



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

Case reference : **BIR/17UC/LVM/2020/0002**

Properties : **The Old School Development, Old
School Lane, Creswell, Worksop,
Nottinghamshire S80 4BY**

Applicant : **Mr David Poppleton**

Representative : **PM Legal Service**

Respondent : **DRC Construction Ltd (1)
The Old School Development (Creswell)
Ltd (2)
The long leaseholders listed in the
Appendix to this decision (3)**

Representative : **None**

Type of application : **An application under section 24(9) of
the Landlord and Tenant Act 1897 (“the
Act”) for a variation of a management
order**

Tribunal member : **Judge C Goodall
Regional Surveyor V Ward FRICS**

**Date and place of
hearing** : **Paper determination**

Date of decision : **30 November 2020**

DECISION

Background

1. The Old School Development is a residential development comprising 2 blocks with 21 residential units. The freehold is owned by the First Respondent (“DRC”). Nine units are let on long leases to the long leaseholders identified in the Appendix to this decision. The remaining twelve units are directly owned by DRC as part of the freehold.
2. The long leases all tri-partite leases between the freeholder, a management company called The Old School Development (Creswell) Ltd, and the long lessees. The Tribunal understands that the management company was struck off the register of companies on 28 May 2019. It has obviously played no part in these proceedings.
3. On 23 July 2014, a tribunal made an order for the appointment of Mr David Popleton (“the Applicant”) as a tribunal appointed manager of the Property under section 24 of the Act. It is not necessary to recite the grounds for that order, which can be found under tribunal reference BIR/17UC/LAM/2014/0003. The term of the appointment was for three years commencing on 21 July 2014.
4. On 11 August 2017, the tribunal extended the period of the appointment for a further three years until 17 August 2020 (see BIR/17UC/LVM/2017/0001).
5. This application was made on 4 August 2020. In directions made by Tribunal Judge Barlow on 17 August 2020, the term of the order was extended further until this application has been finally determined.

The Application

6. The application (as submitted on 4 August 2020) was for the term of the order to be further extended for another three years. However, by an email and supporting statement dated 7 October 2020, the Applicant varied the nature of his application by requesting that he be discharged from his appointment as manager. His grounds are that DRC have failed to pay service charges and are in arrears to the tune of £156,236.04 arising principally from invoices submitted in March and September for the 2019/20 service charge year. The charges for that year had included a budget sum of £270,000 for the cost of re-roofing the Property. It is clear that replacing the roof at that cost is a contested issue.
7. As a result of non-payment, the Applicant’s position is that he cannot perform his duties as manager, and he wishes to be discharged.

The responses

8. DRC was opposed to the original application to extend the Applicant’s appointment until 2023. By directions dated 12 October 2020, the Tribunal

directed that any Respondent wishing to make any representations regarding the varied application dated 7 October 2020 should provide these to the Tribunal by 30 October 2020. No representations from any Respondent have been received.

Law

9. Appointment of a manager is governed by Part II of the Act. Section 24(5)(d) provides that the manager's function can be exercisable either during a specified time period or without limit of time.
10. Whilst the Tribunal has power to extend the period of a specified time limited appointment (see s24(9) of the Act), unless it does so, when the time period comes to an end, the appointment lapses, or expires by effluxion of time, and management reverts to whatever are the arrangements in the contractual documents (normally the lease) between the parties (see *Eaglesham Properties Ltd v Jeffrey* [2012] UKUT 157 (LC)).

The Leases

11. For the long leaseholders, whilst the management company no longer exists, the sample lease the Tribunal has been provided with requires DRC (at the request of the lessees) to take over the functions of management that would have been undertaken by the management company (see clause 6.4). The lease contains provisions for services to be provided at the Property to be funded by a service charge.

Discussion and determination

12. Were it not for the 4 August 2020 application, the management order would by now have expired in any event. It is clear that the Applicant is not willing to continue in office. His term expired on 17 August 2020. It was only extended to the date of this determination to ensure that a management order continued in existence until the 4 August application could be decided.
13. The Tribunal has no power to compel a manager to accept an appointment under section 24 of the Act.
14. There has been no objection from any party to an order being made in the terms of the varied application dated 7 October 2020.
15. For these reasons, the Tribunal makes no order on the 4 August 2020 application to extend the period of the Applicant's management. It is not necessary to make any order discharging the Applicant from his responsibilities under the management order, for as at the date hereof, the management order expires by effluxion of time.

Appeal

16. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)

Appendix

List of long leaseholders

JJ Barrett & Sons Ltd

Simon Lee

Michael Beer & Val Beer

Surjit Singh and Sukhinder Singh Shoker

E J W Wenhan & C Wenham

P J Hine

C M F Jubber

D R Swann & J E Swann

K Windle & D Windle