FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/45UG/LVM/2018/0003**
Property	**:**	**Ditton Place School, Brantridge Lane, Balcombe, West Sussex RH17 6JR**
Applicant	**:**	**Lorraine Nunes-Carvalho and Others (full list on page 2)**
Representative	**:**	**Ms L Nunes-Carvalho for Applicants 1-6**
Respondent	**:**	**Gary Pickard and Others (full list on page 2)**
Representative	**:**	**Claire Whiteman, Dean Wilson LLP, for Respondent 1 Mr J Price for Respondent 2 Mr G Burton for Respondent 3 Mr Roche for Respondents 4-9**
Type of Application	**:**	**Variation of management order: section 24(9) Landlord and Tenant Act 1987**
Tribunal Members	**:**	**Judge E Morrison Mrs J E Coupe FRICS**
Date and venue of Hearing	**:**	**27 November 2018 at Crawley Magistrates Court**
Date of decision	**:**	**7 December 2018**

DECISION

List of Applicants

1. Lorraine Nunes-Carvalho (Flats 3 & 9)
2. Richard Urwick and Caroline Bajo (Flat 1)
3. Marion Vincent (Flat 5)
4. Michele Hodgkinson (Flat 8)
5. Tony Jones and Margaret Jones (Flat 11)
6. Walter Gans and Katherine Gans (Flat 6)
7. Keith Sellers (Flat 2)

List of Respondents

1. Gary Pickard - (Manager)
2. Ditton Place Management Company Limited (Freeholder of part)
3. Gerard Burton and Michael Rosenfeld (Flats 4,7,10,12)
4. Paul Roche and Jo Roche (Waterside)
5. John Price and Liz Price (Middle Cottage)
6. William Lynch and Kelly Lynch (The Lodge)
7. Spencer Carter & Michelle Carter (Bungalow 1)
8. Robert Taylor and Susan Taylor (Bungalow 2)
9. Ian and Joanne Broomfield (Bungalow 3)

Summary of decision

The application to vary the management order dated 1 February 2017 is dismissed.

The application and parties

1. On 4 June 2018 the first six named applicants made an application to the tribunal under section 24 of the Landlord and Tenant Act 1987 ("the Act") stating that they, having acquired the freehold reversion to their leases by way of collective enfranchisement, wished "to resume control of their part of the Estate and Buildings". It was initially unclear whether this was an application to vary or to discharge the management order dated 24 January 2018, but in a subsequent statement of case, it was clarified that the application was to vary that order by removing part of the Ditton Place estate from its scope.

2. Subsequently Keith Sellers, who did not participate in the enfranchisement, was joined as an applicant but he took no part in the proceedings.

3. The original respondent was the manager, Gary Pickard. Subsequently the owners of the six freehold houses on the Estate, the lessee of four non- participating flats, and the management company, were all joined as respondents, opposing the application.

Procedural matters, evidence and representation

4. Further to directions issued by the Tribunal, statements of case/ witness statements were provided by the majority of the respondents, followed by witness statements from applicants Mr Urwick, Ms Carvalho and Mrs Hodgkinson. The latter statements raised new points, including allegations relating to matters that had arisen prior to the management order and to the conduct of the manager. The Tribunal did not consider it was necessary to consider those allegations and issued further directions excluding from consideration at the hearing any evidence relating to them, while permitting the respondents to reply to other new points. Several further documents were accepted into evidence during the hearing without objection from either side.

5. Ms Carvalho, assisted by Mr Urwick, represented the applicants at the hearing, and Neil Maloney, the chartered surveyor whom they wished to appoint as their managing agent, gave evidence on their behalf.

6. For the respondents, Mr Pickard gave evidence, and Ms Whiteman, Mr Burton, Mr Roche and Mr Price all made submissions.

The inspection

7. Immediately prior to the hearing, the Tribunal visited Ditton Place, accompanied by Mrs Carvalho, Mr Urwick, Mr Pickard and Ms Whiteman. Ditton Place is approached by way of a private drive off Brantridge Lane which provides access to the main building and coach house, and also to the freehold houses and bungalows. The site extends to approximately fifteen acres. A second access track, "the north drive", between the trees, is now grown over and is no longer in everyday use.

8. The two storey plus attics main building was built in 1904 in neo William and Mary style, is Grade II* Listed, and constructed in red brick with stone dressings under a hipped Cumberland slate roof with tall brick built chimney stacks. North of the main building and attached by a round headed brick arch is a two storey coach house. This Grade II building was built in 1904 in the same style and is of red brick elevations with stone dressings under a pitched and tiled roof. The main building and coach house have both been converted into self-contained flats. The freehold properties are located to the east and south-east of the main building and are interspersed through the communal grounds; none are situated to the rear (west) of the main dwelling.

9. The estate includes communal grounds with mature trees between Brantridge Lane and the main house, whilst to the west of the main house are formal gardens and a tennis court for the exclusive use of the flats and a sewage system which serves the majority of both leasehold and freehold properties on the development. Parking is provided to the front of the main building.

The relevant law and jurisdiction

10. Subject to certain qualifications not relevant in this case, section 21 of the Act permits a tenant of a flat to apply to the tribunal for an order appointing a manager. Before doing so a notice must be served, as required by section 22, on the landlord and any other person with management obligations, which must specify the grounds on which the tribunal would be asked to make an order, and requiring matters capable of being remedied to be remedied within a specified reasonable period.

11. Under section 24(3) the premises in respect of which an order is made may be more or less extensive than the premises specified in the application.

12. Section 24(4) provides:

> An order under this section may make provision with respect to:
> (a) Such matters relating to the exercise by the manager of his functions under the order, and
> (b) Such incidental or ancillary matters,
> (c) As the tribunal thinks fit and on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

13. Section 24(9) provides that the tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under section 24. Section 24(9A) states that the Tribunal shall not vary or discharge an order under section 24(9) on the application of any relevant person unless it is satisfied:
(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order. A "relevant person" is defined in section 24(2ZA) as a person on whom a section 22 notice has been served (or should have been served but for dispensation).

Chronology

14. It is necessary to set out, in summary form, a chronology of events leading up to the present application.

2007-10	Sale of six freehold houses, and conversion of Main House and Coach House at Ditton Place into twelve flats demised on long leases. Under the house sale transfers a rentcharge is payable by the house owners to the freeholder of the estate. Under the flat leases the lessees pay a service charge to the freeholder.
23.12.10	Ditton Place Management Company Limited ("ManCo"), the management company under the tripartite leases, was registered as freehold proprietor of the entire estate in place of the developer Brickcrest Limited. Each of the flat lessees and some of the house owners were shareholders in ManCo.
11.11.15	Application by three flat lessees (Urwick/Bajo, Gans and Sellers) under section 22 of the Act for the appointment of a manager to carry out the management duties of ManCo.
24.1.17	Order of Tribunal appointing Mr Gary Pickard as Manager for three years, the order reciting that Man Co had admitted "that the conditions specified in [section 24] were met".
12.17 – 2.18	By a series of actions, led principally by Ms Carvalho, the first six applicants gained control of ManCo (the propriety of which actions is strongly disputed by the second – ninth respondents), and formed Ditton Place Freehold Company Limited ("NewCo").
23.3.17	The first six applicants served an initial notice under section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 seeking to acquire the freehold of the buildings containing the flats, together with surrounding land including the flats' private formal gardens, tennis courts, parking areas and the "north drive" which runs through the estate. On the same date Ms Carvalho, as director of both ManCo (the transferor) and NewCo (the transferee) executed a transfer of the freehold of the land requested for a premium of £2.00. (This land is now referred to as "the NewCo land").
29.3.18	At a general meeting of ManCo called by Mr Burton, new directors (Mr Burton, Mr Price, Mr Taylor and Mrs Roche) were appointed, and Ms Carvalho was removed as a director.
24.5.18	Meeting at which applicants ask Mr Pickard to consent to the discharge of his appointment.
4.6.18	Application to the Tribunal.

The current dispute

15. At the outset of the hearing the Tribunal asked the parties to identify the matters still in dispute relating to the management order (apart from any dispute regarding the validity of the enfranchisement process

which is outside the scope of our consideration). It was clarified that these are:

- How substantial costs incurred by the manager for professional fees (accountancy and legal) and his own management fees should be apportioned between the flats on the one hand and the houses on the other hand
- How and whether waste disposal/sewage costs should be apportioned between all units
- Whether, as the applicants contend, the houses should be required, through the rentcharge, to contribute 60% of the cost of maintaining the private grounds of the flats, now enfranchised through NewCo[1]
- Whether the applicants are required to pay the service charge demands served by Mr Pickard (the principal debtors being Mr Urwick, Mr Sellers and Ms Carvalho).

16. There is also the matter of the historic service charges i.e. predating Mr Pickard's appointment. Principal concerns leading to the Management Order were the lack of service charge accounts and alleged misappropriation of service charge funds. The powers granted to the Manager under paragraph 5 of the Order include:

i. [To] bring any legal proceedings for the recovery of rents, service charges, or other monies due under the leases…

iv To investigate and take such action as may be appropriate to manage the service charge accounts and reserve funds … and if considered appropriate to instruct accountants or auditors to audit the service charge accounts and/or reserve funds

v To demand and collect the past and future estate rent charges from the owners of the freehold units …

vi To ascertain the correct proportions of the estate costs to be recovered from the lessees and owners of freehold units.

Final service charge accounts for the years up to and including 2016 have not yet been prepared. Even once all income and expenditure has been identified, and funds accounted for, it seems likely that the applicants will dispute the apportionment of certain expenses, as mentioned above.

The applicants' case

17. The applicants' case was that the NewCo land should be removed from the scope of the management order, leaving only the rest of the land on the estate ("the amenity land") as subject to the order. Under the

[1] The position of at least one applicant (Mr Urwick) was, until late 2017, that the house owners should also contribute 60% of all costs of maintaining the buildings comprising the flats and their common parts.

freehold transfers, the house owners pay 60% of the costs for the amenity land. Under the flat leases as originally granted, the flat lessees pay the amenity land costs, less any amount contributed by the house owners.

18. Last week the applicants sent the respondents copies of Deeds of Variation entered into since the NewCo enfranchisement between the participating leaseholders and NewCo. A sample Deed was provided to the Tribunal. The notable variations appear to be that:

- The lease as varied is bipartite, and all references to ManCo (which was party to the original tripartite lease as the management company) and its rights and obligations have been removed
- The service charge payable by the lessees is limited to the costs of the NewCo land and there is no direct obligation on the lessees to contribute to the costs of the amenity land as part of their service charge
- Instead the lessees must discharge any obligation of NewCo to contribute to those costs, such obligation being set out in the ManCo/NewCo transfer.

19. The applicants, through NewCo, proposed to appoint Neil Maloney as their managing agent for the Newco land. It was their case that Mr Maloney would be able to work with Mr Pickard when required.

20. Mr Maloney had provided a CV, management plan and terms of appointment. He is a chartered surveyor with considerable experience in property management. He began his evidence by explaining that in his view, now that the NewCo enfranchisement had occurred, the management order should be completely rescinded as the only area remaining (the amenity land) was freehold not leasehold.

21. On the assumption, that the management order remained in place, but varied as sought by the applicants, Mr Maloney was asked to explain how he would deal with the matters remaining in dispute (see paragraphs 13 and 14 above). His evidence can be summarised as follows:

- He accepted that the dispute over apportionment of costs revolves around the correct interpretation of the rentcharge provisions in the house transfers, and that a judicial determination was required if agreement could not be reached. His view on the apportionment proposed by Mr Pickard was first expressed as “it may or may not be correct”, but was swiftly followed by the comment “I doubt he’s got it far wrong if at all”. When asked if Mr Maloney had made his views known to the applicants, he said he had not, other than telling them that the apportionments needed clarification.

- Much of his management plan appeared to be in standard form. However Appendix 5 listed "Matters requiring further consideration and clarification by the Tribunal or attention of the property manager". This addressed issues relating to the historical service charge accounts, noted NewCo's intention to decide whether a forensic audit was of economic benefit, and set out a schedule of what purported to be leading counsel's views on apportionment. When it was put to him that the schedule was not, in the Tribunal's view, an accurate representation of counsel's advice, Mr Maloney said that most of Appendix 5 simply reproduced documents given to him by the applicants. He himself had not assessed whether (as set out in the schedule) the house owners should be paying 60% of the costs of the flats' private grounds.

- He had given the applicants no advice as to whether it was appropriate for them to withhold payment of service charges. Any arrears, including historical arrears if collectable, should be collected from the lessees by NewCo, not by Mr Pickard. Mr Maloney would act as NewCo's agent, and he accepted he would not be "independent".

- He did not know anything about the funding position of NewCo or its ability to meet its financial obligations in respect of the amenity land imposed by the ManCo/NewCo transfer

- With regard to any historic arrears he said that arrears owed by individual lessees could not be written off because that would lead to other lessees sustaining a financial loss. He did not have any suggestions on how to deal with historical service charges other than through a forensic audit. He stated that it would not be right to start again if the forensic audit process was half way through.

- Mr Maloney had no criticisms of Mr Pickard, for whom he had "great respect", and he did not want to suggest that he would do a better or worse job than Mr Pickard. Mr Maloney mentioned another difficult estate he had been involved in managing, which had taken three years to resolve.

Mr Maloney left the hearing shortly after concluding his evidence, without first checking that the Tribunal did not wish him to remain in case of further points arising.

22. Ms Carvalho was asked about her instructions to Mr Maloney. She explained that she had discussed with him, before embarking on the enfranchisement process, whether enfranchisement could lead to regaining control of the management, and "we" thought it was feasible. Mr Urwick said that Mr Maloney had been given all relevant documentation.

23. In response to a question as to why he had not paid all of the service charges demanded by Mr Pickard, including a demand for the cost of proposed major works, Mr Urwick said this was because he had already paid sums (as demands for reserves) towards the cost of the same major works prior to the management order. He believes those funds have been misappropriated. Ms Carvalho said the lessees were incredibly frustrated at having to deal with the past, and that they could decide it was not economic to pursue the forensic audit and historic arrears. Mr Urwick then suggested that sorting out the historical position was not difficult, describing it as "a £250 job" and "a five minute job". He said the lessees had not asked for an audit.

24. The applicants are concerned at the very high cost of the forensic audit into the historical service charges which Carpenter Box have been instructed by Mr Pickard to undertake. This has been ongoing for almost two years and is still not complete. The anticipated total cost is in the region of £56,000.00. They thought Mr Pickard should have consulted with them about the cost and time-frame of the audit before proceeding.

25. The applicants' position as regards some matters appeared to change towards the end of the hearing. There was a short adjournment to provide an opportunity for discussion between Ms Carvalho, Mr Urwick and Mr Pickard, following which the Tribunal was told by Mr Urwick that the applicants were now prepared to agree to Mr Pickard's position on some of the apportionment issues, and they agreed to continue discussions. This was a positive development.

26. At the very end of the hearing, and in sharp contrast to comments made earlier by himself and Ms Carvalho as to the need for, and benefits of, a forensic audit, Mr Urwick said that he wanted Mr Pickard to continue the process with Carpenter Box and to recover any historic arrears. He also said that if the management order was varied as requested by the applicants he would pay (but presumably to NewCo) his service charges immediately.

The case of the second – ninth respondents

27. These parties want the management order to remain in place for the entire estate. They contend that the outstanding areas of dispute affect the entire estate and require an independent manager, with powers under the management order, to resolve them. The lessees were already shareholders in ManCo, and the respondents contend that the NewCo enfranchisement was undertaken with a view to evading the management order and to disenfranche non-participating lessees, notably Mr Burton/Mr Rosenfeld who had no right to participate due to owning four flats.

28. These respondents submit that the forensic audit needs to be completed, historic service charge accounts finalised, and arrears

collected from those who have not paid. If Mr Pickard has no authority to collect arrears from the lessees, there is little prospect of recovery, and those lessees and house owners who have paid their service charges will sustain financial losses.

29. Although the respondents have no objection to a future regime under which the estate would be split into two for management purposes, they contend that cannot happen until (a) historic service charge arrears are collected and apportioned as appropriate between NewCo and ManCo (b) past and future costs apportionment between the flat lessees and house owners is resolved (c) rights and obligations as regards the amenity land and the shared driveway on land owned by ManCo, and the waste disposal/sewage system on land now owned by NewCo are agreed (d) there are agreed legal mechanisms in place to ensure that each part of the estate (NewCo and ManCo) can collect monies due from the other.

30. The respondents also contend that Mr Pickard's ability to carry out his duties has been hampered and disrupted by the failure of some applicants to pay service charges he has properly demanded, which has meant that he lacks funds to pay for professional fees, major works etc. They want Mr Pickard to be given any additional powers he requires to collect all arrears.

31. Mr Burton, whose leases have not been varied, and who has been disenfranchised, pointed out that the leases for his four flats now have different service charge obligations to those in the varied leases, which may cause further problems. He had not been consulted about the lease variations.

The position of Mr Pickard

32. Mr Pickard made it clear that he was content to step aside from management if the Tribunal considered discharge of the management order to be in the best interests of the estate (subject to payment of outstanding fees). If he were to remain as manager but only of the amenity land, with the NewCo land managed separately, his view was that this would not help to resolve the outstanding issues. He also doubted that he could be a tribunal- appointed manager if there were no leasehold properties to manage. If the management order was not varied, he would have no objection to working with Neil Maloney as a spokesperson for the applicants.

33. With regard to the forensic audit, there have been delays caused by the inability to settle Carpenter Box's fees. This inability was due to the failure of some applicants (including Mr Urwick and Ms Carvalho) to pay their service charges. However, Carpenter Box have very recently produced draft accounts for all periods up to 31.12.16. The bottom line appears to be that the historic arrears are in the region of £115,000.00, the principal debtors being Mr Urwick and Mr Sellers. There has been

some undercharging, and reserve funds have been used to pay general running costs. There is nothing said in the draft accounts about missing funds, as alleged by Mr Urwick. Mr Pickard needs to be able to assure Carpenter Box that their considerable outstanding fees will be paid before he can expect them to discuss the draft accounts with him and finalise them. However in his view, given the serious allegations of theft and misappropriation of funds made by Mr Urwick (including to the police), only a thorough audit can hope to set matters straight. Carpenter Box had given a quote at the outset but the job and costs grew, and there had been no choice but to continue with what was a very difficult and time-consuming task.

34. As regards the apportionments, Mr Pickard gave the Tribunal an overview of how he believes the costs should be apportioned. Mr Pickard accepts that an application to the court may be required to determine the dispute. He would need funds to make such an application.

35. A similar problem with funding arises in respect of proceedings to recover the unpaid service charge demands he has made since appointment, and any proceedings that may be required to recover historic arrears. Mr Pickard also expressed doubt as to whether he would have any legal entitlement to collect the historic arrears owed by lessees if the NewCo land was taken out of the scope of the management order.

36. He currently holds funds of £75,787.54. Post-appointment service charge demand arrears total £156,810.22, and creditors (including substantial sums owed for management, legal and accounting fees) stand at £93,590.83. Mr Pickard said he was saddened by the sums that had been expended on professional fees; he would much rather have seen the money spent on the property.

37. Mr Pickard said that he needs additional powers in the management order to enable him to overcome the problems referred to above as regards lack of funding. He had been about to apply to the Tribunal when this application had been made, and then thought it best to await the outcome.

38. In his witness statement Mr Pickard also refers to the delays and costs caused by the numerous challenges, complaints and demands made by some or all of the applicants, at various times, since his appointment. Ms Whiteman told the Tribunal that she had considered applying for a penal notice to be attached to paragraph 9 of the management order which states "The Respondent and the lessees … shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers".

Discussion and determination

39. The first question for the Tribunal is whether any jurisdictional issue arises in relation to the application, a point alluded to in the manager's written evidence and discussed at the hearing. The Landlord and Tenant Act 1987 confers, in section 21 (1), a right for "the tenant of a flat" to apply for the appointment of a manager. The relevant provisions apply "to premises consisting of the whole or part of a building if the building or part contains two or more flats" (section 21(2)). It follows that a management order can only be made in the first place if there are at least two flats subject to the order, although by virtue of section 24(3) other premises can be included in its scope.

40. The power given under section 24(9) of the Act to vary or discharge an order is in general terms, affording the Tribunal a very wide discretion. So while there is no explicit prohibition on varying a management order in such a way that there are no longer any leasehold flats within its scope, it is the firm view of this Tribunal that this was not what Parliament intended. The result would be that the First—tier Tribunal was appointing a manager only in relation to freehold land and dwellings. There is no other statute conferring jurisdiction on the Tribunal to appoint a manager. The preamble to the *Landlord* and *Tenant* Act [italics added], explains that its purpose is "to confer on tenants of flats rights with respect to the acquisition by them of their landlord's reversion; to make provision for the appointment of a manager at the instance of such tenants …". We therefore conclude that, even if there is no absolute prohibition, it would be wrong to exercise our jurisdiction by varying the management order as sought by the applicants. Furthermore, even if this conclusion is incorrect, we would not make the requested variation for the reasons set out below.

41. An alternative to variation could be to discharge the order altogether. However no party has requested this. Even if that had been the applicants' position, we would decline to do so. We conclude that it is in the best interests of all at Ditton Place that the management order should remain in effect. Although section 24(9A) of the Act is not strictly relevant (because the application before us has not been made by "any relevant person" – see paragraph 13 above), the particular matters referred to therein have equal resonance in this case. We are not satisfied that a discharge, or variation as sought by the applicants, would not result in a recurrence of the circumstances which led to the order or that it would be just and convenient in all the circumstances of the case.

42. Although the applicants have been critical of Mr Pickard's conduct and performance, the stated ground for their application is simply the enfranchisement through NewCo and the desire to manage the NewCo land themselves. For that reason the Tribunal excluded from consideration matters relating to Mr Pickard's conduct. Having said that, the applicants' written evidence on this issue was in the bundle

and the Tribunal believes it right to state there is nothing which causes us concern. Our firm impression of Mr Pickard, from his written and oral evidence, together with correspondence produced by the applicants, is that he has approached the management in a fair and independent manner. He has been beset by difficulties, many of which have been created by some of the applicants, in particular Mr Urwick, who, having been a principal party to the original application seeking his appointment, turned against Mr Pickard shortly afterwards because he did not do what Mr Urwick wanted in respect of the apportionments (see paragraphs 11 and 43 of Mr Urwick's witness statement). It was not until late 2017 that Mr Urwick conceded that the house owners should not be required to pay 60% of the costs of maintaining the flats. He still maintains that the house owners should pay 60% of the costs of maintaining the flats' private grounds. He has refused to pay all of his current service charges until his allegations with respect to missing funds are resolved, while withholding the funding required for the forensic audit to be completed.

43. On 22 June 2017 the applicants made an extremely lengthy formal complaint to Mr Pickard about numerous issues. Despite a detailed written response, the applicants wrote again at great length on 8 September 2017 accusing him of pursuing a "corrupt regime". Later in 2017 Mr Urwick and his co-lessee Mr Bajo instructed solicitors to write to Dean Wilson, who were acting for Mr Pickard , raising many of the same matters. All these communications have been fully responded to by Mr Pickard/Dean Wilson, but it is clear that considerable time and professional fees have been expended in so doing.

44. The applicants appear to have believed, quite wrongly, that once the NewCo enfranchisement had taken place, they could assume their own management. In a letter dated 27 April 2018 Ms Carvalho wrote to Mr Pickard stating that "We consider any action you take, or will take, since the date of completion, with regard to the enfranchised property to be trespass". This was a blatant breach of paragraphs 8 and 9 of the management order. The applicants also mistakenly believed that Mr Pickard should be required to consult with them about matters which the Tribunal had already directed him to carry out.

45. Turning to the merits of the application, the Tribunal must consider what will best assist in resolving the areas of outstanding dispute affecting those at Ditton Place. The rationale for appointing a manager is to provide a measure of neutrality and independence to the management of a property. The manager is accountable to the Tribunal.

46. The principal areas of dispute between some of the lessees and the previous management, namely apportionment of costs and production of proper historic service charge accounts, with clarification of each owner's state of account, have not yet been resolved.

47. Dealing with apportionment, legal advice has been taken, and Mr Pickard has acted on that advice. Towards the end of the hearing it

appeared that the dispute may have narrowed due to a change in position of the applicants, but if full agreement is not reached, an application to the court may be required. Having two different managers will not assist that process. There is no evidence that NewCo has either the funding or the will to make such an application. If Mr Pickard were retained as manager just of the amenity land, only the house owners could be required by him to fund the proceedings. In our view that would be manifestly unfair, particularly when it is (principally) the applicants who have objected to his proposed apportionment, and the service charges in question would have been incurred under the common management regime. It is essential that the apportionment dispute is resolved as soon as possible. It affects the collection of both historic service charge arrears, and service charges raised by Mr Pickard.

48. As regards the historic service charges, we have no doubt that the forensic audit should be completed. Again this requires funding, and it is only fair that the lessees should contribute (the vast majority of the service charges being incurred in relation to the flats in any event). It is troubling that Ms Carvalho thought that NewCo, if it had control, might decide to abandon altogether the forensic audit and collection of historic arrears. As Mr Maloney quite correctly pointed out, arrears cannot be written off, as those who have paid would end up subsidising those who have not. It is clear that Carpenter Box, due to a degree of good will in carrying out work without being paid as they went along, are nearing the end of the process. It should be completed as soon as possible. Mr Pickard needs monies contributed by all owners, including the flat lessees, to fund this. If the flats were removed from the scope of the management order, he could not require funding from the lessees.

49. The historic arrears must be collected. Mr Pickard's concern that, if the application succeeded, he might have no power to collect these from the flat lessees appears well-founded. However if the management order remains in place he will have that power. It should be noted that "the Respondent" is defined in the management order as including any successors in title to ManCo or persons discharging the function of ManCo in the leases. It therefore encompasses NewCo. Under paragraph 5 i of the order the manager has power to bring proceedings for recovery of arrears in his own name or in the name of the Respondent. For the avoidance of doubt, we do not agree with Mr Maloney that the enfranchisement of NewCo means that only NewCo, and not Mr Pickard, has the right to collect those arrears.

50. In sum, the Tribunal finds the continuation of the management order to be the only practical and effective mechanism to resolve these issues. It has no confidence that NewCo, with or without Mr Maloney as its management agent, would undertake these tasks. Mr Pickard, as manager only of the amenity land, would be unable to do so. Mr Maloney did not impress the Tribunal as someone who had given any proper consideration to the resolution of the issues, and did not suggest that he could do a better job than Mr Pickard.

51. What is clear is that none of the parties view the management order as a long-term arrangement. They all desire an eventual separation of the estate management. The Tribunal sees no objection to this. However in our view this can only be fairly and sensibly achieved once:

- apportionment of all costs for the estate is fully agreed or determined, and formally recorded
- the historic service charges are ascertained, balances established and arrears collected
- any positive reserve balance is apportioned between NewCo and ManCo
- current service charges are paid up to date, or liability for them agreed between ManCo and NewCo
- agreements are in place between NewCo and ManCo for payment/recovery of future costs
- The management of NewCo, as successor in title to ManCo in respect of leasehold flats, is on a proper footing.

Achieving this objective will be assisted by the full cooperation of the applicants with Mr Pickard.

52. If Mr Pickard considers that he requires any additions or amendments to the management order, it is suggested that he makes an application to the Tribunal at the earliest opportunity, requesting that it be dealt with on the fast track and by the same tribunal members. Consideration could be given to requesting directions as to how costs incurred by the manager in the implementation of the management order should be apportioned.

Dated: 7 December 2018

Judge E Morrison

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an

extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.