



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

Case Reference : CHI/45UB/LVM/2021/0004

Property : 37 Buckingham Road, Shoreham by Sea,
West Sussex BN43 5UA

Applicant : Louise Whitnall & Mary Bean

Representative : Mr Adrian Carr, counsel

Respondent : Mr John Williams and Mr Paul Meredith

Representative :

Type of Application : Application to vary a management order

Tribunal Member(s) : Judge D. R. Whitney
Mr M Ayres FRICS
Mrs J Herrington

Date of Hearing : 26th August 2021 and 24th November 2021

Date of Decision : 14th December 2021

Decision

Background

1. The Applicant seeks an Order extending the appointment of a Tribunal Appointed Manager and replacing the current manager, Mr Peter Bigge, with Ms A Mooney.
2. The Applicants are one of the leaseholders at the building. The Respondents are both the freeholders and owners of the other leasehold interests in the Property.
3. Mr Bigge had been appointed by an Order dated 3rd March 2020 for a period of 12 months with such appointment extended by order made on 2nd October 2020 until 30th June 2021. Mr Bigge had indicated to the parties that he would not be seeking an extension of the order and so the current application was made.
4. Various sets of directions had been issued. Mr Bigge had been required to submit various documents. Mr Bigge failed to comply with Judge Tildesley's directions and a direction was issued requiring Mr Bigge to attend the hearing on 26th August 2021.
5. At the hearing on 26th August the Applicants were represented by Mr Adrian Carr of counsel and the Respondents attended in person. Ms Mooney also attended. Both parties gave evidence and made their respective submissions in respect of the application before the Tribunal and the Tribunal heard from Ms Mooney. The Tribunal issued directions listing the matter for a further hearing at which Mr Bigge was required to attend.
6. A hearing bundle was supplied for the initial hearing together with other documents supplied by the various parties. References in [] are to pages within the original hearing bundle.

The Law

7. The relevant law is contained within Section 24 of the Landlord and Tenant Act 1987 which states that:

Section 24 Appointment of manager by a leasehold valuation tribunal.

(1)A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a) such functions in connection with the management of the premises,
or

(b) such functions of a receiver, or both, as [F1the tribunal] thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—

(a) where the tribunal is satisfied—

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii)

(iii) that it is just and convenient to make the order in all the circumstances of the case;

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal is satisfied—

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section “relevant person” means a person—

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a)if the amount is unreasonable having regard to the items for which it is payable,
(b)if the items for which it is payable are of an unnecessarily high standard, or
(c)if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred. In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the M2Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B)In subsection (2)(aba) “variable administration charge” has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3)The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4)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,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.

(5)Without prejudice to the generality of subsection (4), an order under this section may provide—

(a)for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b)for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c)for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d)for the manager’s functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6)Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7)In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a)that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b)that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8)The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9)A leasehold valuation 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.

(10)An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11)References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.

The Hearing

8. The initial day of the hearing on 26th August 2021 took place remotely by video. Mr Carr of Counsel attended to represent Mesdames Bean and Whitnall. Messrs. Williams and Meredith attended in person. Ms Mooney the nominated manager attended throughout.
9. The Tribunal did not inspect the Property and no party invited them to do so. The Tribunal had seen photographs and descriptions within the bundle as well as having looked at the property via online resources.
10. Mr Carr had filed a skeleton argument.
11. This decision records the most salient parts of the hearing which the Tribunal took account of in reaching its determination. It is not however a transcript of all that took place.
12. Mr Meredith on behalf of the Respondents confirmed they objected to any variation or extension of the earlier management order being made. He stated that the Respondent's would prefer to appoint their own manager.
13. Mr Carr explained in his view there were 5 main arguments he wished to present:
 - Accounting issues: earlier accounts not reconciled and no accounts from Mr Bigge;

- Major works: his clients believe the major works undertaken during the course of Mr Bigge's appointment are sub standard;
 - Further major works are required;
 - The relationship between the parties has irretrievably broken down and an independent manager is the most appropriate way forward;
 - The Respondent's have put forward no alternative management plan;
14. Mr Carr then called Louise Whitnall who confirmed the contents of her witness statement were true [47-48].
15. Mr Williams then cross examined her.
16. She explained she had arranged for a structural engineer to review the major works undertaken by Mr Bigge. She did not have a report and could not remember the engineers details.
17. She accepted she had agreed to have UPvC to replace the previous wooden windows but she would have preferred wooden windows. She had discussed matters with the contractor as would have preferred the windows which were fitted to not have fan lights but to fit the full opening including the sloping edges. She felt the quality of the work undertaken was poor.
18. The Tribunal then asked questions.
19. Ms Whitnall confirmed she raised with the surveyor the question of FENSA certificates or Building regulations approval after she learnt this was required. She stated she was awaiting the guarantees for the work. She had tried to contact Mr Bigge as the team from his company who were managing day to day she did not feel took her seriously. Mr Bigge did not engage with her.
20. On re-examination Ms Whitnall confirmed she was not happy with the management by Mr Bigge. She did not feel the major works had been properly completed. She accepted that so far there had been no leaks.
21. The Tribunal took a short break at this point and upon resumption Mr Bigge had attended. He explained he was on holiday and had been trying earlier to log on for the hearing. He explained he had not got accounts and had been advised by his accountant these would take a further 8 weeks to produce. He confirmed he was advised his accountant now had all the information he required.
22. The Tribunal invited Mr Bigge to remain in attendance and highlighted that at the close of the proceedings it would issue further directions.

23. Ms Mary Bean was then called. She confirmed her statement [53-54] was true and would stand as her evidence.
24. Mr Williams then cross examined.
25. She stated that she believed the earlier accounts did not reflect the previous Tribunal determinations. Items were included which she stated had not been approved. These included items such as supposed finance costs which she said had not been approved.
26. The Tribunal stopped the cross examination on the basis this application was to determine whether or not the appointment of a Manager should be extended and varied to appoint Ms Mooney.
27. The Tribunal had no questions for Ms Bean.
28. Mr Williams and Mr Meredith presented their case.
29. Mr Williams was content for Mr Bigge to finalise the accounts. He flagged that it was the Applicant's who had fallen out with Mr Bigge and Town & City who was their nominated manager. He suggested they contested everything and say all works done are rubbish. He stated that the Applicant's then produce no evidence supporting this.
30. Mr Williams suggested that the Respondent's would look to approach a firm called ADJ in Worthing if the management order was not continued and management returned back to them as freeholders.
31. The Tribunal adjourned for lunch. Upon resumption Mr Bigge did not re-join and did not re-join again on 26th August 2021.
32. Mr Carr cross examined the Respondents.
33. Mr Meredith accepted the previous agents appointed did a bad job. He made clear it was the agents and not himself and Mr Williams.
34. Mr Williams explained that they tried to give the previous agents a period of time to get matters right. He and Mr Meredith believed the Applicants were unreasonable.
35. Mr Meredith had to be muted by the Tribunal. Mr Meredith expressed forcibly his dissatisfaction with matters relating to the Property and the numerous applications to the Tribunal. He believed matters could only be resolved if matters proceeded to the Upper Tribunal. The Tribunal explained to him until a decision had been made he would not be able to proceed to the Upper Tribunal and then would only be able to do so if he was granted leave to appeal either by this Tribunal or the Upper Tribunal.

36. Mr Williams then continued to answer questions.
37. Mr Williams confirmed he had received statements from Town & City. He stated he had only been made aware immediately prior to the Tribunal application in October 2020 that a Section 22 Notice had been served upon the previous managing agents. He stated that whenever he was asked by the agents he had always agreed to the disclosure of information to the Applicants. He had always wanted to be transparent.
38. Mr Williams confirmed that he and Mr Meredith took advice and instructed solicitors who had written to the Applicants seeking recovery of monies which Mr Williams believed was owed. He explained that the Respondent's had financed works in 2015 and remained owed monies for the same.
39. Mr Williams confirmed he had no details as to what professional bodies if any ADJ were members of.
40. Mr Meredith stated that he could not believe this was the eighth tribunal hearing. He felt Town & City and Mr Bigge should complete the accounts.
41. The Tribunal then heard from Ms Alison Mooney. She relied on her statement and attachments [14-26].
42. She explained she had a number of Tribunal appointments ranging from buildings of 2 units up to 70 units. She spoke to her management plan. She believed the Property required an independent manager who would look at matters with a critical eye.
43. She explained that she was born in Worthing so knows the area well. She currently manages two buildings in Lancing. Her minimum fee is £2000 plus vat which is what she proposes for the Property. She stated that in her opinion even at this level she would not earn much money from the Property.
44. She felt there were some unrealistic expectations on both sides.
45. Ms Mooney was questioned by the Tribunal.
46. She explained that she felt relationship management will be key.
47. Mr Carr had no questions.
48. Mr Meredith asked questions.
49. Mr Mooney confirmed the address of one of the properties in Lancing. She confirmed it had about 20 units and she had

managed for about 20 years. She explained she always looks to try and use local contractors and has contacts in the area already.

50. Mr Meredith commented that he found that M Mooney came across as a confident person.
51. Mr Meredith and Mr Williams in closing stated they are happy for Ms Mooney to be given a period of time but do not accept three years is reasonable. They felt Mr Bigge should complete the accounts and any matters relating to the major works so that Ms Mooney started with a clean sheet. They stated that it seems whenever the Applicants received an invoice they find fault and try and delay and confuse matters.
52. Mr Carr referred to his skeleton argument. He accepts this is a remedy for a fault being established. He submitted the emphasis should be on an independent manager answerable to the Tribunal only.
53. The Tribunal then agreed certain further directions with the parties for Mr Bigge to produce the accounts and further explanation of the major works. It was agreed that the parties submissions on 26th August would stand as their case for the application and they were not required to attend the further date which was principally for the Tribunal to question Mr Bigge as to what had happened during his period of management.
54. The Tribunal confirmed to all present that Mr Bigge would remain the manager until further Order. The hearing ended and further directions were sent to all parties including Mr Bigge.
55. Between the two hearings Mr Bigge complied with the directions and supplied accounts, various documents including statement as to what steps had been taken under his management principally in connection with the major works. Both parties submitted submissions in reply as the directions provided.
56. On 24th November 2021 the hearing resumed. Mr Carr attended in person with the Applicants attending remotely. The Respondent's had wished to attend in person but due to a train derailment they attended by video as well. Mr Bigge attended the Tribunal in person. Judge Whitney was in person with his panel members attending remotely by video.
57. Mr Bigge spoke to his bundle of documents and statement supplied. He explained that almost immediately he was appointed the Covid 19 pandemic had struck and the first lockdown was instigated. Mr Bigge commented that this changed the world and throughout his appointment he had not been travelling as he would have done prior to the pandemic.

58. Mr Bigge accepted he relied on Miss McGill and Mr McGill. They were father and daughter but were in his evidence experienced property managers in the employ of Town & City. They dealt with matters day to day as they were closer to the Property than himself. He had as a minimum weekly meetings with Laura McGill.
59. He explained that when first appointed he had been told by Ms Whitnall that there were concerns over Mr David Smith and hence he had appointed Hallas & Co Surveyors to look at the major works required. It was only upon the application being made which was heard in October 2020 that he learnt that Ms Whitnall had accepted Mr Smith's specification.
60. He explained the original contractor had left the site. The contractor said this was due to issues with Miss Whitnall. Mr Smith had found another contractor who had completed matters and the whole project came within budget. He accepted there were some outstanding items as identified in Miss Whitnall's reply to his recent statement but in his opinion these matters were snagging.
61. He confirmed he had spoken to his accountant who was satisfied that the accounts had now been reconciled and those recently produced were accurate. Those accounts had been supplied to all parties.
62. Mr Carr then asked questions of Mr Bigge.
63. He agreed that the contract was between Cambridge Construction and himself. He agreed he should have agreed all variations to the contract but this did not take place. He confirmed Mr Smith as the surveyor had his authority to deal with matters.
64. Mr Bigge explained the McGills visited the property during the management order. He visited with the Applicants prior to his appointment. He had also visited as set out in his statement. He confirmed the bullet point statement had been prepared by Laura McGill but he had approved it.
65. Mr Bigge stated Cambridge Construction were only paid for the work they completed. He had seen the report of Wade Grummett which the Applicants had now obtained and discussed with David Smith. David Smith believed the issues were snagging and would be remedied as such.
66. Messrs. Williams and Meredith also had opportunity to ask questions of Mr Bigge.
67. Mr Bigge confirmed Mr Smith had been back to the site and was adamant he could resolve the outstanding items.
68. The Tribunal also questioned Mr Bigge.

69. He confirmed Mr Smith had been asked to attend to the snagging process.
70. Mr Meredith explained he manages a thousand properties. He would self manage until all issues resolved as he would want any manager to have a clean sheet of paper.
71. Mr Carr submitted that the situation cries out for a manager. Continuity of appointment is required and so a three year term is reasonable. He stated it was clear there was not a happy relationship and ongoing management is required.
72. Mr Carr indicated he sought orders under section 20C that none of the costs of this application would be recovered as a service charge item. He also indicated that he wished to seek an Order pursuant to Rule 13 against Mr Bigge.
73. The Tribunal adjourned to consider. On resumption the Tribunal indicated the Order it intended to make to assist the parties in planning and provided that reasons would follow.

Decision

74. The Tribunal thanks all the parties for their assistance. It was plain that very real tensions existed.
75. We record that the Applicant seeks to vary the original management order dated 3rd March 2020. The Applicant suggests the Order should be extended and the manager appointed should be varied to be Ms Alison Mooney. The Applicant suggests any appointment should be for three years.
76. We have proceeded on the basis that the Respondents objected to the appointment although by the end of the second hearing it appeared that they accepted it may be in all parties interests for a manager to be appointed but only for 12 months.
77. We do not set out the long and unhappy history between the Applicant and Respondents. It was repeatedly raised by both sides. What was clear was that plainly neither side had any trust or respect for the other. This is important given the only parties in respect of this Property are the those to this application with each being responsible for 50% of the service charge costs.
78. We note the original determination appointing Mr Bigge had followed a series of determinations criticising the managers appointed by the Respondent's. The Tribunal in that instance [31] acknowledged that appointment of a manager was a practical solution to ensure that accounts could be reconciled and major works to what is known as the conservatory completed.

79. We have considered carefully all of the evidence. Simply because the parties think a manager should be appointed is not the test. Currently there is a Tribunal appointed manager. The major works for which Mr Bigge was appointed appear to have been completed subject to certain matters. Accounts have been reconciled. It is however plain from the evidence of the parties that the Respondent's have made little or no preparations for having management returned to them. At the August hearing they referred to looking to appoint a manager based in Worthing although no information was produced. At the later hearing Mr Meredith stated he would self manage.
80. The earlier Tribunal which originally appointed Mr Bigge determined that the conditions set out in Section 24 of the Landlord and Tenant Act 1987 were met. We must be satisfied that it remains just and convenient for a manager to be in post. On balance we are so satisfied.
81. In our judgment issues still remain between the parties. The Applicants do not accept the accounts prepared by Mr Bigge properly reconcile the earlier amounts and amounts owed by the Applicants to the Respondents by way of service charges. All such earlier years have been subject to Tribunal determination and it was accepted by both parties that any action to resolve these issues would necessitate County Court proceedings if agreement cannot be reached. It seems the same is likely. Until this is resolved it is not clear to this Tribunal that any working relationship can be established.
82. Taking account of all matters and the submissions made we are satisfied that it remains just and convenient for manager to be appointed. In our judgment any such appointment should be for no longer than may be required. The Respondents are entitled to expect that they can manage their building. We are satisfied that an Order for 12 months is reasonable in all of the circumstances. If issues still remain any party, including the manager, can apply for the order to be varied and extended. A period of 12 months should provide opportunity for any snagging issues to be resolved and for the parties to have determined whatn if any further actions they wish to take over earlier accounts and sums said to be due and owing. On this later point both parties must take their own advice and it will not be for the Manager to become embroiled in the same.
83. We have considered Ms Mooney. We were impressed with her management plan and the way she gave her evidence. As Mr Meredith commented she did so with confidence. We are satisfied that she understands her duty to this Tribunal and the need to be independent of the parties. Her previous appointments support this conclusion. We are satisfied she is an appropriate manager.

84. We must comment upon Mr Bigge and his management. We acknowledge that the timing of his appointment in respect of the pandemic could not be worse. The same must have hampered good management given his business is not local to the Property. His failure to comply with the initial directions did however cause difficulties in this case. Whilst we note he referred to difficulties he had experienced in obtaining documents from previous agents to reconcile accounts he had not returned to the Tribunal seeking further directions. Ultimately accounts have been produced together with other documentation which the parties can now consider.
85. As we made clear at the hearing we make no determination as to any of the sums which Mr Bigge incurred. It was not appropriate within this application to do so.
86. We are satisfied that Mr Bigge has now reconciled the accounts and the major works to the conservatory have been completed. Mr Bigge indicated he had given instructions to David Smith to ensure that snagging items, including those raised in the report obtained on behalf of the Applicants are attended to. Mr Bigge had produced Building Regulation consent and a guarantee for the windows.
87. Plainly if such information had been produced to the Tribunal sooner then this would have assisted all. We note however Mr Bigge did as directed attend in person at the resumed hearing and submit to detailed questioning. He was in our judgment candid in his answers.
88. Having said the above we do determine that an Order should be made pursuant to Section 20C and Mr Bigge should not recover any of his costs of dealing with this application through the service charge.

Conclusion

89. As we advised the parties orally at the conclusion of the hearing we make an order appointing Ms A Mooney from 25th December 2021 until 24th December 2022. Mr Bigge will remain as the Tribunal appointed manager until 24th December 2021.
90. We have determined such dates given these reflect the service charge years. Mr Bigge shall comply with paragraph 12 of the management order appointing him [37].
91. Ms Mooney shall not engage in any work in relation to the earlier accounts and the reconciliation of the same. She will be entitled to rely upon the account supplied by Mr Bigge unless and until there is any further order of the Tribunal or County Court as appropriate.

92. The management order shall provide that the Applicants and the Respondents will each make an interim payment to her of £2000 on account of any and all expenditure she is required to make. Such payment is to be made as Ms Mooney directs by not later than 14th January 2022.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.