



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

**Case reference** : **LON/00BD/LAM/2019/0013**

**HMCTS code  
(paper, video,  
audio)** : **V: CVPREMOTE**

**Property** : **Langham Mews, 170 High Street,  
Teddington, Middlesex TW11 8HU**

**Applicants** : **Arhion Investments Limited  
(leaseholder of Flat 1), Chiara Greaves  
(leaseholder of Flat 2), Colin and Irene  
Jones (leaseholders of Flat 3), James  
Bust (leaseholder of Flat 4), Vanessa  
Timms (leaseholder of Flat 5), David,  
Sophie and Samuel Krajnyk  
(leaseholders of Flat 6) and Camilla  
Gregory (leaseholder of Flat 7)**

**Representative** : **Mr Bruce Maunder Taylor of Messrs  
Maunder Taylor Chartered Surveyors**

**Respondents** : **Ms L Lawless and Ms V Barber (First  
Respondents) and BDW Trading  
Limited (Second Respondent)**

**Representatives** : **Mr Paul Cope, Conveyancer, of Property  
Transfer Co-ordination (First  
Respondents) and Mr James Fieldsend  
of Counsel (Second Respondent)**

**Type of application** : **Appointment of Manager**

**Tribunal members** : **Judge P Korn  
Mr P Roberts DipArch RIBA**

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

**Date of hearing** : **23<sup>rd</sup> November 2020**

**Date of receipt of further written submissions** : **4<sup>th</sup> December 2020 to 1<sup>st</sup> February 2021**

**Date of decision** : **8<sup>th</sup> February 2021**

---

## **DECISION**

---

### **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the Applicant and not objected to by the Respondent. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined in a remote hearing. The documents that we were referred to were in a series of electronic document bundles, the contents of which we have noted. The order made is described at the end of these reasons.

### **Background**

1. The Applicants seek an order appointing Mr Simon Spavins of Broadoak Management Limited as manager of the Property under section 24 of the Landlord and Tenant Act 1987 (“**the 1987 Act**”).
2. The building in question comprises a ground floor restaurant with 10 residential flats on the upper floors. The Applicants are between them the leaseholders of 7 of the flats. The First Respondents are the freehold owners of the Property. The Second Respondent holds a head leasehold interest in part of the Property. A preliminary notice under section 22 of the 1987 Act dated 19<sup>th</sup> March 2019 was served on both the First Respondents and the Second Respondent.
3. The hearing bundle contains a copy of one of the Applicants leases by way of example together with other relevant leases and title and other documentation.

### **Applicants’ case**

4. The 10 flats include 7 self-contained flats approached by a common entrance hall and staircase above, which are between them owned by the Applicants on long leases. The other 3 flats are additional flats developed on what was the roof. The estate of which the Property forms part also includes (a) outbuildings, driveways and walls, (b) an access roadway to the east flank of the Property and (c) 5 freehold houses at the rear to which the access roadway leads.

5. The application is supported by the owners of each of the 5 freehold houses. The First Respondents own the freehold interest in the Property and have retained the rights and obligations to maintain and manage the structure and exterior of the Property. The Second Respondent is the developer who developed the Property and built the 5 freehold houses, and it has a head leasehold interest with rights and obligations to manage the internal common parts of the Property. The Second Respondent also has a freehold interest in part of the access roadway.
6. Langham Mews Management Company Limited (“LM”) is a management company whose members and directors are either leaseholders of one of the flats or a freeholder of one of the houses. Under the terms of the leases of the original 7 flats, LM has rights and obligations to manage the structure, internal common parts and exterior of the Property, and the Applicants submit that this was an error. The owners of the 5 houses contribute towards estate costs.
7. The First Respondents have not undertaken any management responsibilities since the completion of the development and have not issued any annual accounts. LM has taken responsibility for management via its managing agent Broadoak Management Limited but there have been issues regarding service charge liability for the restaurant and for the 3 new flats.
8. The current management difficulties are set out in the section 22 notice and can briefly be summarised as (i) LM being technically insolvent due to a large accumulation of service charge arrears and therefore being unable to comply with its management obligations, (ii) the freeholder refusing to pay service charge for the 3 new flats or the restaurant, (iii) the construction of the 3 additional flats being defective, leading to water penetration and other health and safety issues, (iv) the existence of an unsafe section of boundary wall that LM does not have the resources to rebuild and (v) overdue external painting and routine repairs, and problems with areas of brick paving.
9. The proposed manager, Mr Simon Spavins, is the managing director of the existing managing agent, and he has prepared a management plan. Some progress has been made with the management problems and the outstanding works in that the First Respondents have carried out some remedial works to the 3 new flats and have indicated that in principle those flats and the restaurant should contribute towards the service charge. It is also agreed by all parties in principle that a solution needs to be found to reconcile the various management rights and responsibilities and obligations to pay service charge. However, progress towards a negotiated settlement of these issues has been slow, and in the meantime LM has an income deficiency which makes continued management very difficult.
10. The Applicants submit that there are compelling reasons for an order to be made. The management has been dysfunctional for a long time, and all attempts to resolve the issues to date have failed for various reasons.

The Applicants feel that it is only the current application that has finally led to some discussion between the parties and that if an order is not made such discussion will cease.

### **Respondents' position**

11. The First Respondents' position is that the main problem is with the defective nature of the documentation. They also feel that the issues relating to the additional 3 flats have been overstated and that there were management problems well before these flats were added. The First Respondents do, though, accept that service charge contributions should be made in respect of the 3 additional flats.
12. The First Respondents acknowledge the need for a management order following the failure as yet to reach agreement on a variation of the documentation. They also do not oppose the appointment of Mr Spavins as manager. There are various matters that need to be clarified, but this can be done with Mr Spavins.
13. The Second Respondent, likewise, does not oppose the appointment of a manager or the appointment of Mr Spavins as that manager. The Second Respondent agrees that the documentation needs to be varied.

### **The proposed manager**

14. Mr Maunder Taylor for the Applicants asked Mr Spavins various questions relevant to his experience, qualifications and knowledge of the Property. The tribunal then asked Mr Spavins various questions about his experience, his understanding of the role of manager and how he would manage the Property. Mr Spavins said that he was content for his fee as manager to be the same as his current fee as managing agent.

### **The terms of the order if granted**

15. The Applicants provided a draft order prior to the hearing, and this formed part of the hearing bundle.
16. The Respondents are happy with most of the wording of the draft order but have certain specific concerns. The Second Respondent disagrees with the implication in the first section of paragraph 1 of the draft order that the order would be varying the leases.
17. On the question of whether a service charge can or should be retrospectively imposed in relation to the 3 additional flats and the restaurant, the Applicants argue that the lease of the restaurant requires the tenant to reimburse service charges to the landlord and therefore there should be no issue about the First Respondents passing on such service charges to LM or to a manager. As regards the 3 additional flats, these have had the benefit of the services since completion and the First Respondents cannot expect to have the benefit of those services without paying a proportionate share of the costs.

18. The First Respondents submit that section 24 of the 1987 Act does not give a manager power to include a power to claim service charges retrospectively where there is no contractual basis nor any basis in tort for such a claim. If, alternatively, the Applicants are arguing that it is fair and reasonable in a general sense to include a retrospective imposition of such service charge, the First Respondents deny that they failed to carry out any repairs to the building, and indeed the First Respondents committed to replacing the roof as soon as they knew that there was a problem, and there are now warranties in place. The First Respondents have therefore spent money on the Property and it would be unfair on top of that to impose on them an obligation to pay alleged arrears of service charge attributable to the additional flats and the restaurant.
19. In the Applicants' view, the money spent by the First Respondents on the Property was all development cost and did not constitute a contribution towards the cost of ongoing services. The First Respondents counter that the money spent by them benefited the Applicants and that, in any event, there is no contractual nexus between the First Respondents and the Applicants.
20. However, in any event the First Respondents argue that paragraph 1(b) of the draft order does not have the effect claimed by the Applicants. The reason for the First Respondents' amendment to paragraph 1(b) was that, as there had been references in the Applicants' statement of case to the then technical insolvency of LM, the First Respondents had wanted to make the point that the new management regime should be based on a sound financial footing and therefore not burdened by the carrying forward of any negative cost balances.
21. In relation to clause 1(e) of the draft order, the Applicants want the proposed manager to be able to delegate whilst the Respondents do not feel that it is necessary or appropriate to add wording that gives a specific power to delegate.
22. There was some discussion at the hearing regarding paragraph 1(g) and as whether its ambit should be considerably cut down.
23. Regarding the title restrictions proposed by the Applicants in paragraph 9 of the draft order, after some discussion at the hearing the Applicants accepted that it was inappropriate to register a restriction against the Second Respondent's title. As regards the proposed restriction against the First Respondents' title, the Applicants submit that the order needs to be protected, but the First Respondents submit that they should be free to deal with their own land and also that for a restriction to be reasonable it has to be clear what that restriction is designed to achieve. Whilst their preference is for there to be no restriction, if there is to be a restriction at all then in the First Respondents' submission it should be in Form L rather than Form N, as Form L is a lesser and sufficient form of control.

24. In relation to paragraph 11 of the draft order, the Second Respondent submits that the order cannot bind successors in title as a matter of law and so this paragraph should be deleted: see *Urwick and another v Pickard (2019) UKUT 365 (LC)*.
25. In relation to paragraph 12 of the draft order, the Second Respondent submits that any person interested should be entitled to apply under section 24(9) of the 1987 Act for a variation or discharge of the order.
26. Regarding the length of the order, the Applicants' proposal is for it to be for 5 years but the First Respondents feel that the order should be seen as an interim solution and therefore that 2 years should be sufficient. The Second Respondent, on the other hand, is supportive of a 5 year term. Mr Spavins himself expressed the view at the hearing that 2 years was insufficient and that 5 years would allow a reasonable amount of time to resolve matters.
27. The tribunal queried the drafting of certain aspects of the draft order and the parties took these points on board.
28. In the light of the differences between the parties on the wording of certain paragraphs within the draft order, at the end of the hearing the tribunal directed the parties to clarify in writing the precise wording that they were seeking but with the clarification to be limited to the existing areas of disagreement. The parties duly made their written submissions, from which emerged (inter alia) a disagreement between the Applicants and the First Respondents as to the definition of the extent of the property to which the order (if granted) should relate. The tribunal then invited the parties to agree a single definition but they were unable to do so.

### **Analysis of the tribunal**

#### **Whether in principle an order should be made**

29. We note the contents of the Applicants' preliminary notice and are satisfied that the notice was valid.
30. Under section 24(2) of the 1987 Act the tribunal may only make an order in one or more of the circumstances listed in that sub-section. The circumstances listed in that sub-section include fault-based circumstances such as – in section 24(2)(a)(i) – breach by any person of obligations owed to the tenants, together with the tribunal being satisfied that it is just and convenient to make the order – see section 24(2)(a)(iii).
31. We are satisfied on the basis of the evidence provided that there are serious management problems in relation to the Property and that these problems have existed for a considerable period. There are considerable service charge arrears, there are parts of the Property which are not contributing towards the cost of services and there are repairing and decorating issues which are not being dealt with. It is common ground between all parties that management problems exist and that they would

be best resolved by appointing a manager. However, there is a disagreement between the parties as regards the extent to which the problems arise out of defective documentation and the extent to which (if at all) the First Respondents and/or the Second Respondent and/or LM are actually at fault.

32. In this case, on the evidence before us we consider that the First Respondents and/or the Second Respondent and/or LM are in breach of management obligations – including but not limited to repairing obligations – owed to the Applicants. Various matters have been neglected which should have been attended to, and it is highly likely that some of the failings result from breaches of obligations owed to the tenant. It is not, though, in our view necessary to make a specific finding as which of the Respondents or LM is/are in breach. In addition, we consider that it is just and convenient to make an order in all the circumstances of the case, as the evidence and the joint view of the parties both point to the conclusion that the serious management problems that have been ongoing for a considerable period are likely to continue unless a manager is appointed.
33. In the alternative, on the unusual facts of this case, we are satisfied – under section 24(2)(b) – that other circumstances exist which make it just and convenient for the order to be made. In other words, even if technically nobody is in breach of any obligations to the tenants, the serious ongoing management problems coupled with the agreement of all parties that a manager should be appointed makes it just and convenient to do so.

#### Whether to appoint Mr Spavins

34. We have considered the documentation provided by Mr Spavins and have had an opportunity to cross-examine him about his qualifications and experience and about how he would manage the Property. We have also taken on board the parties' respective observations.
35. Mr Spavins came across well. He has relevant qualifications, has been in property management for 25 years and has managed the Property itself for 5 years. He demonstrated knowledge of the Property and its problems and displayed a realistic attitude as to what difference he would be able to make if appointed manager. Importantly, all parties were happy for him to be appointed, or at the very least were not opposed.
36. In the circumstances we are satisfied that Mr Spavins would make a suitable manager and that it would be appropriate to appoint him.

#### The terms of the order

37. As regards the length of the order, we note that the Applicants and the Second Respondent would like a 5 year term and that Mr Spavins considers 5 years to be the right period, whilst the First Respondents

consider that the management order should be seen as an interim solution and that 2 years is sufficient.

38. Whilst it may be the case that everything will be resolved satisfactorily within 2 years, the likelihood is that it will not and that therefore the parties would have to come back to the tribunal to get the order extended if the order were only granted for 2 years. There is also the risk that under a 2 year appointment Mr Spavins' tenure would feel more temporary and that he would therefore have less power. However, 5 years does seem to us to be an unnecessarily long period, although we note that the Applicants and the Second Respondent would both be content with 5 years. In the circumstances we consider that a 4 year appointment is appropriate, as this should be easily enough time to resolve the management problems at the Property.
39. The parties are content with Mr Spavins' proposed fee and we agree that the proposed fee is acceptable in the circumstances.
40. We agree with the Second Respondent that the order should not describe itself as varying the leases. As regards paragraph 1(b) of the original draft order we are not persuaded that it is appropriate for the order to specify 'carry forward' figures or to state that any carry forward figures must be positive, and therefore this paragraph has been deleted. We agree with the First Respondents that this paragraph does not deal with the question of the date from which a service charge liability should commence in relation to the additional flats or the restaurant.
41. In relation to paragraph 1(e) of the original draft order, now paragraph 1(c), we do not consider it necessary to add an express power to delegate as the point is covered by what is now paragraph 1(d). To the extent that it is arguable that 1(d) only covers agents and not (for example) employees, in our view it is implicit anyway that Mr Spavins does not have to physically do everything himself; the key point is that he is solely responsible. As for paragraph 1(g) of the original draft order, now paragraph 1(e), in our view the version contained in the attached final version of the order is sufficient.
42. As regards paragraphs 11 and 12 of the original draft order (now paragraphs 10 and 11), we agree with the points made by the Second Respondent. The point made in relation to paragraph 12 is self-explanatory and was accepted at the hearing by the Applicants. As for paragraph 11, the Second Respondent has referred us to the decision of the Upper Tribunal in *Urwick and another v Pickard (2019) UKUT 365 (LC)*. In that case, Martin Rodger QC stated that as a matter of law a purchaser of property for valuable consideration takes the property free of a tribunal's order appointing a manager on registration of the purchaser's title whether or not the order is mentioned on the register of title. It follows that it would be meaningless and misleading for the order to be expressed to bind successors in title and this wording should therefore be deleted.



43. Turning now to paragraph 9 of the original draft order, the Applicants and the First Respondents take a different view as to the nature of the restriction (if any) that the manager could or should be directed to enter against the First Respondent's title at the Land Registry. The First Respondents' primary position is that there should be no restriction, but in the alternative they are prepared to accept a Form L type of restriction, using wording proposed by them in written submissions.
44. In *Urwick v Pickard*, Martin Rodger QC said that a manager was (in theory at least) entitled to apply for a restriction in Form L or Form N in the same way as a receiver can apply for such a restriction under rule 93(s) of the Land Registration Rules 2003. A restriction in Form L prevents the registration of a disposition without the provision of a certificate stating that the provisions of an instrument or order have been complied with. A restriction in Form N, on the other hand, prevents the registration of a disposition without the written consent of the manager. Martin Rodger QC said that a restriction in Form N (of the nature sought by the Applicants in this case) would be a very significant intervention in the property rights of the landlord which might be thought to go beyond the tribunal's powers under the 1987 Act. A management order needs to be proportionate to the purpose for which it is imposed, and an order which potentially prevents a sale should only be made after careful consideration. Even if on the facts of a particular case such a restriction could be justified in principle, it would be essential to specify precisely in what circumstances the manager would be required to give consent. However, even then, if the intention was for the manager to give consent on condition that the purchaser agreed to be bound by the management order this would present another difficulty as any such agreement would appear to fundamentally change the tribunal's role. This is because a manager who reached an agreement with a purchaser who was not otherwise bound by the tribunal's order to accept the terms of that order would depend for his/her status on what had been agreed with the purchaser, and it would be questionable in such a scenario whether the manager would remain accountable to the tribunal.
45. In our view the Applicants have failed to demonstrate why it would be appropriate to include in the order a Form N restriction in the wording sought. Whilst it is clear why it is attractive to a manager and to those relying on a manager for that level of control to be given to the manager, it would be a draconian interference with the First Respondents' right to dispose of their property in circumstances where the Applicants have failed to identify any exceptional circumstances which would justify doing so. That is quite apart from the fact that this type of Form N restriction runs in to the conceptual problems identified by Martin Rodger QC, not to mention the additional problems posed by the Applicants' actual proposed wording. It appears from the Applicants' proposed wording that the intention is for Mr Spavins simply to have absolute discretion as to whether to give his consent to a disposition without even being bound by any specific considerations or even having to act reasonably, as the wording after the quotation marks seems just to have been added by way of example of circumstances in which the

manager might give his consent. But even if these circumstances are intended to form part of the restriction and even if a restriction is registrable in that form (which we very much doubt), the wording then just runs into the practical problems identified by Martin Rodger QC.

46. The First Respondents' alternative restriction (in Form L) reads as follows:-

*No transfer of the registered estate or the grant of any lease out of the registered estate for a term of more than 21 years (other than a lease of business premises for a term not exceeding 25 years) 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 registered without a certificate signed by Simon Spavins of Unit 7 Hockliffe Business Park, Hockliffe Bedfordshire LU7 9NB (being the appointed Manager under an order under section 24(1) of the Landlord & Tenant Act 1987 dated [ ] "the Order") that either:-*

*A transferee from the proprietor of the registered estate has provided written acknowledgement of the Order and agreement to comply with the obligations of the First Respondent thereunder or;*

*The grant of a lease of any residential part of the registered estate for a term of more than 21 years contains covenants on the part of the tenant to contribute to a fair and reasonable proportion of the costs of maintenance of the Premises (as defined in the Order).*

47. The standard form of restriction in Form L assumes the issuing of a certificate confirming that certain provisions have been complied with. However, there are no provisions of the order which can be complied with so as to render such a restriction meaningful. As regards the First Respondents' wording itself, this again runs into the problems identified by Martin Rodger QC in *Urwick v Pickard*. We are not persuaded that requiring a transferee to agree to comply with the transferor's obligations is appropriate, given that the transferee is not bound by them as a matter of law and therefore that any such agreement would fundamentally alter the nature of the order and the obligations contained therein. In addition, it seems to us that it is at least arguable that as a matter of principle a purchaser for valuable consideration in good faith who has not been a party to the management failings that led to the order being made should not be bound by it and should be entitled to manage their own property unless the circumstances warrant the making of a fresh order, for which any tenant (i.e. leaseholder) could apply. If one were to object that this potentially allows a property owner to circumvent a management order by entering into a sham sale of the property, the answer could be that a purchaser would only take free of the order if the transfer was a sale for valuable consideration in good faith.

48. Therefore, in the absence of any restriction being proposed which we consider to serve a reasonable and legitimate purpose and to be proportionate to the circumstances, our conclusion is that no restriction should be ordered to be registered against the First Respondents' title.
49. As regards the extent of the property to which the order should relate, it will be noted from paragraph 28 above that the Applicants and the First Respondents do not agree on this issue. In written submissions the First Respondents have introduced a new point as to whether a certain section of land is demised under the head lease or whether there are any formal rights under the head lease over this section. However, the First Respondents had ample opportunity to raise this point in submissions prior to the hearing or at the hearing itself. The draft order with plan attached was made available to the First Respondents prior to the hearing, and indeed both the First Respondents and the Second Respondent commented on those aspects of the draft order with which they said that they disagreed. The further directions requiring the parties to clarify the precise wording sought in the areas of disagreement were clearly stated to be confined to the existing areas of disagreement as already expressed, and therefore it is too late for the First Respondents to be making fresh submissions regarding the definition of the property.
50. For the avoidance of doubt, the request by the tribunal that the parties try to agree the definition of the property only arose because the First Respondents had introduced an alternative definition without having been invited to do so and – initially – without even explaining their reasons. The invitation to the parties to try to reach an agreement was considered the most practical way forward in the circumstances. However, in the absence of agreement the basic point still stands, namely that it is too late now for the First Respondents to challenge the definition. Accordingly, the order contains the Applicants' definition of the extent of the property.

### **Costs**

51. No cost applications were made.

### **Decisions of the tribunal**

52. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Simon Spavins of Broadoak Management Limited (“**the Manager**”) is appointed as manager of the property at Langham Mews, 170 High Street, Teddington, Middlesex TW11 8HU as shown coloured yellow on the attached plan.
53. The order shall continue for a period of 4 years, expiring on 7<sup>th</sup> February 2025. Any application for an extension must be made prior to the date of expiry of the order. If such an application is made in time, then the appointment will continue until that application has been finally determined.

54. The Manager shall manage the Property in accordance with:
- (a) The terms attached to this order;
  - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised; 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.

**Name:** Judge P Korn

**Date:** 8<sup>th</sup> February 2021

### **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).

**IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

**CASE REFERENCE: LON/00BD/LAM/2019/0013**

**IN THE MATTER OF SECTION 24 (1) OF THE LANDLORD AND TENANT  
ACT 1987**

**AND IN THE MATTER OF**

**LANGHAM MEWS, 170 HIGH STREET, TEDDINGTON, MIDDLESEX TW11  
8HU**

**B E T W E E N:**

**VANESSA JANE TIMMS (1)  
COLIN WILLIAM JONES AND IRENE ROSEMARY JONES (2)  
ARHION INVESTMENTS (3)  
CHIARA ELEANOR GREAVES (4)  
JAMES BUST (5)  
DAVID, SOPHIE AND SAMUEL KRAJNYK (6)  
CAMILLA ELIZABETH GREGORY (7)**

**Applicants**

**AND**

**MS L S LAWLESS AND MR V R BARBER (1)  
B D W TRADING LIMITED (2)**

**Respondents**

---

**MANAGEMENT ORDER**

---

*Interpretation:*

In this Order:

- (a) “Common Parts” means postal boxes, refuse store, cycle store, security gates, lifts, paths, halls, staircases and other access ways and areas (if any) within the premises that are provided by the Second Respondent for common use by the Lessees.
- (b) “the Head Lease” means the lease dated 9 June 2006 between the First Respondent and Barratt Homes Limited.
- (c) “Leases” means the long under-leases vested in the Tenants of the Flats.

- (d) “Tenant” means a tenant of a dwelling holding under a long under-lease as defined by Section 59(3) of the Landlord and Tenant Act 1987 (“the Act”).
- (e) “Flats” means the seven flats on the first and second floors of the Premises.
- (f) “Freeholder” means and owner of the freehold interest of the dwelling houses in Royal Oak Mews, Teddington TW11 8HX.
- (g) “Transfers of Part” means the original Transfers of Part of freehold properties known as 1 to 5 Royal Oak Mews, High Street, Teddington as the same are now respectively registered at the Land Registry under title numbers TGL274511, TGL274384, TGL268475, TGL271147 and TGL269550
- (h) “the Manager” means Simon Spavins.
- (i) “the Management Company” means Langham Mews Management Company Ltd. (Registered in England under company number 5578247) whose members and Directors are the Applicants and are parties to the Leases.
- (j) “the Premises” means all that property at 170 High Street, Teddington TW11 8HU comprising the Commercial Premises and ten flats above as shown highlighted yellow on the plan attached hereto.
- (k) “the First Respondent” means Vincent Richard Barber and Linda Susan Lawless.
- (l) “the Second Respondent” means BDW Trading Limited (Company number 03018173 Registered in England and Wales).
- (m) “the Commercial Premises” means the premises on the ground and basement floor of 170 High Street, Teddington, TW11 8HU.
- (n) “the Existing Service Charge Proportions” are those shown in the Witness Statement of Mr Simon Spavins headed *Estimated Service Charge for the Year Ending 30<sup>th</sup> September 2016*.
- (o) “the New Service Charge Proportions” are those shown on the attached schedule headed Service Charge Proportions for inclusion with Order.
- (p) “Additional Flats” means the three flats constructed in 2016 now forming the third floor of the Premises.

### **Preamble**

UPON the Applicant having applied for the appointment of a Manager under Part II, Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal being satisfied that the Applicants ~~is~~ are entitled to so apply and that the jurisdiction to appoint a Manager is exercisable in the present case

AND UPON the First-Tier Tribunal being satisfied that the conditions specified in S.24 Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a Manager

IT IS ORDERED THAT

### **The Manager**

1. Mr Simon Spavins be appointed as Manager (including such functions of a Receiver as are specified herein) of the Premises pursuant to S.24 of the Act for a period of 4 (four) years and shall continue until 7<sup>th</sup> February 2025 and be given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases, or if different as provided herein for the duration of the Order, to carry out the management functions of the First and Second Respondents and in particular:
  - (a) To receive all service charges, based on the New Service Charge Proportions, interest and any other monies payable under the Leases, or if different as provided by this Order, and any arrears due thereunder, the recovery of which shall be at the discretion of the Manager but so that the provisions of this Order and the Functions and Services set out in the Schedule hereto shall take precedence over any conflicting and/or missing terms in the Leases and the Management Lease in particular.
  - (b) The power and duty to carry out the obligations and covenants on the part of the Management Company:-
    - (i) In accordance with the 10<sup>th</sup> Schedule of the Leases provided that insofar as the obligation to procure insurance (in accordance with paragraph 2 of Part B of the Sixth Schedule) the Manager shall seek and obtain the approval of the Freeholder who shall be satisfied that the insurance cover is adequate for the Commercial Premises (acting reasonably) before the arrangement of any policy.
    - (ii) As contained in the Transfers of Part so far only as such obligations relate to the maintenance, upkeep repair and replacement of any part of the Premises but not further or otherwise provided that by virtue of this Order the

Manager shall be entitled to recover contributions from the Freeholders in accordance with those set out in the New Service Charge Proportions rather than those in the Transfers of Part.

- (c) The power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.
- (d) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- (e) The power in his own name to bring, defend or continue any legal action or other legal proceedings in connection with this Order. The Manager shall be entitled to an indemnity for costs reasonably incurred out of the service charge account.
- (f) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- (g) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to S.42 of the Landlord and Tenant Act 1987.
- (h) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the First Respondent or any Lessee owing sums of money under his Lease.
- (i) The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the First Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e., on the leasehold interest of any Lessee, and the freehold interest of the Premises in respect of the First Respondent) PROVIDED THAT the Manager shall not secure any borrowing as aforesaid without the consent of the defaulting party (not to be unreasonably withheld), or in default of that consent, without further Order of the First-Tier Tribunal.



2. The Manager shall manage the Premises in accordance with:
  - (a) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order which shall take precedence over any conflicting and/or missing provisions in the Leases and the Head Lease in particular;
  - (b) the respective obligations of the First and Second Respondents and the Lessees under the Leases and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and
  - (c) the duties of managers set out in the 3<sup>rd</sup> Edition of the RICS 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 S.87 of the Leasehold Reform, Housing and Urban Development Act 1993.
3. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.
4. From the date of this Order, neither the First nor the Second Respondent, nor the Management Company will, whether by themselves or any agent, servant or employee, demand any further payments of services charges, administration charges or any other monies from the Lessees at the Premises save for ground rent (which will continue to be demanded by the Second Respondent), such functions having been transferred to the Manager from and including the date of the Tribunal's decision.
5. The First and Second Respondents, the Management Company and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
6. Without prejudice to the generality of the foregoing hereof:
  - (a) The Second Respondent shall assist the Manager as he reasonably requires to serve upon Lessees any Notices under S.146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.

- (b) The rights and liabilities of the First Respondent as Landlord arising under any contracts of insurance to the Premises shall continue as rights and liabilities of the Manager.
  - (c) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.
7. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be 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 and shall ensure he has appropriate professional indemnity cover in the sum of at least £1,000,000 providing copies of the current cover note upon request by any Lessee, the First and Second Respondents or the Tribunal.
  8. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
  9. The Manager's appointment shall continue from the date of this Order and the duration of his appointment shall be limited to a period of 4 (four) years.
  10. The terms of this Order shall be disclosed to any person seeking to acquire an interest in the Property (whether by assignment or fresh grant).

***Liberty to apply***

11. Without prejudice to the right of "any person interested" to apply under S.24(9), Landlord and Tenant Act 1987, the Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with S.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;
  - b. For directions generally;
  - c. Directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.

**Judge P Korn**

**8<sup>th</sup> February 2021**

## **SCHEDULE**

### **FUNCTIONS AND SERVICES**

#### **Financial Management:**

1. Prepare an annual service charge estimate, administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the percentage proportions contained in Appendix A to this Schedule.
2. The Manager shall have the power and authority to demand and collect in advance the estimated Maintenance Expenses for each financial year in the manner provided for in the Seventh Schedule of the Leases and in the proportions provided for in Appendix A to this Schedule from the First Respondent (in relation to the Commercial Premises), all ten flats and the freehold houses, which the Manager in his sole discretion considers will be required for the services to be carried out in accordance with clause 1(b) of this Order and/or any of the prospective costs, expenses, outgoings and other matters mentioned in or referred to in Parts A, B C and D of the Sixth Schedule of the Leases together with a reserve fund and (so far as applicable to the Premises) in the Seventh Schedule of the Transfers of Part.
3. In creating a reserve fund and collecting contributions from Lessees in accordance with Paragraph 2 of this Schedule, the Manager shall assess the appropriate reserve fund to be demanded in each year in a reasonable and prudent manner.
4. Produce for inspection (but not more than once in each year) within a reasonable time following a written demand by the Lessees, the First or the Second Respondent, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
5. Manage all outgoings from the funds received in accordance with this Order in respect of day-to-day maintenance and pay bills.
6. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day-to-day financial management of the Premises.

#### **Insurance:**

7. Arrange insurance for the buildings (subject to clause 1(b)(i) of this Order), and the contents of the common parts of the Premises, to receive payments arising from insurance claims and to apply then to reinstatement of any loss or to distribute such payments as appropriate to the beneficiaries of such claims.

### **Repairs and Maintenance**

8. Deal with all reasonable enquiries raised by the Lessees and the First Respondent in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary.
9. Administer contracts entered into for the benefit of the First and Second Respondents and Lessees in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.
10. Manage the Common Parts and common services to the Premises, including the arrangement and supervision of maintenance.
11. Carry out regular inspections (at the Manager's discretion but not less than four per year) without use of equipment, to such of the Common Parts of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

### **Major Works**

12. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Premises (such as extensive interior or exterior redecoration or repairs required to be carried out under the terms of the Head Lease and/or the Leases or any other major works which the Manager considers to be reasonably necessary and/or where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and supervise the works in question).
13. In particular to undertake as soon as practicable a full health and safety review

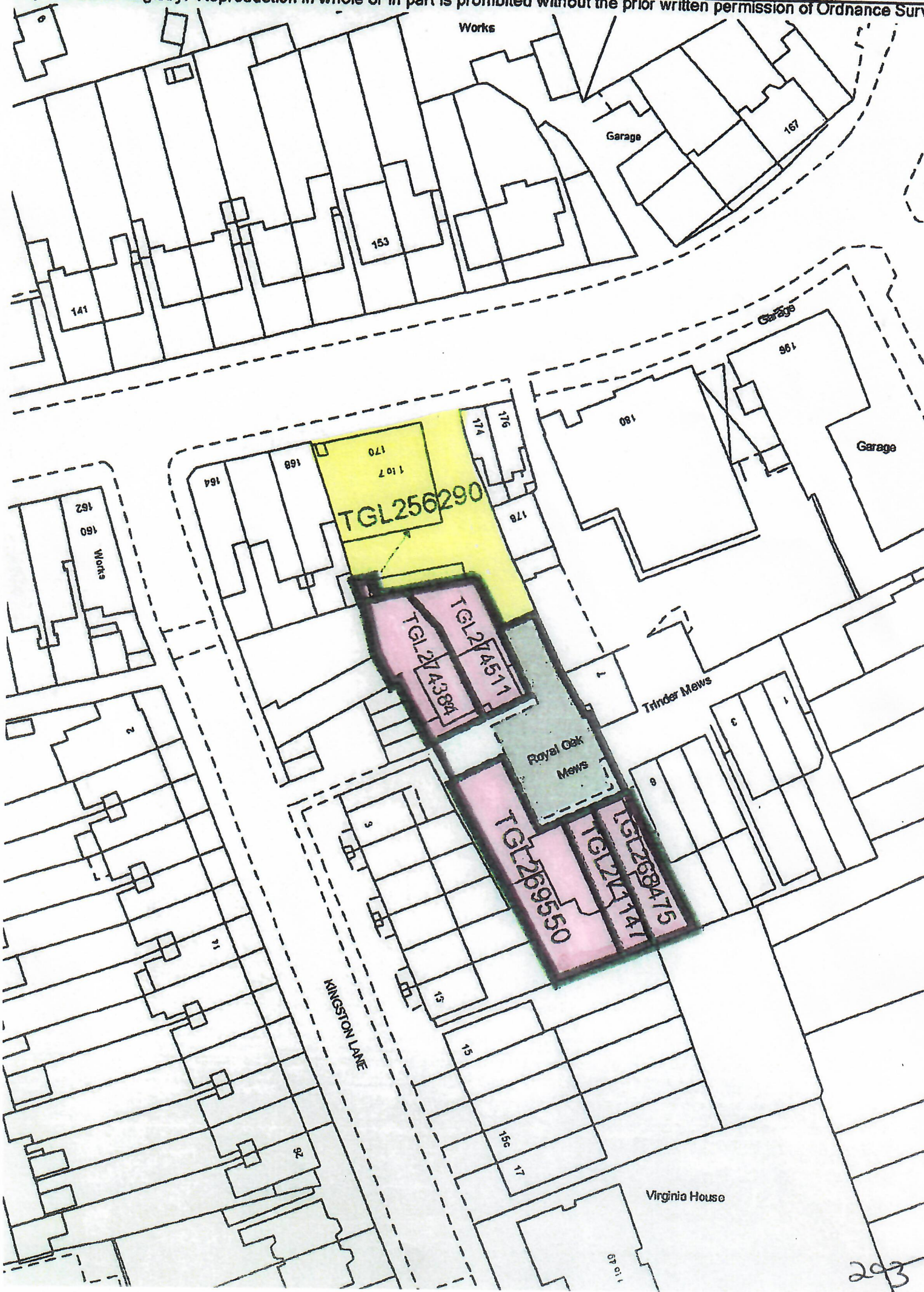
### **Administration and Communication**

14. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquires from the Lessees or their solicitors.
15. Provide the Lessees with telephone, fax, postal and email contact details and complaints procedure.
16. Keep records regarding details of Lessees, agreements entered into by the Manager's in relation to the Premises and any changes in Lessees.

## **Fees**

17. Fees for the above-mentioned management services (with the exception of supervision of major works) would be a fee of £4,700 plus VAT per annum for the Premises. Thereafter the fee shall be reviewed annually in line with inflation.
18. An additional charge shall be made in relation to the arrangement and supervision of major works (including the preparation and service of any statutory consultation notices) on the basis of a fee of (10%) of the cost of the works plus VAT.
19. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £275 plus VAT payable by the outgoing Lessee.
20. The undertaking of further tasks which fall outside those duties described above are to be charged separately at a present hourly rate ranging from £65 plus VAT for a qualified member of staff, but, if the matter requires the Manager's personal attention, at a present hourly rate of £115 plus VAT.
21. The Manager shall account for any credit, commission or other benefit received from the arrangement of any insurance policy required by this order and shall pay to the credit of the service charge account all sums so received and/or shall make a payment equivalent to any non-monetary benefit.





TGL256290

TGL274384

TGL274511

TGL269550

TGL271141

TGL268475

KINGSTON LANE

Virginia House



In the First-tier Tribunal

Ref: LON/00BD/LAM/2019/0013

**Langham Mews, 170 High Street, Teddington TW11 8HU**

**Service Charge Proportions for inclusion with Order**



PROPERTY	Area Sq Mt	Area Sq Ft	SCHEDULE 1 GENERAL ESTATE COSTS %	SCHEDULE 2 HOUSE ESTATE COSTS %	SCHEDULE 3 STRUCTURAL AND EXT MAINT COSTS %	SCHEDULE 4 BLOCK COSTS Apts 1-10 %	SCHEDULE 5 BLOCK COSTS Apts 1-7 %
1 Royal Oak Mews			6.250%	20.000%			
2 Royal Oak Mews			6.250%	20.000%			
3 Royal Oak Mews			6.250%	20.000%			
4 Royal Oak Mews			6.250%	20.000%			
5 Royal Oak Mews			6.250%	20.000%			
Flat 1 170 High Street	38.87	418.40	6.250%		4.855%	8.502%	11.243%
Flat 2 170 High Street	43.47	467.90	6.250%		5.430%	9.507%	12.574%
Flat 3 170 High Street	45.11	485.60	6.250%		5.635%	9.867%	13.049%
Flat 4 170 High Street	44.31	477.00	6.250%		5.535%	9.692%	12.818%
Flat 5 170 High Street	38.87	418.40	6.250%		4.855%	8.502%	11.243%
Flat 6 170 High Street	61.89	666.20	6.250%		7.731%	13.537%	17.902%
Flat 7 170 High Street	73.19	787.80	6.250%		9.142%	16.007%	21.170%
Flat 8 170 High Street	23.50	252.95	6.250%		2.935%	5.140%	
Flat 9 170 High Street	55.00	592.01	6.250%		6.870%	12.029%	
Flat 10 170 High Street	33.00	355.21	6.250%		4.122%	7.218%	
Commercial Unit 172 High Street	343.37	3696.00	6.250%		42.890%		
<b>TOTAL</b>	<b>1146.31</b>	<b>12338.77</b>	<b>100.000%</b>	<b>100.000%</b>	<b>100.000%</b>	<b>100.000%</b>	<b>100.000%</b>