



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

Case reference : **LON/00AN/LAM/2019/0030**

Property : **384 Uxbridge Road, London W12
7LL.**

Applicant : **Ms. C. Audibert.**

Representative : **In person.**

Respondent : **Ms. C. Bushnell (1)
Mr. Gurinderjeet Singh Suri (2)
Mr. Baljit Singh Suri (3)
Mr. Mohinder Singh Suri (4)**

Representative : **StevensDrake Solicitors
Ms. A. Grasso of Counsel.**

Type of application : **Appointment of Manager**

Tribunal member(s) : **Ms. A. Hamilton-Farey.
Mr. S. Mason BSc, FRICS.**

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

Date of decision : **19 March 2020.**

DECISION

1. The tribunal dispenses with the requirement for the applicant to serve a S.22 Notice on the freeholder/landlord.
2. In accordance with section 24(1) Landlord and Tenant Act 1987 **Ms. Joanna Roznowska MRIPM, AssocRICS** ('the Manager') is appointed as manager of the property at 384 Uxbridge Road, London W12 7LL. ('the Property').
3. The order shall continue for a period of **three** years from **19 March 2020**. Any application for an extension must be made prior to the

expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.

4. The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of functions and services attached to this order.
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
5. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
6. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.

Background:

7. By an application dated 18 November 2019, the applicant sought the appointment of Ms. Joanna Roznowska as tribunal appointed manager in relation to the building at 385 Uxbridge Road W12 7LL.
8. Directions were issued by the tribunal on 17 December 2019, that required the parties to exchange documents on which they wished to rely, including a draft Order and management plan prepared by the proposed manager.
9. On 25 February 2020, the representatives of the second, third and fourth respondents confirmed that they did not object in principal to the appointment of Ms. Roznowska, but said that any appointment should only cover the residential elements of the building and not include the ground and basement floor shop.
10. It is not disputed by any of the parties that no-one has heard of the head leaseholder, Ms. Bushnell, the first respondent for some years, and that effectively she is 'missing'.
11. Ms. Toledo, the leaseholder of flat 1 also agreed that a manager should be appointed but did not one who would report to the applicant and wanted a completely independent person to be appointed.

12. It is accepted that the applicant was appointed as a temporary manager of the building in order to have roofing works carried out. That Order has expired.

The Premises:

13. The premises comprise a commercial shop premises on the ground and basement floor levels, and three residential units arranged on three upper floors. The property is situated in a generally mixed-use area of shops, offices and flats.
14. The residential units are accessed from a front door at street level. There appears to be an entryphone, but not all flats appear to be connected to it. There is no access to the flats from the rear of the property.
15. The residential flats are let on standard residential leases that require the tenants to pay ground rent and service charge. It is accepted that due to the status of the head leaseholder, no demands for ground rent or service charges have been received by the leaseholders and no payments made.
16. The ground and basement shop is subject to a commercial lease under a commercial rent, and is currently let as a food outlet, including the sale of hot food. The freeholders manage this unit themselves.

The Hearing:

17. The applicant, Ms. Audibert represented herself at the hearing and was accompanied by Ms. Roznowska. The second, third and fourth respondents were represented by Ms. Grasso of Counsel. Mr. Gurinderjeet Singh Suri was in attendance. Ms. Toledo, although not represented, also observed and was given an opportunity to make her own case. She was accompanied by a friend.
18. At the start of the hearing, Ms. Grasso reiterated her clients' suggestion that the S.22 Notice served by the applicant was invalid, in that it was served on the respondents' representatives and not the respondents' themselves. The respondents also say that the applicant failed to identify the property properly and referred only to her own flat, and again for this reason the S.22 Notice is invalid.
19. The tribunal considered the substantive evidence from the parties and reserved their decision on whether we consider the S.22 Notice to valid.
20. Having now heard that evidence, the tribunal agrees that the S.22 Notice may not have fully complied with the relevant requirements, but it was clear to us that the property is not being properly managed and that a manager should be appointed. In the circumstances, the tribunal dispenses with the requirement of the applicant to serve the S.22 Notice.

Insurance:

21. One of the reasons for the application was the assertion by the applicant that the property was not properly insured. The freeholder denied this to be the case. However, when we saw the latest insurance certificate, it was clear that the respondents are only insuring the commercial unit, and not the upper parts of the building. The applicant, and Ms. Toledo, confirmed that they insured their flats themselves, but it appeared to the tribunal that this was 'landlord's insurance' where a property is let to a tenant, and would not cover the structure of the building, or common parts.
22. It is the tribunal's view that the whole building should be insured under one policy with the relevant premium being apportioned between the parties in accordance with their leases. We take this view so as to ensure that there are no areas of the building that might become uninsured, and where claims might be rejected by insurers.
23. Given the previous lack of understanding by the freeholder that the whole property was insured, we include the right to insure the building within the manager's responsibilities under the Order attached to this decision.

Repairs and Maintenance:

24. No maintenance has been carried out by either the freeholder or head leaseholder for some time, and the applicant in particular has had to carry out maintenance to the roof following a leak. There is no maintenance reserve for future works, and no fire risk assessment has been carried out.
25. We consider that a fire risk assessment, in particular, is urgently required and any identified works undertaken. This is especially so due to the location of a food outlet below the flats, where cooking is undertaken, and the risk of fire greater than with an office user.
26. We also consider that a maintenance reserve should be established to address the outstanding maintenance issues (broken entryphone, lack of cleaning and general maintenance), and that this can only be addressed by having a manager appointed.

Extent of Order.

27. The freeholder, whilst agreeing to the appointment of a manager, suggests that, because the freeholders are currently insuring the building, and dealing with the maintenance of the commercial unit, that the Order should only extend to the residential parts of the building.
28. The tribunal disagrees. We are guided by the Upper Tribunal decision in *Queensbridge Investments Ltd v Lodge and Ors* [LRX/71/2015] wherein the Upper Tribunal agreed with the First Tier-Tribunal

decision relating to 135 Ladbroke Grove, where it was determined the management order should extend to the commercial property.

29. We find that the manager should manage the entire building, but not collect the commercial rent. We come to this conclusion because the structure of the building requires maintenance, and the commercial unit is liable for a proportion of those costs. The manager is in the best position to organise repairs and bill the relevant parties. We therefore include the commercial service charges within the Order. These will be recoverable from the Freeholders due to the terms of the commercial lease.

Costs:

30. The freeholder wishes to recover the costs of this application from the applicant and/or service charge. The applicant has made an application under S.20C of the Landlord & Tenant Act 1985 to limit the landlord's costs of proceedings.
31. The immediate landlord of the applicant is Ms. Bushnell who is missing and therefore unlikely to make a demand for costs of proceedings, but in any event the tribunal makes an Order under S.20C that the landlord may not recover the costs of the proceedings from the applicant.
32. It is not clear whether the Freeholders are able to recover any costs from the applicant, because they do not have a contractual relationship with her. The tribunal informed the parties that they should make submissions on this point 14 days after the hearing, and the tribunal will determine any costs, if they are recoverable from the applicant.

Name: Aileen Hamilton-Farey **Date:** 19 March 2020.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities.
3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon **19 March 2020** become rights and liabilities of the Manager.
4. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
5. By no later than **18 March 2021**, the Manager shall, if requested by the tribunal, prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date, providing a copy to the lessees of the Property and the Respondent at the same time.
6. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
7. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property known as the commercial and residential premises at 384 Uxbridge Road, London W12 7LL.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) Demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (iv) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest-bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.

- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

- (i) Fees for the abovementioned management services will be a basic fee of £250.00 per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a flat rate charge of £300.00 per consultation exercise.
- (iii) Professional fees for architects, surveyors and solicitors will be in addition.
- (iv) An additional charge will be made for dealing with solicitors' enquiries on assignment.
- (v) Currently VAT will not be payable on the managers' fees quoted above. Should the VAT status of the manager change during the course of her appointment then the residential leaseholders and freeholder shall be notified accordingly that VAT will hence forth be payable.
- (vi) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.

Complaints procedure

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