



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

Case reference : **LON/00BA/LVM/2019/0019**

HMCTS code (paper, video, audio) : **P: PAPER REMOTE**

Property : **16 Arterberry Road, London SW20 8AJ**

Applicant : **Sarah Simonis**

Representative : **In person**

Respondent : **Cynthia Diana Rowley**

Representative : **In person**

Interested persons : **(1) Laura Katancivoka (Flat 1)
(2) Alistair Stewart & Heather Stewart (Flat 2)
(3) Anselm Benedict (Flat 3)
(4) Marbeth Gordon (Flat 4)
(5) Mr Paul Cleaver, Tribunal appointed Manager**

Type of application : **Application to vary a management order**

Tribunal members : **Judge N Hawkes
Mr L Jarero BSc. FRICS**

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

Date of paper determination : **28 October 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which has not been objected to by the parties. The form of remote determination was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that the Tribunal was referred to are in a bundle of 106 pages filed by the Applicant, a bundle of 8 pages filed by the lessees of Flat 2, and correspondence passing between the parties and the Tribunal, the contents of which we have noted. The order made is described below.

Decisions of the Tribunal

- (1) The term of the Management Order is extended for a period of two years from the date of this decision. Accordingly, the Management Order, as varied, shall expire on 28 October 2022.
- (2) The variation of the Management Order is subject to the further conditions which are set out below.
- (3) The Applicant is directed to, by 9 November 2020, amend the draft Amended Management Order contained in the hearing bundle to reflect the determinations made by the Tribunal below and to submit the revised draft order, in Word format, for the Tribunal's approval.

The Background

1. The Applicant seeks a variation of a Management Order under section 24(9) of the Landlord and Tenant Act 1987 ("the 1987 Act").
2. The existing Management Order is dated 13 March 2017 and it appoints Mr Paul Cleaver of Urang Property Management Limited as manager of 16 Arterberry Road, London SW20 8AJ ("the Property").
3. This Management Order was expressed to expire on 12 March 2020 but, by an interim order which was made on 24 February 2020, it was extended until the final determination of this application.
4. The reasons for the making of a Management Order are set out in a Tribunal decision dated 13 March 2017, case reference LONG/00BA/LAM/2016/0015, which should be read together with this decision.
5. The Property is a Victorian house which has been converted into 5 flats. The Applicant is the lessee of Flat 5. By a Statement of Case dated 25 March 2020, the lessees of Flat 2 agree that the Management Order

should be extended but make representations as to the terms of the proposed extended order. The lessee of Flat 1 supports the representations made by the lessees of Flat 2.

6. By letter dated 2 December 2019, the freeholder consents to an extension of the Management Order, if requested by the majority of the leaseholders.
7. The lessee of Flat 4, Mrs Gordon, filed a reply form with the Tribunal dated 10 August 2020. In this reply form, Ms Gordon explained that she was having practical difficulties in complying with the Tribunal's directions and Judge Vance made allowance for this in further Directions which were issued on 21 August 2020. Mrs Gordon did not, however, state whether she opposed the application and, if so, on what basis.
8. The Directions dated 21 August 2020 provided that this application would be determined on the papers unless any party or interested person made a request for an oral hearing by 4 September 2020. No request for an oral hearing has been received by the Tribunal and no written submissions have been received setting out any specific grounds for opposing the application.
9. Section 24(9) of the 1987 Act, which is set out in the appendix below, gives the Tribunal a broad discretion. Having considered all of the evidence, the Tribunal determination dated 13 March 2020, and the fact that the Manager is currently part-way through a major works project, the Tribunal finds that it is just, convenient and appropriate to extend the management order.
10. Further, having considered Mr Cleaver's witness statement dated 9 March 2020 together with the supporting documents, and having noted the absence of any objection on the part of the lessees to Mr Cleaver continuing to act as manager, the Tribunal is satisfied that Mr Cleaver remains a suitable appointee.
11. Whilst no Statement of Case has been received from any of the lessees objecting to the extension of the management order, representations have been made by the lessees of Flats 1 and 2 concerning the terms of the proposed extension.
12. The Applicant and Mr Cleaver propose an extension for a period of 5 years "to be extendable for a further two years following approval by the Tribunal".
13. In a Statement of Case dated 25 March 2020, prepared by Mr Stewart on behalf of himself and his wife, Mr Stewart states that "much progress has been made" concerning the proposed works. However, he

also expresses concerns regarding some aspects of the manner in which the Property has been managed and submits the Management Order should be extended for two years rather than five.

14. The Tribunal is satisfied, in all the circumstances, that it is just and convenient to extend the Management Order for a two year period, as proposed in Mr Stewart's Statement of Case. It is anticipated that Mr Cleaver will have a reasonable opportunity to complete the proposed major works within this period and any party or interested person may apply to further extend the Management Order at the end of the two year period, if considered appropriate.
15. The Tribunal is satisfied that the proposed increase of £70 + VAT in the basic management fee from £350 + VAT to £420 + VAT is sufficient to cover the period for which the Management Order has been extended. The proposed increase is significant and the Tribunal finds that a basic management fee of £420 + VAT over a two year period is reasonable, having regard to the nature and location of the subject Property. The Tribunal therefore makes no provision for this fee to increase further during this limited period of time. As regards the proposed increase in the hourly rates, the Tribunal determines that in all the circumstances it would be reasonable, just and convenient to increase each of the hourly rates by 10% from the date of this decision until 28 October 2022.
16. A substantial reserve fund has now been built up and the Tribunal accepts Mr Stewart's submission that, in respect of service charge demands relating to future periods which have yet to be demanded, any further surplus of income over expenditure should be refunded to the lessees.
17. In determining this application, the Tribunal makes no findings of fact concerning the reasonableness and of the service charge items referred to in Mr Stewart's Statement of Case or concerning the criticisms which he makes of Urang Property Management Limited. It would not be appropriate to do so without hearing oral evidence. As regards the reasonableness and payability of service charge items, the Tribunal's jurisdiction in respect of this application is limited to considering whether the Management Order should be varied and, if so, the terms of the variation.

Judge N Hawkes

28 October 2020

Appendix of relevant legislation

Landlord and Tenant Act 1987 Section 24

24.— Appointment of manager by a tribunal

...

(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; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) The tribunal shall not vary or discharge an order under subsection (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.