the same as pursuing his own agenda for a particular property.

141. We have real doubts that Mr Wismayer would have sufficient resource to give Northwood Hall the attention it requires. Although he spoke of high level plans and

some specific projects required more urgently at the property, he gave no attention whatsoever to the day to day running of the Building. We reject the proposal that an average of 30 minutes a day would be sufficient to manage routine tasks required to run a property comprising 194 flats and having historic management problems.

142. In reaching our decision we took into account Mr Wismayer's experience in dealing with Morshead Mansions. However, that was a very different property with a different freehold and leasehold structure. Mr Wismayer had a long standing and personal vested interest in the Building. Furthermore, he was not required to be independent in decision making or in reaching his goals. Although it seems that the situation at Morshead Mansions is now stable, it has taken many years and bitter litigation to reach that point.

143. Finally, we consider that there is a real danger that Mr Wismayer has a conflict of interest which prevents the Tribunal from appointing him as a manager to Northwood Hall. We accept Ms Stevens-Hoare's submission that a person seeking to be appointed as manager he should be completely transparent in his dealings. Mr Wismayer accepts that he has an interest in the outcome of the collective enfranchisement. Mr Johnson also acknowledged that this is the case. That interest cannot be disregarded. The interest is either a real interest currently held or a future interest.

144. Even if it could be said that Mr Wismayer's interest in or in achieving the collective enfranchisement is separate from a section 24 appointment, there is very real prospect that stakeholders would regard Mr Wismayer's management decisions as being tainted by that interest. Such a perception would be a barrier to achieving a successful result in managing any building but here, where there is so little trust between leaseholders, it would be fatal.

Decision

145. For the reasons set out above, we therefore decline to vary the management order. We do not underestimate the impact of this decision but cannot appoint either of the candidates. Accordingly, the Tribunal's management order will come to an end on 13th September 2019 and management of the property will revert to Triplark.

146. Triplark, as freeholder and landlord will have to contend with the serious problems at Northwood Hall and seek a resolution of the pressing issues at the Building. They will have to comply with their obligations under the leases within a

reasonable period of regaining control of the property and seek to restore effective management.

Siobhan McGrath

21st August 2019