



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

Case reference : **LON/00BA/LVM/2021/0018**

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

Property : **Kilmeny House, 36 Arterberry Road,
Wimbledon, London, SW20 8AQ**

Applicant : **Mr Richard John Thwaites (Appointed
Manager)**

Representative : **JB Leitch Solicitors**

Respondents : **The Leaseholders of the property; and
Kilmeny House Limited**

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

Tribunal : **Judge J Pittaway
Mr A Lewicki FRICS**

Date of Hearing : **3 February 2022**

Date of decision : **21 February 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The Hearing

At the hearing Mr Castle of counsel represented the Applicant. No one represented Kilmeny House Limited. Mr Bennett represented his mother, the tenant of Flat 3. Mr Walker the tenant of Flat 2, Mr Jung the tenant of Flat 4 and Mr Holliday the tenant of Flat 7 represented themselves.

The Tribunal heard evidence from Mr Twaites and submissions from Mr Jung, Mr Holliday, Mr Bennett and Mr Walker.

The hearing was also attended by Ms Bottomley of J B Leitch and by Ms McErlean of FirstPort, the company of which the Applicant is a director.

Mr Walker confirmed to the Tribunal that the freeholder, Kilmeny House Limited, was a company owned by the leaseholders of whom the directors are himself, Mr Harris (Flat 6), Mr Bennett, Mr Holliday and Mr Reid (Flat 1) and that Mr Jung had applied to become a director. None of the leaseholders at the Hearing were there to represent Kilmeny House Limited. They were all there in their personal capacity.

No party requested an inspection and the Tribunal did not consider an inspection necessary in the circumstances.

The documents before the tribunal were
The Applicant's bundle of 422 pages,
A Statement by Mr Walker of 17 pages,
A statement by Mr Harris of Flat 6 of 1 page,
The Applicant's Reply of 57 pages; and
Mr Castle's skeleton argument provided to the Tribunal on the day of the Hearing.

The tribunal has had regard to the documents before it, the evidence and the submissions that it heard in reaching its decision.

Decision

- (1) In accordance with the Tribunal's powers under section 24(9) Landlord and Tenant Act 1987, the management order made by the Tribunal in respect of the subject property at Kilmeny House, 36 Arterberry Road, Wimbledon, London, SW20 8AQ on 11 December 2018 as amended on 19 March 2019, 30 April 2021 and 2 November 2021 (the '**Existing Order**') is hereby varied so that it is extended until **31 December 2023** or sooner if the Tribunal so orders. The Existing Order will remain in force and be effective as varied by this Decision. A copy of the varied Management Order and

Schedule of Functions and Services is attached to and forms part of this Decision. A tracked copy showing the variations is also attached.

- (2) All parties remain at liberty to apply to vary further, extend or discharge the varied Management Order prior to the date on which it is now due to expire, namely **31 December 2023**.

Relevant legal provisions are set out in the Appendix to this decision.

The variations sought

1. The Applicant has applied to the Tribunal to extend the Existing Order for three years from 10 December 2021, to vary the service charge percentages payable by certain of the tenants in respect of certain items of expenditure, to be entitled to progress identified repair work, to be given the power to apply to the Tribunal to vary the leases (with power to undertake the necessary preparatory work) and to increase the management fee.

Reasons for the decision

2. Section 24(9) permits the Tribunal, on the application of any person interested, to vary or discharge (conditionally or unconditionally) an order made under Section 24. The Applicant is seeking to vary the order as set out above. Section 24(9A) requires the Tribunal to be satisfied, before varying or discharging an order, (a) that the variation will not result in the 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 the order.

These are the factors to which the tribunal has had regard in reaching its decision.

Period of Order

3. Mr Twaites gave evidence that he considered the Existing Order needed to be extended for three years to allow him to deal with the arrears of service charge (being primarily contributions to the sinking fund), to put him in the funds required to carry out the works that had been identified as required to the building, to enable a s20 consultation to take place and arrange a timely hand back to the tenants. He was unable to comment on why there had not been further progress since the order was originally made in 2017 under the previous managers, although he suggested that this might be due to lack of reserves, as the tenants had not made the requested contributions. He explained that the lack of funds was due to the lack of clarity in the leases which required variation to ensure that there was 100% recovery and that it would be better if the existing leases were 'modernised'.
4. Mr Walker asked Mr Thwaites whether it would not be possible for the tenants to take over the implementing the necessary works once the leases had been varied. Mr Twaites stated that it would be messy to hand over when the works were part done. He considered the order should remain in place until the works were finished

and that it allowed the works to be carried out contemporaneously with the variation of the leases.

5. Cross examined by Mr Walker Mr Thwaites confirmed that there were no reserves at present. Mr Thwaites, on being questioned by Mr Jung, confirmed that it was his intention that any sums paid into the reserve/sinking fund should be used to pay for the repair works.
6. Mr Walker submitted that he objected to an extension of the Order to 2024 as once the leases were altered, a schedule of work agreed and the costs clarified this would enable the Respondents to appoint their own manager and other persons as required for the works, and adopt a maintenance plan and a cost structure for the payment of the works. Initially he submitted that three months should be sufficient time for the variation of the leases to be resolved but at the hearing accepted that a period of six months would be acceptable. He submitted that the appointment should be for a short period than three years to give focus to the need to achieve the variation of the leases.
7. Mr Holliday expressed concern if the order were to be extended for three years, the flats would be unsellable during that period. He submitted that the form of the leases needed to be settled, and that any programming of the works should be sensitive to the ability of the tenants to meet the demands for payment. He submitted that twelve months should be sufficient time to complete the necessary variation of the leases.
8. Mr Bennett submitted that three months should be a sufficient period in which to sort out the leases but mentioned that there was one flat which might not agree to the required lease variations. He submitted that an extension of the order by one year should be sufficient.
9. Mr Castle submitted that if the period for which the Order was extended was too short this would lead to further applications to the Tribunal to extend the period of the Order with attendant costs that fall to be paid by the leaseholders. The leaseholders had not achieved consensus on variation of their leases in the past four years when it was open to them to do so. They had not done so which points to the need of a Tribunal appointed manager. Too short an extension of the Order could give rise to an issue with lack of continuity, required, for example, during the section 20 consultation process. Mr Castle submitted that the manager owes an obligation to anyone with an interest in the property, including mortgagees. He further submitted that if the leases had not been varied by the end of the period of the order it would be necessary to return to the Tribunal again, with the attendant costs being borne by the tenants.
10. The Existing Order was originally made on 17 July 2017 because it was recognised that the leases were old fashioned with inadequate service charge provisions, that did not allow full recovery of the costs incurred in providing the contemplated services. There was no management fee recoverable under the leases so that it was not possible to appoint a managing agent. The state of repair of the external

staircase at that time was described as parlous (it was also described as being a fire escape).

11. Until the leases are varied to provide, at the least, for remuneration to a managing agent and 100% recovery of service costs incurred, the tribunal finds that it is just and convenient for the appointment of a Tribunal appointed manager to continue. The continued appointment of the manager is necessary, until the leases are varied, to ensure that there is no recurrence of the circumstances which led to the order being made, namely incomplete recovery of costs incurred and the inability for the managing agent to charge a fee.
12. The Tribunal find that the leaseholders now appear prepared to work towards variation of their lease with some expedition but consider it unlikely that the leaseholders will achieve variation of all the leases at the property within three months where they have been unable to achieve this during the past four years. It is open to them in their capacity as leaseholders and as freeholder to apply to the Tribunal for the necessary variation of their leases in the event that the variations cannot be agreed between them, but such a course of action will take significantly longer than three months. While various tenants expressed views as to how long the lease variations would take the Tribunal note that the variations have not been effected in the past four years (as they could have been) and that no evidence supported the tenants' views as to the length of time the variations would take. It should however be possible for the variations to be achieved in under three years.
13. The Tribunal note Mr Castle's submission that should the leases not be varied within the extended period of the order it will be necessary to return to the Tribunal for a further extension of the order and the costs in connection with such further variation will be borne by the tenants. The Tribunal find from the submissions made by the tenants that this is a risk that they are prepared to accept.
14. The service charge year for the leases runs to 31 December in every year. The Tribunal find it would be convenient to extend the period of the order to the end of a service charge year in the interests of ease of handover of management of the property. The Tribunal therefore varies the Existing Order by extending its term to 31 December 2023. In the event that the leases are appropriately varied before then any party is at liberty to apply to the Tribunal for the order to be discharged.
15. At present the Tribunal have no evidence as to exactly what works are required and the timetable for them. It is therefore difficult for it to set a timetable which contemplates such works. By section 24(9) it is open to any person interested, to apply to vary or discharge (conditionally or unconditionally) an order made under Section 24. Accordingly if once the leases have been varied any interested party wishes to apply to extend the period of the order (for example, because there are ongoing works that it would be difficult to hand over) or discharge it (for example before works are commenced) they are able to do so.

Progressing identified works

16. Mr Thwaites is seeking the express right to progress work to the external staircase and other work required for fire safety reasons. In evidence reference was also made to chimney stacks requiring work.
17. Mr Thwaites gave evidence that the external staircase was beyond economic repair and is currently blocked off. He stated that it is not a fire escape (contrary to the evidence provided in 2017) and alternative means of escape in case of fire exist. This was despite Mr Jung putting to him that the leases of flats 3 to 5 refer to it as a fire escape.
18. Mr Thwaites commented when giving evidence that the technical documents relating to the required works are now aged.
19. On replying to Mr Walker he put the lack of monies in the reserve fund down to the ongoing uncertainty as to the proportions each leaseholder should contribute to the various categories of work. Mr Walker also questioned why Mr Thwaites was looking for the monies for the works to be paid in advance of the works being done. Mr Thwaites pointed to the Existing Order which contemplates that the works will be progressed while the leases are being varied. In his opinion the necessary section 20 consultation in relation to the works should be commenced as soon as possible so that the works could be commenced.
20. Mr Jung questioned Mr Thwaites on how he had arrived at the figure of £100,000 per annum as the contribution to the reserve fund. Mr Thwaites stated that this was a forecast of the cost of the works, that he did not have an exact figure. Mr Jung submitted that the position had changed since the Existing Order was first made in that there was now no council requirement for the works to be done, and that the level of contribution to the sinking fund that Mr Thwaites was seeking was unrealistic. Mr Jung expressed concern as to the impact that a demand for £100,000 per annum contribution to a sinking fund would have on the tenants who may well not be able to afford to pay their contribution to this sum and submitted that a longer period should be specified over which the service charge should be recovered. He submitted that repair rather than renewal had been recommended previously.
21. From the evidence that the Tribunal heard it is likely that before the leases are varied work may have to be undertaken by the manager in respect of the external staircase, the chimney stacks and to comply with the recent fire risk assessment commissioned by Mr Thwaites.
22. The Tribunal find that until the leases have been varied the manager should have the power to progress the works to the external staircase, the chimneys and any works required by reason of the recent fire safety report. The Manager had not requested a variation of paragraph 17 of the Existing Order but has stated that the reports in his possession are out of date. The Tribunal therefore find that the manager should have the power to commission new reports if necessary and vary the Existing Order accordingly. Given that the leaseholders now contemplate an early variation of the leases the Manager should limit the works he commissions to

those which are required as a result of the fire risk assessment or where reports indicate that they need to be undertaken during the period of the order.

23. The Tribunal confirm the Manager's power to demand contributions to the sinking fund. These sums demanded should be by reference to ascertained costings and have regard to the urgency with which any work is required, its likely timing and the possibility that he may not be the manager when the works are undertaken (the leases having been varied).

Variation of service charge percentages payable by the leaseholders

24. The Existing Order provides that each Flat will contribute to the service charge in specified proportions set out in the Existing Order (the '**Specified Proportions**'). The draft revised order prepared by Mr Twaites contemplates that there will be a variation to the proportions of service charge paid by Flats 4 and 5 (to reflect that the garage owned by Flat 4 when the percentages were agreed had been sold to Flat 5). The draft order also seeks to separate the costs of any works to the external staircase from the agreed percentages and to provide that these costs are borne by Flats 3 to 6 with each paying 25% of these costs.
25. Mr Holliday submitted that there should be no change in the service charge percentages. Mr Holliday considered it likely that five of the seven flats would agree relevant percentages of service charge between themselves that would lead to the discharge of the Order.
26. Mr Walker submitted that the service charge should be split into three categories. Flats 3-6 should be responsible for the cost of the work to the external staircase (25%), Flats 2-6 should be responsible for the front stairs and hallway and other costs should be borne by all seven flats.
27. Mr Harris of Flat 6 did not attend the hearing but his Statement indicated that he considered that all the tenants of the building should contribute to the cost of the staircase.
28. Mr Jung submitted that all the respondents should contribute to the costs of the works, in their capacity as shareholders of the freehold, as the works are to the infrastructure of the building, referring the Tribunal to clause 3(6) of the lease of Flat 4 which requires the landlord to reinstate the main building in the event of destruction or damage by fire. In relation to the adjustment of percentages proposed by the Applicant between Flats 4 and 5 he submitted that it was inappropriate to take only the swap of a garage from Flat 4 to Flat 5 into account when there had been a sale of land between Flats 2 and 7.
29. Mr Castle submitted that the clause referred to by Mr Jung was not relevant to the consideration of the percentages paid by each leaseholder. Mr Castle submitted that it is the order and not the terms of the leases which determines the basis upon which the manager can charge the tenants the service charge.

30. Mr Castle submitted that Mr Thwaites' concern was that he should not manage the property at a loss. He required 100% recovery of the service charge costs.
31. The Tribunal accept Mr Castle's submission that while the order remains in force it is the order and not the current leases which determines the contributions paid by each tenant to the service charge and whether all the tenants contribute to all elements of service charge equally. While the Tribunal agree with Mr Castle that the clause to which Mr Jung was not relevant to service charge percentages (as it deals with reinstatement following damage by insured risks) it accepts that what Mr Jung was arguing for was a responsibility for works to be shared equally between all leaseholders, albeit that he argued that it was in their capacity as members of the freeholder. The Existing Order contemplates that all tenants will contribute to all elements of service charge, including the reserve/sinking fund in the Specified Proportions. The tenants may agree, when the leases are varied, the percentages of each service charge element that each Flat will bear, which may differ from the Specified Proportions. This Tribunal is only concerned with the percentages paid during the period of the Order, which may differ from those ultimately agreed by the tenants or determined when the leases are varied, which may provide different percentages for different elements of the services.
32. In the absence of evidence before the Tribunal as to the sale of the garage from Flat 4 to Flat 5, which is the basis upon which Mr Thwaites seeks the variation of the percentages paid by Flats 4 and 5 and how he has calculated the revised percentages, and given that Mr Jung, the owner of Flat 4 was objecting to any variation in these percentages without other changes in the percentages paid by other Flats the Tribunal does not alter the general percentages currently set out in the Existing Order.
33. The Existing Order currently contemplates that all costs are borne by the tenants in the Specified Proportions, and these proportions were not queried by the tenants until Mr Thwaites raised the possibility of varying them. Mr Thwaites' primary concern is to achieve 100% recovery of the costs incurred and this achieved under the Existing Order. The Tribunal therefore finds that it is not just and convenient in the circumstances to vary the Specified Percentages nor to remove the costs of the external staircase and the costs of the front stairs and hallway into separate categories. These may be matters for the consideration in any proposed lease variations.

Power to apply to the Tribunal to vary the leases

34. Mr Thwaites is seeking power to apply to the Tribunal for a variation of the leases. Mr Castle accepted, when making submissions, that section 35 Landlord and Tenant Act 1987 refers to the ability of 'any party to a long lease of a to apply to vary it, and it is not clear the status a Tribunal-appointed manager has under that section. He nonetheless requested that the Tribunal include the power in the varied order, including the power to undertake necessary preliminary work..

35. Mr Jung submitted that the tenants should be looking to form an RTM company to take over management of the building, which he submitted could be done in one month. It could apply to vary the leases.
36. The Tribunal vary the Existing Order to give the Manager the power requested to apply to the Tribunal to vary the leases. Whether a Tribunal-appointed manager, or an RTM company as referred to by Mr Jung, is able to make an application under section 35 will be for a relevant Tribunal to determine if an application is made to it.
37. Given the tenants' expressed belief that they should now be able to effect the necessary variations themselves (and the Tribunal would remind the Respondents of their ability to make an application under section 35) the Tribunal have delayed this power to the Manager until of 1 January 2023 to afford the Respondents the opportunity of effecting the necessary variations themselves and if necessary making an application to the Tribunal to settle these.

Increase in management fee and reimbursement of professional fees.

38. Mr Thwaites is seeking an immediate increase of 4% in the management fee, and subsequent increases at the beginning of each financial year to be linked to the RPI, rather than the 1% increase contemplated by the Existing Order. Questioned by Mr Walker as to why he was seeking an increase of 4% in the management fee when he had accepted eight months' ago that an increase of 1% would be sufficient Mr Thwaites stated the 4% increase in the current fee to £5,616 plus VAT that he was seeking was in line with the generic increase adopted by FirstPort, necessitated by the increase in cost of living. The increase was not specific to the fact that he was a court-appointed manager.
39. Mr Walker put to Mr Thwaites that the management fees already constituted 24% of the service charge costs, much higher than the 10% contemplated by the RICS. Mr Thwaites responded that the percentage was not so high when his requested contribution to the sinking fund was taken into account.
40. Mr Jung submitted that he considered an increase of 4% rather than 1% to be insignificant in circumstances where he contemplated that the order should continue for a limited duration.
41. The Tribunal note that when Mr Thwaites was appointed manager by the variation dated 30 April 2021 of the Existing Order the order stated at paragraph 12, '*Both Mr Thwaites's management plan and the handover agreement are also approved by the Tribunal save that the annual uplift to the management fee is restricted to 1%. A future revision of this uplift may be dependent on the manager's progress in achieving the stable management of the building*'. The Tribunal is not satisfied that it is possible for Mr Thwaites to provide evidence of such stable management and it is less than a year since he has been appointed, however the Tribunal accept that the rate of inflation has increased unexpectedly since April. Mr Jung did not

challenge the level of increase sought. Mr Walker submitted the actual management fee was high but did not challenge the increase sought.

42. The Tribunal therefore vary the Existing Order to contemplate an increase of 4% in the fee charged for the current financial year. The RICS Code of Practice recommends, at section 3.3, The Tribunal therefore vary the Existing Order to contemplate an increase of 4% in the fee charged for the current financial year. The RICS Code of Practice recommends, at section 3.3, *'where there is a service charge, basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income. This method is considered to be preferable so that leaseholders can budget for their annual expenditure.'* Accordingly the Tribunal finds that any subsequent increase should be fixed rather than linked to an uncapped RPI. The Tribunal therefore vary the order to provide that the increase in subsequent years should be the lesser of 4% and the increase in RPI.
43. During the hearing the Tribunal reminded the parties that it is open to any party to dispute any sum payable this Order by seeking a determination under section 27A Landlord and tenant Act 1975. Mr Castle agreed that the Existing Order could be varied to recite this right.
44. Reference to the reimbursement of professional fees had been introduced in the Applicant's reply as the manager need to ensure that he was reimbursed for the actual cost to him of appointing professionals in connection with his management functions. In response to Mr Walker's query as to whether these costs could be capped Mr Thwaites said that he believed that the combination of the consultation process and the ability to make an application under section 27A on the reasonableness of any service charge cost should afford the tenants protection against being overcharged.
45. Mr Castle submitted that it was of fundamental importance to Mr Thwaites that he could instruct professionals knowing that the whole of their costs could be recovered by way of service charge. Mr Jung stated that any survey fees should be recoverable by way of the service charge. While Mr Walker accepted that third party fees should be paid he submitted that there should not be an unlimited budget initially suggesting that maybe a cap should be set on the fees.
46. The Tribunal find that the Manager should be able to recover fees which he incurs from instructing professionals. There should be no cap on these fees set out on the order but the Tribunal would refer the leaseholders again to their rights under section 27A Landlord and Tenant Act 1985

Other

47. Mr Walker submitted that once the tenants had varied their leases they wish to recover the right to manage the property themselves. Mr Walker and Mr Jung both referred to the possibility of the formation of an RTM company.

48. The Tribunal would invite the tenants to progress the lease variations without delay and reminds them that section 24(9) permits the Tribunal, on the application of any person interested, to vary or discharge (conditionally or unconditionally) an order made under section 24.
49. The Tribunal also invites the tenants to consider whether the formation of an RTM company is necessary given that they are the freeholder of the property. Once the management of the property is returned to them they will have the right to manage it as they see fit, given their ownership of Kilmeny House Limited.

Name: Judge Pittaway

Date: 21 February 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 rplondon@justice.gov.uk.
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.

Appendix – relevant legislation

Landlord and Tenant Act 1987

Section 24

- (1) The appropriate 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 the tribunal thinks fit.
- (2) The appropriate 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;
 - (abb) where the tribunal is satisfied--
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, 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 Landlord 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) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—
- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by the appropriate 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.

IN THE FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference: LON/00BA/LVM/2020/0014

Property: Kilmeny House, 36 Arterberry Road, London SW20 8AQ

Applicant: Mr Richard John Thwaites (Appointed Manager)

Representative: James Castle, Tanfield Chambers
J B Leitch Solicitors LLP

Respondents: The Leaseholders of Kilmeny House
Kilmeny House Limited

Type of Application: Variation of Appointment of Manager

Date of Hearing: 3 February 2022

ORDER

UPON hearing the Applicant’s application dated 9 September 2021 pursuant to Section 24(9) of the Landlord and Tenant Act 1987 (“**the Application**”) to vary the management order made by the First-tier Tribunal (Property Chamber) (Residential Property) (“**the Tribunal**”) in respect of the subject property at Kilmeny House, 36 Arterberry Road, London SW20 8AQ (“**the Property**”) of 17 July 2017, as varied by further orders of 11 December 2018, 19 March 2019 and 30 April 2021 (“**the Management Order**”), by appointing extending the period of the Management Order and adding and varying certain of the powers given to Mr Richard John Thwaites (“**the Manager**”)

AND UPON reading the Manager’s Witness Statement dated 10 December 2021 and the statements of Mr Walker, the tenant of Flat 2 and Mr Harris of Flat 6

AND UPON the Tribunal hearing oral evidence from the Manager

AND UPON hearing James Castle of Counsel for the Applicant, and Mr Walker, Mr Bennett (as representative of the tenant of Flat 2), Mr Jung (Flat 4) and Mr Holliday (Flat 7)

AND UPON the Tribunal having determined that it is just and convenient for the Management Order to be varied

IT IS ORDERED THAT:

1. Richard John Thwaites of FirstPort Property Services Limited, Marlborough House, Wigmore Lane, Luton LU2 9EX shall continue as the Manager.
2. Richard John Thwaites may delegate his powers, rights, duties, obligations or liabilities to FirstPort Property Services Limited or any employee thereof, as he may reasonably require to assist him in the performance of his functions as the Manager.
3. This order shall continue for a period until 31 December 2023. If the parties wish to apply for any extension of the Management Order after that date they are encouraged to do so at least 3 months before the Management Order expires on 31 December 2023.
4. The Manager shall manage the Property in accordance with:

- 4.1. The directions and Schedule of functions and services attached to this order;
- 4.2. The respective obligations of “the Lessor” and “the Company” by which the flats at the Property are demised to the leaseholders. In particular, the Manager is to have regard to the obligations relating to repair, decoration, provision of services and insurance of the Property, as modified and extended by the directions and Schedule of functions and services attached to this order. For the avoidance of doubt, the Manager is to deal with licenses as set out in clause 2(j) of the leases where the lessor is to provide consent for assignments and sub-lettings; and
- 4.3. The duties of a Manager set out in the Service Charge Residential Management 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 of the Leasehold Reform, Housing and Urban Development Act 1993.
5. The Manager shall register this order against the landlord’s registered title to the Property as a restriction under the Land Registration Act 2002, or any subsequent Act.
6. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in his own name in the sum of at least £5,000,000.00 and shall provide copies of the current cover note upon request being made by any lessee of the Property, Kilmeny House Limited, or the Tribunal.
7. The parties to this Application shall provide all necessary information to the Manager.
8. The rights and liabilities of the freeholder, Kilmeny House Limited, arising under any contract of insurance, and/or any contract for the provision of any services to the Property, shall continue from the date of this order to be rights and liabilities of Richard John Thwaites.
9. Subject to 11 below, the Manager shall account forthwith for the payment of ground rent received by him (if any) to the person(s) to whom it is due and shall apply those remaining amounts received by him (other than those representing his fees) in performance of the landlord’s covenants contained in the leases.
10. As the collection of the very low ground rent may be uneconomical, the Manager has a discretion as to the extent to which, if at all, he incurs costs in attempting to recover the ground rent from any of the lessees.

11. For the avoidance of doubt, Richard John Thwaites has the right to recover arrears of any monies owing to the Applicant under the Management Order accrued during the Applicant's appointment.
12. The Manager shall be entitled to remuneration (which for the avoidance of doubt) shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of functions and services below which management fee for the current service charge year to 31 December 2022 will be £5,616 plus VAT.
13. The Manager shall be entitled to review the management fee at the beginning of 2023 and increase it by a sum equal to the lesser of 4% and the increase in the Retail Price Index between January and December 2022
14. The Manager may commission reports on the condition of the Property in respect of the condition of the Property and the remedial works necessary pursuant to the leases where the current reports are out-of-date.
15. In the event that the leases of the flats at the property have not been varied by 1 January 2023 the Manager shall be entitled to apply to the Tribunal for a variation of the terms of the leases and to recover any costs incurred in connection with preparing for and making such application through the service charge.
16. Within 28 days of the expiry of the fixed term of this Management Order, the Manager shall prepare and submit a brief written report for the Tribunal on the progress and outcome of the management of the Property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessees and on the freeholder, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new Tribunal-appointed Manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
17. The Applicant shall be given notice of any application to the Tribunal in connection with the Property which relates to his period of appointment as manager.
18. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

INSURANCE

1. Maintain appropriate building insurance for the Property. For the avoidance of doubt, this includes areas and structures outside the footprint of the building itself as well as the building. The insurance is to cover all usual modern risks, including terrorism.
2. Ensure that the Manager's interest is noted on the insurance policy.

SERVICE CHARGE

3. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
4. The Manager has the power to adopt a service charge year starting on the 1st day of January in each year and ending on the 31st December in each year.
5. The Manager has the power to collect an interim service charge in advance which will reflect the anticipated cost of necessary works likely to be carried out during the period of this Order.
6. The Manager will continue with demanding and collecting the estimated service charge from the lessees at the appropriate times.

7. Interim payments of the service charge will be due on the 1st day of January and the 1st day of July in each year.
8. Demand and collect ground rents (insofar as he considers it economic to do so), service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees. The Manager will issue interim service charge demands in good time and by no later than 30 days prior to the service charge demand being issued on 1st January (although in the case of the demand to be issued on 1st January 2019 the Manager will issue the demand as soon as reasonably possible).
9. After the actual expenditure in any service charge year has been certified by an accountant, to demand any shortfall or repay or give credit for any surplus paid.
10. Place, supervise and administer contracts and check demands for payment of goods services and equipment supplied for the benefit of the Property with the service charge budget.
11. The proportion of the total service charge which his to be borne by each flat is as follows:-

1	11.60%
2	15.88%
3	14.24%
4	14.73%
5	12.66%
6	15.54%
7	15.35%

ACCOUNTS

12. Within 90 days from 31st December of each year prepare and submit to the lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager

13. Maintain efficient records and books of account, which are open for inspection by the Respondents. Upon request, produce for inspection, receipts or other evidence of expenditure.
14. Maintain on trust an interest-bearing account/s (if available) at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
15. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

MAINTENANCE

16. Deal with routine repairs and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structures of the Property.
17. The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondents.
18. The Manager is to continue with the planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.
19. Subject to receiving sufficient prior funds the Manager shall be entitled to progress any works required for the repair, renewal or removal of the external staircase to the Property to the extent the same are necessary for safety reasons and/or such other works as are reasonably required to the chimney stacks and for fire safety reasons (whether the works are improvements or not and which works may be limited to the internal common parts of the building located on the Property and recover the cost through the service charge.
20. The Manager is at liberty to remove the lift if he considers it appropriate so to do. He is under no obligation to replace it, as it is now redundant.
21. The Manager has power to incur expenditure in respect of the provision of all necessary health and safety equipment, and in complying with all regulatory and statutory requirements.
22. The Manager is entitled to recover through the service charge the cost of any surveyors', architects' or other professional persons' fees incurred by the Manager whilst carrying out his functions.

23. The Manager is entitled to recover through the service charge, in addition to the fees referred to in paragraph 22, fees for dealing with the administration of any major works projects, capped at 5% of the total cost of the works.
24. An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessees.
25. VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of the invoicing.
26. The preparation of insurance valuations and the undertaking of other tasks, which fall outside those duties described above are to be charged for the time basis.

COMPLAINTS PROCEDURE

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

DISPUTES

28. In the event of a dispute regarding the payability of any sum payable under this Order, rather than 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 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 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.

IN THE FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference: LON/00BA/LVM/2020/0014

Property: Kilmeny House, 36 Arterberry Road, London SW20 8AQ

Applicant: Mr Richard John Thwaites (Appointed Manager)

Representative: James Castle, Tanfield Chambers
J B Leitch Solicitors LLP

Respondents: The Leaseholders of Kilmeny House
Kilmeny House Limited

Type of Application: Variation of Appointment of Manager

Date of Hearing: 3 February 2022

ORDER

UPON hearing the Applicant’s application dated 9 September 2021 pursuant to Section 24(9) of the Landlord and Tenant Act 1987 (“**the Application**”) to vary the management order made by the First-tier Tribunal (Property Chamber) (Residential Property) (“**the Tribunal**”) in respect of the subject property at Kilmeny House, 36 Arterberry Road, London SW20 8AQ (“**the Property**”) of 17 July 2017, as varied by further orders of 11 December 2018, 19 March 2019 and 30 April 2021 (“**the Management Order**”), by appointing extending the period of the Management Order and adding and varying certain of the powers given to Mr Richard John Thwaites (“**the Manager**”)

AND UPON reading the Manager’s Witness Statement dated 10 December 2021 and the statements of Mr Walker, the tenant of Flat 2 and Mr Harris of Flat 6

AND UPON the Tribunal hearing oral evidence from the Manager

AND UPON hearing James Castle of Counsel for the Applicant, and Mr Walker, Mr Bennett (as representative of the tenant of Flat 2), Mr Jung (Flat 4) and Mr Holliday (Flat 7)

AND UPON the Tribunal having determined that it is just and convenient for the Management Order to be varied

IT IS ORDERED THAT:

19. Richard John Thwaites of FirstPort Property Services Limited, Marlborough House, Wigmore Lane, Luton LU2 9EX shall continue as the Manager.
20. Richard John Thwaites may delegate his powers, rights, duties, obligations or liabilities to FirstPort Property Services Limited or any employee thereof, as he may reasonably require to assist him in the performance of his functions as the Manager.
21. This order shall continue for a period until 31 December 2023. If the parties wish to apply for any extension of the Management Order after that date they are encouraged to do so at least 3 months before the Management Order expires on 31 December 2023.
22. The Manager shall manage the Property in accordance with:
 - 22.1. The directions and Schedule of functions and services attached to this order;
 - 22.2. The respective obligations of “the Lessor” and “the Company” by which the flats at the Property are demised to the leaseholders. In particular, the Manager is to have regard to the obligations relating to repair, decoration, provision of services and insurance of the Property, as modified and extended by the directions and Schedule of functions and services attached to this order. For the avoidance of doubt, the Manager is to deal with licenses as set out in clause 2(j) of the leases where the lessor is to provide consent for assignments and sub-lettings; and
 - 22.3. The duties of a Manager set out in the Service Charge Residential Management 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 of the Leasehold Reform, Housing and Urban Development Act 1993.
23. The Manager shall register this order against the landlord’s registered title to the Property as a restriction under the Land Registration Act 2002, or any subsequent Act.
24. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in his own name in the sum of at least

£5,000,000.00 and shall provide copies of the current cover note upon request being made by any lessee of the Property, Kilmeny House Limited, or the Tribunal.

25. The parties to this Application shall provide all necessary information to the Manager.
26. The rights and liabilities of the freeholder, Kilmeny House Limited, arising under any contract of insurance, and/or any contract for the provision of any services to the Property, shall continue from the date of this order to be rights and liabilities of Richard John Thwaites.
27. Subject to 11 below, the Manager shall account forthwith for the payment of ground rent received by him (if any) to the person(s) to whom it is due and shall apply those remaining amounts received by him (other than those representing his fees) in performance of the landlord's covenants contained in the leases.
28. As the collection of the very low ground rent may be uneconomical, the Manager has a discretion as to the extent to which, if at all, he incurs costs in attempting to recover the ground rent from any of the lessees.
29. For the avoidance of doubt, Richard John Thwaites has the right to recover arrears of any monies owing to the Applicant under the Management Order accrued during the Applicant's appointment.
30. The Manager shall be entitled to remuneration (which for the avoidance of doubt) shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of functions and services below which management fee for the current service charge year to 31 December 2022 will be £5,616 plus VAT.
31. The Manager shall be entitled to review the management fee at the beginning of 2023 and increase it by a sum equal to the lesser of 4% and the increase in the Retail Price Index between January and December 2022
32. The Manager may commission reports on the condition of the Property in respect of the condition of the Property and the remedial works necessary pursuant to the leases where the current reports are out-of-date.
33. In the event that the leases of the flats at the property have not been varied by 1 January 2023 the Manager shall be entitled to apply to the Tribunal for a variation of the terms of the leases and to

recover any costs incurred in connection with preparing for and making such application through the service charge.

34. Within 28 days of the expiry of the fixed term of this Management Order, the Manager shall prepare and submit a brief written report for the Tribunal on the progress and outcome of the management of the Property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessees and on the freeholder, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new Tribunal-appointed Manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
35. The Applicant shall be given notice of any application to the Tribunal in connection with the Property which relates to his period of appointment as manager.
36. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

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SERVICE CHARGE

32. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
33. The Manager has the power to adopt a service charge year starting on the 1st day of January in each year and ending on the 31st December in each year.
34. The Manager has the power to collect an interim service charge in advance which will reflect the anticipated cost of necessary works likely to be carried out during the period of this Order.
35. The Manager will continue with demanding and collecting the estimated service charge from the lessees at the appropriate times.
36. Interim payments of the service charge will be due on the 1st day of January and the 1st day of July in each year.
37. Demand and collect ground rents (insofar as he considers it economic to do so), service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees. The Manager will issue interim service charge demands in good time and by no later than 30 days prior to the service charge demand being issued on 1st January (although in the case of the demand to be issued on 1st January 2019 the Manager will issue the demand as soon as reasonably possible).
38. After the actual expenditure in any service charge year has been certified by an accountant, to demand any shortfall or repay or give credit for any surplus paid.
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ACCOUNTS

41. Within 90 days from 31st December of each year prepare and submit to the lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager
42. Maintain efficient records and books of account, which are open for inspection by the Respondents. Upon request, produce for inspection, receipts or other evidence of expenditure.
43. Maintain on trust an interest-bearing account/s (if available) at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
44. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

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47. The Manager is to continue with the planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.
48. Subject to receiving sufficient prior funds the Manager shall be entitled to progress any works required for the repair, renewal or removal of the external staircase to the Property to the extent the same are necessary for safety reasons and/or such other works as are reasonably required to the chimney stacks and for fire safety reasons (whether the works are improvements or not and which works may be limited to the internal common parts of the building located on the Property and recover the cost through the service charge.
49. The Manager is at liberty to remove the lift if he considers it appropriate so to do. He is under no obligation to replace it, as it is now redundant.
50. The Manager has power to incur expenditure in respect of the provision of all necessary health and safety equipment, and in complying with all regulatory and statutory requirements.
51. The Manager is entitled to recover through the service charge the cost of any surveyors', architects' or other professional persons' fees incurred by the Manager whilst carrying out his functions.

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55. The preparation of insurance valuations and the undertaking of other tasks, which fall outside those duties described above are to be charged for the time basis.

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

DISPUTES

57. **In the event of a dispute regarding the payability of any sum payable under this Order, rather than 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 Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.**

58. **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.**