



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

Case reference : **LON/00AH/LAM/2021/0025**

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

Property : **74 Auckland Road, London SE19 2DH**

Applicants : **Therese Leignel**

Representative : **In person**

Respondent : **74 Auckland Road Limited**

Representative : **Ms H O'Neil; Mr T Redwin and Mr D
Gordon directors**

The Manager : **Mr Stephen Wiles**

Tribunal members : **Judge Dutton
Mr K Ridgeway MRICs**

Date of Hearing : **5 April 2022**

Date of decision : **20 April 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was, V: CVYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 14 section, unnumbered pages, the contents of which we have noted.

Decisions of the tribunal

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Stephen Wiles of Prime Property Management ('the Manager') is appointed as manager of the property at **74 Auckland Road, London SE19 2DH** ("the Property").
2. The order shall continue for a period of 3 years from 1 June 2022. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
3. The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of functions and services attached to this order;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; 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.
4. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
5. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.

The application

1. The Applicant sought the appointment of a manager under the provisions of s24 Landlord and Tenant Act 1987 (the Act). Mr Gordon and Ms O'Neil had no objection to the appointment of a manager, thinking it a good idea to rise above the problems linked with other

leaseholders who were the shareholders of the limited company 74 Auckland Road Limited.

2. Mr Redwin, the other shareholder was not initially in favour of the appointment and was still concerned that it would not solve the issues but before us confirmed that he had no objection to the appointment of a manager

The hearing

3. As a consequence of the approval of a Tribunal Appointed manager, we did not consider the various issues that had been raised by the parties. Whilst some would fall within the remit of a manager, others, such as the use to which part of the land to the rear could be put were not something which the manager would involve himself with. Further, our involvement was somewhat hamstrung because we were not provided with a copy of any lease so could not comment on, for example, the obligations as to repair of the front area. This will be something that the manager can review.
4. Ms O'Neil, who had been dealing with the accounts said she considered they were up to date and that she had issued same every 6 months, which included actual and anticipated expenditure. She considered that there was something in the region of £6,000 held on account.
5. We did have the opportunity of interviewing Mr Stephen Wiles of Prime Property Management the proposed manager. Unfortunately, he had not been aware of the latest guidelines issued by the First Tier Tribunal in December 2021 about the appointment of a manager, nor was he aware of the preferred management order. Somewhat surprisingly he had neither visited the Property, nor had the chance to peruse any leases. He did not think this lack of knowledge of the Property would affect his wish to be appointed. He did confirm that he had been appointed by the tribunal on one other occasion.
6. He provided satisfactory answers to questions we put to him and confirmed that Prime Property Management was a lessee friendly company and would liaise with and consider the wishes of leaseholders when he fulfilled his role as a Tribunal appointee.
7. He confirmed that there would be in-house bookkeeping but that the final accounts were sent out for external accounting. He sought an appointment of between 3 and 5 years and confirmed that the costs would be £2,500 including VAT, certainly for the first year and maybe beyond.

Findings

8. Given that the shareholders and Mr Carter, the lessee of one of the basement flats who attended part of the hearing agreed that the appointment of Mr Wiles would be an 'excellent idea' we find that it is just and convenient to make the appointment.
9. The terms of the management Order are set out below.

MANAGEMENT ORDER

Interpretation

1. In this Order:

"The Property" means the flats and other premises known as known as 74 Auckland Road, London SE19 2DH and registered at HM Land Registry under title number **SGL 551266** and shall include the building, outhouses, gardens, amenity space, drives, pathways landscaped areas, flower beds, passages, bin-stores, common parts, storage rooms basements, electricity and power rooms; and all other parts of the property.

"The Landlord" shall mean 74 Auckland Road Limited or their successors in title to the reversion immediately expectant upon the Leases.

"The Tenants" shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and "Tenant" shall be construed accordingly.

"The Leases" shall mean all leases and/or underleases of flats in the Property.

"The Manager" means Mr Stephen Wiles

"The Tribunal" means the First-tier Tribunal (Property Chamber)

ORDER

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 ("the Act") **Stephen Wiles of Prime Property Management** is appointed as Manager of the Property.
3. The Manager's appointment shall start on **1 June 2022** ("the start date") and shall end on **31 May 2025** ("the end date").

4. For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the Tenants remain bound by them. Where there is a conflict between the provisions of the Order and the Leases, the provisions of the Order take precedence.
5. The Manager shall manage the Property in accordance with:
 - (a) the terms of this Order and the Directions set out below;
 - (b) the respective obligations of the Landlord and the Tenants under the Leases whereby the Property is demised by the Landlord (save where modified by this Order);
 - (c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors (“RICS”) and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993(whether the Manager is a Member of the RICS or not; and
 - (d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.
6. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
7. The tribunal requires the Manager to act fairly and impartially in the performance of their functions under this Order and with the skill, care and diligence to be reasonably expected of a Manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions.
8. The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
9. Any application to extend or renew this Order **must** be made before the end date, preferably at least three months before that date, and supported by a brief report of the management of the Property during the period of the appointment. Where an application for an extension or renewal is made prior to the end date, then the Manager’s appointment will continue until that application has been finally determined.
10. The Manager is appointed to take all decisions about the management of the Property necessary to achieve the purposes of this Order. If the Manager is unable to decide what course to take, the Manager may apply to the Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Circumstances in which a request for such directions may be appropriate include, but are not limited to:

- (a) a serious or persistent failure by any party to comply with an obligation imposed by this Order;
- (b) circumstances where there are insufficient sums held by the Manager to discharge their obligations under this Order and/or for the parties to pay the Manager's remuneration; and
- (c) where the Manager is in doubt as to the proper construction and meaning of this Order.

Contracts

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

Pre-contract enquiries

13. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property and shall be entitled to make a reasonable charge to the seller of the flat for this information.

Legal Proceedings

14. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and, subject to the approval of the Tribunal, may continue to bring or defend proceedings relating to the appointment, after the end of their appointment.
15. Such entitlement includes bringing proceedings in respect of arrears of service charge attributable to any of the Flats in the Property, including, where appropriate, proceedings before this tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act or before the courts and shall further include any appeal against any decision made in any such proceedings.

16. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so during, or after, this appointment. If costs paid from the service charge are subsequently recovered from another party, those costs must be refunded to the service charge account.

Remuneration

17. The Tenants are responsible for payment of the Managers' fees, which are payable under the provisions of this Order but which may be collected under the service charge mechanisms of their Leases
18. The sums payable are:
- (a) an annual fee of £2,500 including VAT for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable) payable as provided for under the terms of the tenants leases;
 - (b) any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code (so far as applicable); and
 - (c) and further VAT on the above fees.

Ground Rent and Service charge

19. The Manager shall not collect the ground rents payable under the residential Leases.
20. The Manager shall collect all service charges and insurance premium contributions payable under the Leases, in accordance with the terms and mechanisms in the Leases.
21. Whether or not the terms of any Lease so provides, the Manager shall have the authority to:
- (a) demand payments in advance and balancing payments at the end of the accounting year;
 - (b) establish a sinking fund to meet the Landlord's obligations under the Leases;
 - (c) allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund;
 - (d) alter the accounting year and to collect arrears of service charge and insurance that have accrued before their appointment; and

22. The Manager may set, demand and collect a reasonable service charge to be paid by the Landlord (as if he were a lessee), in respect of any unused premises in part of the Property retained by the Landlord, or let on terms which do not require the payment of a service charge.
23. To ensure that the Manager has adequate funds to manage the Property, the Manager may immediately collect **£500** from each of the leaseholders who are member of the Landlord company and **£250** from the tenants of basement flat and flat 1b. Any sum demanded by the Manager shall be payable within 28 days. This is in addition to the apparent sum of £6,000 currently sitting in the reserve fund for the Property.
24. The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by them whilst carrying out their functions under the Order.

Administration Charges

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

Disputes

26. In the event of a dispute regarding the payability of any sum payable under this Order by the lessees, additional to those under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, may apply to the tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.
27. In the event of a dispute regarding the payability of any sum payable under this Order by the landlord, other than a payment under a Lease, the Manager or the Landlord may apply to the tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.
28. In the event of dispute regarding the conduct of the management of the property by the Manager, any person interested may apply to the Tribunal to vary or discharge the order in accordance with section 24(9) of the Landlord and Tenant Act 1987.
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.

DIRECTIONS TO LANDLORD

30. The Landlord must comply with the terms of this Order.
31. On any disposition [other than a charge] of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager, that the said person will (a) comply with the terms of this Order; and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed.
32. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of their functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.
33. The Landlord is to allow the Manager and their employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform their functions and duties, and exercise their powers under this Order.
34. Within 28 days from the date of this Order the Landlord must provide all necessary information to the Manager to provide for an orderly transfer of responsibilities, to include the transfer of:
 - (a) all accounts, books and records relating to the Property, including a complete record of all unpaid service charges; and
 - (b) all funds relating to the Property including uncommitted service charges and any monies standing to the credit of a reserve or sinking fund.

DIRECTION TO CHIEF LAND REGISTRAR

35. To protect the direction in paragraph 31 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate under title no(s) SGL 551266. The restriction is to have overriding priority against any search with priority or pending application for a disposition of the registered estate (other than a charge) that has been lodged after the 27 day of October 2021 being the date of the application to the tribunal

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration or their conveyancer that the provisions of paragraph 31 of an Order of the Tribunal dated 20 April 2022 have been complied with”

DIRECTIONS TO MANAGER

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

Registration

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

Conflicts of Interest

38. The Manager must be astute to avoid any Conflict of Interest between their duties and obligations under this Order, and their contractual dealings. Where in doubt, the Manager should apply to the Tribunal for directions.

Complaints

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

Insurance

40. The Manager must maintain appropriate building insurance for the Property and ensure that the Manager’s interest is noted on the insurance policy.

41. From the date of appointment, and throughout the appointment, the Manager must ensure that he/she has appropriate professional indemnity insurance cover in the sum of at least £5 million and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Tenant or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

Accounts

42. The Manager must:

- (a) prepare and submit to the Landlord and the Tenants an annual statement of account detailing all monies receivable, received and expended. The accounts are to be certified by the external auditor, if required under the Leases;
- (b) maintain efficient records and books of account and to produce for these for inspection, to include receipts or other evidence of expenditure, upon request by the Landlord or a Tenant under section 22 Landlord and Tenant Act 1985;
- (c) maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and
- (d) hold all monies collected in accordance with the provisions of the Code.

Repairs and maintenance

43. The Manager must:

- (a) by 1 September 2022 draw up a planned maintenance programme for the period of the appointment, allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property, as well as any roads, accessways, mechanical, electrical and other installations serving the Property, and shall send a copy to every Tenant and to the Landlord;
- (b) subject to receiving sufficient prior funds:
 - (i) carry out all required repair and maintenance required at the Property, in accordance with the Landlord's covenants in the Leases, including instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the Leases or in accordance with the Order.
 - (ii) arrange and supervise any required major works to the Property, including preparing a specification of works and obtaining competitive tenders.
- (c) liaise with all relevant statutory bodies in the carrying out of their management functions under the Order; and
- (d) ensure that the Landlord, and the Tenants, are consulted on any planned and major works to the Property and to give proper regard to their views.

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

Reporting

45. By no later than six months from the date of appointment (and then annually) the Manager must prepare and submit a brief written report to the Tenants, and the Landlord, on the progress of the management of the Property up to that date, providing a copy to the Tribunal at the same time.

End of Appointment

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

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

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

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

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

APPENDIX OF ADDITIONAL SERVICES AT EXTRA COST

Additional Services	Frequency	Cost
The preparation of leasehold/contract information packs in connection with a sale, transfer or remortgage (15 working day turnaround)	As required	£250 (charged to the relevant party)
Enhanced fast track response to above (pack provided next working day if paid before 12pm on a working day)	As required	£400 (charged to relevant party)
Receipting notices of transfer and/or charge in connection with a unit purchase	As required	£120 per notice (charged to relevant party)
Issuing share certificate to new owner	As required	£100 (charged to individual)
Preparing deed of covenant during unit transfer	As required	£100 (charged to individual)
Issue of section 20 notices	As required	£10/notice per flat (min fee £100)
<p>Preparing specifications (in partnership with surveyor*), obtaining tenders and supervising major works *exclusive of surveyor fees (if a surveyor is not instructed and we are required to act as CA the fee is x2)</p> <p>Fees are charged at the following stages:</p> <ol style="list-style-type: none"> 1. Completion of initial inspection and specification of works (or recommendations for specification) 30% 2. Tender process and issue of tender report 20% 3. Supervision of works 40% 4. Final inspection and sign off 10% 	As required	£0 - £1000: £100
		£1000 - £2500: £150
		£2501 - £5000: £250
		£5001 - £10000: £400
		£10001 - £20000: £750
		£20001 - £50000: £1500
		£50001 - £100000: £3000
		£100001 - £150000: £5000
		£150001 - £200000: £7500
		£200001 - £250000: £10000
£250001+: £12500		
Additional meeting attendance and minutes preparation	As required	£75 per meeting
Land registry search	As required	£10 per search
Lease copies	As required	£50 per lease
Providing certificate of compliance or consent	As required	£200 (charged to relevant party)

Preparing deed of covenant or licence for subletting	As required	£100 (charged to individual)
Administering return of unpaid cheque	As required	£25 (charged to individual unit)
Pursuing recovery of unpaid service charge following written reminder	As required	Reminder: £0
	All charged to individual unit	Final warning: £50
	All charged to individual unit	Legal review upon instruction of solicitors: £150
Preparing for and attending FTT hearing	As required	£150/hour plus travel expenses
Dealing with alteration or improvement permissions required licence to alter	As required	£POA
Issue of parking permits in addition to first issue (initial issue is no cost)	As required	£POA
Preparing reserve fund plan or maintenance plan for the Property and agree with the Client an appropriate schedule of works and funding to execute the plan.	As required	£POA
Any additional work entailed, where the information as listed in Appendix II is not forthcoming on the Takeover list.	As required	£POA
The provision of leaseholder welcome packs or handbooks.	As required	£POA
Fees for specialist advice on assessment of major repairs and decoration or other issues.	As required	£POA
Negotiating with local and statutory authorities regarding operation or amendment or improvements to communal services as necessary.	As required	£POA
Advising and providing information on the transfer of leases.	As required	£POA
Advertising and recruiting site staff on behalf of the Client.	As required	£POA
Dealing with wages and/or pensions for on site staff.	As required	£1,000 per individual, per year
Subletting, changes of use and handling requests for any necessary approvals, lease extensions and variations.	As required	£POA
Preparing schedules of dilapidation or condition in respect of individual dwellings.	As required	£POA

Dealing with requests for improvements or alterations by lessees and related party wall matters.	As required	£POA
Handling client account(s)	At least once per client, then upon request (eg for dedicated reserve fund account)	£5 per account, per month
Companies House return	Annually, per company we act for	£13 per company, per year
Postage and stationery	Annual estimate	£2.50 per unit, per year
Legal recovery of unpaid service charges or ground rents or action for non-compliance with leases including instructing solicitors and preparing for and attending Court/Tribunal.	As required	£POA
Carrying out appraisals of reserve funds including surveys of Property and reporting to Client.	As required	£POA
Dealing with complex or legal company secretarial matters over and above that reasonably expected of a managing agent	As required	£POA
Attending meetings of directors.	As required	£POA
Attending meetings outside of specified hours.	As required	£POA
Providing any form of services to the Client over and above this Agreement in relation to the exercise by the lessees of Enfranchisement, the Right to Manage or as the result of the Appointment of a Manager by a Tribunal.	As required	£POA
Any matters relating to rent reviews.	As required	£POA
Answering lessee queries additional to those to be reasonably expected and where excess work arises due to this.	As required	£POA
Providing detailed legal advice on any of the above.	As required	£POA
Providing accommodation for meetings and inspection of documents and the facility to make photocopies.	As required	£POA

Extra legal services (over and above that reasonably expected of a managing agent.	As required	£POA
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Name: Judge Dutton

Date: 20 April 2022

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).