



**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** : 26<sup>th</sup> August 2021 and 24<sup>th</sup> November 2021

**Date of Decision** : 14<sup>th</sup> December 2021

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**MANAGEMENT ORDER**

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## **Interpretation**

1. In this Order:

**“The Property”** means the flats and other premises known as known as 37 Buckingham Road, Shoreham-by-Sea, West Sussex BN45 5UA.

**“The Landlord”** shall mean Mr Paul Meredith and Mr John Williams or their successors in title to the reversion immediately expectant upon the Leases.

**“The Tenants”** shall mean Mesdames Bean and Whitnall being the proprietor for the time being of the Lease whether as lessee or under-lessee and "Tenant" shall be construed accordingly.

**“The Lease”** shall mean the lease of The Tenants flat in the Property.

**“The Manager”** means Ms Alison Mooney.

**“The Tribunal”** means the First-tier Tribunal (Property Chamber)

## **ORDER**

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) **Ms Alison Mooney** is appointed as Manager of the Property in place of Mr Peter Bigge who was appointed pursuant to an Order dated 3<sup>rd</sup> March 2021.
3. The Manager’s appointment shall start on **25<sup>th</sup> December 2021** (“the start date”) and shall end on **24<sup>th</sup> December 2022** (“the end date”).
4. For the avoidance of doubt this Order does not displace covenants under the Leases and the Tenants remain bound by them.
5. The purpose of this Management Order is to provide for adequate management of the Property which includes taking steps to ensure completion of the major works to the conservatory undertaken during the appointment of Mr Bigge and in particular any items of snagging.
6. The Manager shall manage the Property in accordance with:
  - (a) the terms of this Order and the Directions set out in below;
  - (b) the respective obligations of the Landlord and the Tenants whereby the Property is demised by the Landlord (save where modified by this Order);
  - (c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3<sup>rd</sup> Edition) 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; and

(d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.

7. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
8. The Manager must act fairly and impartially in the performance of her functions under this Order and with the skill, care and diligence to be reasonably expected of a Manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions. The Manager's overriding duty to this tribunal.
9. Where there is a conflict between the provisions of the Management Order and the Leases, the provisions of the Management Order take precedence.
10. The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
11. Any application to extend or renew this Order **must** be made before the end date, preferably at least three months before that date, and supported by a brief report of the management of the Property during the period of the appointment. Where an application for an extension or renewal is made prior to the end date, then the Manager's appointment will continue until that application has been finally determined.
12. The Manager may apply to the First-Tier Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
  - (a) any failure by any party to comply with an obligation imposed by this Order; and
  - (b) circumstances where there are insufficient sums held by him/her to discharge the Manager's obligations under this Order and/or for the parties to pay the Manager's remuneration.

### Contracts

13. Rights and liabilities arising under contracts, including any contract of insurance and/or any contract for the provision of any services to the Property, to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:
  - (a) the Landlord shall indemnify the Manager for any liabilities arising before commencement of this Order; and
  - (b) the Manager has the right to decide in her absolute discretion the contracts in respect of which she will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date this order.
14. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.

#### Licences to assign, approvals and pre-contract enquiries

15. The Manager shall not be responsible for carrying out those functions in the residential Leases concerning approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the Leases provide should be carried out by the Landlord.
16. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

#### Legal Proceedings

17. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and may continue to bring or defend proceedings relating to the appointment, after the end of her appointment.
18. Such entitlement includes bringing proceedings in respect of arrears of service charge and rent attributable to any of the Flats in the Property, including, where appropriate, proceedings before this tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act or before the courts and shall further include any appeal against any decision made in any such proceedings.
19. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so. If costs are

recovered direct from a defaulting Tenant, those costs should be refunded to the service charge account.

### Remuneration

20. The Tenants are responsible for payment of 50% of the Managers' fees, which are to payable under the provisions of this Order but which may be collected under the service charge mechanisms of their Leases and the Landlord is responsible for payment for the remaining 50% of those fees.

21. The sums payable are:

- (a) an annual fee totalling £2000 for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable);
- (b) any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code (so far as applicable); and
- (c) VAT on the above fees.

### Ground Rent and Service charge

22. The Manager shall collect the ground rents payable under the residential Leases.

23. The Manager shall collect all service charges and insurance premium contributions payable under the Leases, in accordance with the terms and mechanisms in the Leases.

24. The Manager shall have the authority to:

- (a) demand payments in advance and balancing payments at the end of the accounting year;
- (b) establish a sinking fund to meet the Landlord's obligations under the Leases;
- (c) allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund;

25. To ensure that the Manager has adequate funds to manage the Property the Manager may immediately collect £2,000 from the Tenants and from the Landlords. For the avoidance of doubt both the Tenants and the Landlords shall pay to the Manager £2000 by the 14<sup>th</sup> January 2021 so that the Manager shall have interim service charge funds totalling £4000. The Manager will take account of such interim payment in

making any further demands for interim service charge payments which may be allowed under the lease.

26. The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by her whilst carrying out her functions under the Order.

#### Administration Charges

27. The Manager may recover administration charges from individual Tenants for her costs incurred in collecting ground rent, service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Details of the fees charged are set out in the Appendix of additional fees.

#### Disputes

28. In the event of a dispute regarding the payability of any sum payable under this Order by the lessees, additional to those under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, may apply to the tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.
29. In the event of a dispute regarding the payability of any sum payable under this Order by the landlord, other than a payment under a Lease, the Manager or the Landlord may apply to the tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.
30. In the event of dispute regarding the conduct of the management of the property by the Manager, any person interested may apply to the Tribunal to vary or discharge the order in accordance with section 24(9) of the Landlord and Tenant Act 1987.
31. The Manager may seek Directions from the Tribunal at any time by making an application under section 24(4) of the Landlord and Tenant Act 1987 and where the Manager is in doubt as to the proper construction and meaning of this Order, he is encouraged to so do.
32. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Tenant, or the Landlord may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

### **DIRECTIONS TO LANDLORD**

33. The Landlord must comply with the terms of the Order above.
34. On any disposition of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager, that the said person will (a) comply with the terms of this Order; and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed.
35. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of her functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.
36. The Landlord is to allow the Manager and his employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform his functions and duties and exercise his powers under this Order.

### **DIRECTION TO CHIEF LAND REGISTRAR**

37. To protect the direction in paragraph 34 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate. The restriction is to have overriding priority against any search with priority or pending application for a disposition of the registered estate (other than a charge) that has been lodged after the 24<sup>th</sup> day of November 2021.

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration [or their conveyancer] that the provisions of paragraph 34 of an Order of the Tribunal dated 14<sup>th</sup> December 2021 have been complied with”

### **DIRECTIONS TO MANAGER**

38. The Manager must adhere to the terms of the Order above.

## Registration

39. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 38, within 14 days of the date of this Order.

## Conflicts of Interest

40. The Manager must be astute to avoid any Conflict of Interest between his duties under this order in his contractual dealings or in the discharge of any of his obligations and where in doubt, the Manager should apply to the Tribunal for directions.

## Complaints

41. The Manager must operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.

## Insurance

42. The Manager must maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.
43. From the date of appointment, and throughout the appointment, the Manager must ensure that he/she has appropriate professional indemnity insurance cover in the sum of at least £2 million [or £5 million] and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Tenant or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

## Accounts

44. The Manager must:
  - (a) prepare and submit to the Landlord and the Tenants an annual statement of account detailing all monies receivable, received and expended. The accounts are to be certified by the external auditor, if required under the Leases;
  - (b) maintain efficient records and books of account and to produce for these for inspection, to include receipts or other evidence of expenditure, upon request by the Landlord or a Tenant under section 22 Landlord and Tenant Act 1985;



- (c) maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and
- (d) hold all monies collected in accordance with the provisions of the Code.

### Repairs and maintenance

45. The Manager must:

- (a) By 31<sup>st</sup> January 2022 draw up a planned maintenance programme for the period of the appointment allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property and shall send a copy to the Tenants and to the Landlord;
- (b) subject to receiving sufficient prior funds:
  - (i) carry out all required repair and maintenance required at the Property, in accordance with the Landlord's covenants in the Leases, including instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the Leases or in accordance with the Order.
  - (ii) arrange and supervise any required major works to the Property, including preparing a specification of works and obtaining competitive tenders.
- (c) liaise with all relevant statutory bodies in the carrying out of her management functions under the Order; and
- (d) ensure that the Landlord, and the Tenants, are consulted on any planned and major works to the Property and to give proper regard to their views.

46. The Manager has the power to incur expenditure in respect of health and safety equipment reasonably required to comply with regulatory and statutory requirements.

### End of Appointment

47. No later than 56 days before the end date, the Manager must:

- (a) apply to the tribunal for directions as to the disposal of any unexpended monies;

- (b) include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a “Final Report”); and
- (c) seek a direction from the tribunal as to the mechanism for determining any unresolved disputes arising from the Manager’s term of appointment (whether through court or tribunal proceedings or otherwise).

48. Unless the tribunal directs otherwise the Manager must within two months of the end date:

- (a) prepare final closing accounts and send copies of the accounts and the Final Report to the Landlord and Tenants, who may raise queries on them within 14 days; and
- (b) answer any such queries within a further 14 days.

49. The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed Manager within three months of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.

### **Schedule of Additional Fees**

Director £250 + VAT per hour  
Team Leader £200 + VAT per hour  
Senior Property/Accounts Manager £200 + VAT per hour  
Property /Accounts manager £150 + VAT per hour  
Administrator £50 + VAT per hour