



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

<b>Case reference HMCTS Code</b>	:	<b>CAM/38UF/LAM/2021/0002 V: CVP REMOTE</b>
<b>Property</b>	:	<b>The Old Warehouse, 51 Woodgreen, Witney, Oxon OX28 1DD</b>
<b>Applicants</b>	:	<b>1. Mr and Mrs Gibson – flat 3 2. Mr and Mrs Guerriero – flat 12 3. Mr Godfrey – flat 2</b>
<b>Respondent</b>	:	<b>Mrs Sophie Smith (represented by Mr Daniel Smith)</b>
<b>Type of application</b>	:	<b>Appointment of Manager</b>
<b>Tribunal member(s)</b>	:	<b>Judge Wayte Mr Derek Barnden Mr N Miller</b>
<b>Date of decision</b>	:	<b>14 April 2022</b>

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**DECISION**

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**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: CVP REMOTE. A face-to-face hearing was not held due to the pandemic. The tribunal was referred to a hearing bundle prepared by the applicants' representative Mr Gibson. References to the page numbers in the bundles are contained in square brackets.

**The tribunal has decided that:**

- (1) In accordance with section 24(1) of the Landlord and Tenant Act 1987, Alan Draper of Common Ground, Sandford Gate, East Point Business Park, Oxon OX4 6LB ('the Manager') is appointed as manager of the property at The Old Warehouse, 51 Woodgreen, Witney, OX28 1DD,**

**freehold title number ON207483 ("the Property") from Friday 22 April 2022.**

- (2) The order shall continue to 30 September 2024. 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 Management Order attached to this decision;**
  - (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 and hearing**

1. On 31 August 2021 the applicants and leasehold owners of flats 2,3 and 12 of the property made an application for an order appointing Alan Draper as manager under section 24 of the Landlord and Tenant Act 1987 ("the Act"). The applicants sought the order due to the alleged failure of the freeholder to comply with the terms of its leases and relevant landlord and tenant legislation.
2. The respondent is an elderly woman who is said to reside in India. Copies of the application form were sent to her son, who has confirmed that he acts as her attorney, although the power of attorney has not been produced.

3. Directions were given on 2 November 2021. The following issues were identified for determination:
  - Did the contents of the section 22 notice comply with the statutory requirements?
  - Has the applicant satisfied the tribunal of any grounds for making an order as specified in section 24(2) of the Act?
  - Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should the appointment be made?
  - Is it just and convenient to make a management order?
  - Should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the respondents' costs that may be recoverable through the service charge?
4. The respondent did not produce a statement in response or indeed any documentation in accordance with the directions. It appeared that he also failed to serve a copy of the application on the other leaseholders as required by the directions, as he did not reply to the request for confirmation from the tribunal. Mr Gibson made his own attempts to serve them using the contact information at his disposal. No other leaseholders contacted the tribunal to confirm that they wished to be joined to the application.
5. The application was heard by Cloud Video Platform (CVP) on 22 March 2022. Mr Gibson represented the applicants and appeared as a witness, together with Mr and Mrs Guerriero. Mr Draper also attended as required by the directions. Mr Smith attended the hearing as his mother's attorney and was permitted to take part despite the fact that he had failed to comply with the directions.
6. The applicants had also issued an application under section 27A of the Landlord and Tenant Act 1985 in respect of service charges from 2015 – 2021. This application was heard on the same day as the hearing for the Appointment of Manager and is considered in a separate decision under reference number CAM/38UF/LIS/2021/0034.

### **Background**

7. As the name suggests, the property is a period industrial building, which has been converted into 17 flats. Mr Smith confirmed that his mother purchased the freehold in about 1996, although the entries of the freehold title show that she was registered as the proprietor on 24

September 1998. The majority of the leases pre-date her ownership, although two of the flats were sold in 2017, including flat 12. The lease for that flat is in a slightly different format to the earlier leases issued in respect of the leases for flats 2 and 3. All of the leases except one (flat 17) are for a term of 125 years from 29 September 1984. In addition to the main building, there appears to be at least one garage (flat 15), together with parking spaces and communal gardens. There is no tenants' association and many of the leaseholders let out their property to tenants.

8. The application was supported by witness statements from Mr Alan Gibson and Franco Guerriero, with their evidence unchallenged by Mr Smith. Mr and Mrs Gibson bought their flat on 1 December 2014 and rent it out. Mr Gibson is a retired accountant and raised a number of concerns about the way the former managing agents Gatekeeper Property Services levied service charges. These are dealt with in more detail in the separate decision in relation to the section 27A application but in summary; the demands failed to comply with section 47 of the Landlord and Tenant Act 1987 and the service charge provisions in the lease were ignored, with no estimates provided to support the claim for interim charges and no end of year accounting. Accounts were eventually produced by Gatekeeper in 2021 but were defective for a number of reasons, again set out in the separate decision. Importantly, Mr Gibson submitted that the accounts were never prepared as service charge accounts and the accountant who drew them up has conceded that they are not in an appropriate format to be used as such.
9. In addition to his concerns about the service charges, Mr Gibson has become increasingly concerned about the condition of the property. In particular: urgent repairs are required to the replacement windows and original cills, guttering, downpipes and brickwork; the gardens and bicycle shed are poorly maintained and the internal communal areas are seriously overdue for decoration. Recent work to replace front door locks was of a poor quality. His flat was suffering from damp which he felt was due to the landlord's failure to keep the property in repair. The agents had failed to engage with him in respect of the problems with the property and he proposed a 5 year appointment as it would be sensible to spread the works over a longer period to avoid excessively high service charges for any one year. In due course he hoped to form a Right to Manage company but had suffered from a lack of buy in from other leaseholders.
10. Mr Guerriero and his wife live in their flat and had raised concerns about the state of the property with the agents soon after their purchase in 2017. A meeting was arranged by the agents on 19<sup>th</sup> December 2019, with only 4 properties represented. Some of the repairing issues were discussed at the meeting but the note produced by the agents sought to record, incorrectly, that there was agreement to postpone any works due to lack of funds. He had subsequently arranged for Common Ground to visit the property and produce their report dated 26

February 2020. The report was sent to Mr Smith who passed it onto the agents. They admitted the majority of the findings but again stated that there was a shortage of funds. He also had concerns about the defective service charges demanded by Gatehouse and the fact that they were not members of an approved redress scheme, despite claiming membership of the Property Ombudsman scheme (this was rectified in March 2021).

11. Mr Smith confirmed that Gatekeeper had resigned as managing agents from 31 December 2021, since which date he had taken on the management himself. He wished to appoint professional management as soon as possible and had identified another company but they wanted to await the outcome of this application. He conceded that Gatekeeper had been unsatisfactory and that the property required attention but was concerned about the state of the service charge account. He was also concerned that only a minority of leaseholders were behind the application and that Mr Draper had refused to talk to him in advance of the hearing.

### **Statutory Framework**

12. Under section 24(2) of the Act, the tribunal may appoint a manager under section 24 in various circumstances. These include where the tribunal is satisfied:
  - 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
  - that unreasonable service charges have been made, or are proposed or likely to be made; and
  - that it is just and convenient to make the order in all the circumstances of the case exist which make it just and convenient for the order to be made.

### **Section 22 notice**

13. Before an application for an order under section 24 is made, section 22 of the Act requires the service of a notice which must, amongst other requirements, set out steps for remedying any matters relied upon which are capable of remedy and give a reasonable period for those steps to be taken.
14. There have actually been two section 22 notices served in this case: the first by Mr Guerriero on 13 March 2021 and the second on 23 July 2021 by all three applicants, which is the notice relied on for this application. The notice claimed that the respondent was in breach of her obligations

under the lease: in particular, repairing obligations and service charge provisions and relating to management of the premises: accounting requirements, health and safety legislation, service charge demands and other legislative protection for leaseholders. The notice also stated that unreasonable service charges had been made and that the agents had failed to comply with the RICS code. Although the applicants lacked confidence that the agents were capable of remedying matters to a satisfactory extent the notice stated that the vast majority of matters were capable of remedy within 30 days, with the exception of repair works which it was acknowledged would take longer. However, the notice submitted that an inspection could be carried out within that period to identify the works that were required.

15. Mr Smith had responded to the notice served by Mr Guerriero stating that he had no objection to Gatekeeper being replaced but any arrears would have to be settled first, he also wanted evidence that the other leaseholders were in support of any application to appoint a manager. Gatekeeper offered a meeting which the applicants declined until they could inspect the service charge books and records and there was a written proposal from the freeholder. No progress was made and the application was issued on 31 August 2021.
16. The tribunal is satisfied that the notice met the requirements of the Act.

### **Grounds under the Act**

17. As stated above, the applicants relied on a number of grounds. First, breach of the lease. The bundle contained a copy of the lease for Flat 3 and Flat 12. The lease for Flat 3 is dated 16 December 1986. It contains covenants on the part of the lessor to keep the common parts and the Estate in good condition and to repaint the ironwork gutters and pipes so often as reasonably necessary and in any case every 7 years. The covenant is stated as being subject to receipt of service charges but Mr Smith accepted works were necessary and did not raise any claim that service charges had been withheld. The lease for flat 12 was granted on 8 December 2017 and is more extensive, with a covenant to maintain and keep in good and substantial repair and condition the external walls, conduits and common parts. Again, this is subject to payment of the lessee's contribution but no claim was made by Mr Smith that this was an issue. Given the undisputed evidence that the property is in a poor state of repair and that there has been no external or internal decoration for well over 7 years, the tribunal considers that this ground has been proven by the applicants.
18. The applicants also claimed that the terms of the lease were broken in respect of the service charge machinery. This is considered in more detail in the separate decision dealing with the s27A application but in summary, Gatekeeper had failed to provide an estimate at the outset of each service charge year or a certificate or report at the end of the year

or carry out any reconciliation process. Again, this was not challenged by Mr Smith and no evidence was provided from Gatekeeper other than the accounts which appeared to have been drafted for the benefit of the agent rather than as service charge accounts. The tribunal also considers that this ground has been proven and that the failure of the agents to demand appropriate service charges in accordance with the leases has clearly led to the failure to properly maintain the property.

19. The second ground claimed was in relation to allegedly unreasonable service charges – ground 24(2)(ab)(i). Whereas deductions have been made from the agents' fees due to their failure of performance and the accounts as not fit for purpose, the tribunal is not convinced that the service charges are unreasonable in the sense of supporting an application for the appointment of a manager. If anything, insufficient service charges have been demanded. On balance, this ground is not proven.
20. The third ground claimed was under section 24(2)(ac)(i), the failure to comply with the RICS Service Charge Residential Management Code. Examples included the failure of Gatekeeper to comply with various statutory provisions protecting leaseholders, including serving compliant demands; failure to account for the leaseholders' funds properly by not carrying out any year end reconciliations and keeping insufficient records; failure to consider Health & Safety and failure to consider necessary repairs. Gatekeeper took no part in the proceedings, apparently on legal advice. On the evidence provided by the applicants, the tribunal considers that this ground is proven.
21. In the circumstances, the tribunal determines that there are grounds for appointing a manager.

### **The proposed manager**

22. The applicants had proposed Alan Draper, the Managing Director of Common Ground, a property management company. He had prepared a letter with Mr Gibson dated 24 November 2021 which purported to set out his experience and the basis of his instructions. Mr Draper had also produced the report dated 26 February 2020 following his inspection on that date. Mr Draper attended the hearing as required by the directions.
23. Mr Draper is a professionally qualified property manager who founded his company in 2008. Although his letter stated that Common Ground “*have held and current (sic) hold other FTT appointments*” this was apparently a misunderstanding due to the dual authorship of the letter. He had agreed to provide his services at an annual fee of £3,672 plus VAT, with an additional fee of £1,200 plus VAT assuming a “hostile” takeover. He indicated that day to day management would be by

another member of the team, the company had four property managers at present.

24. Mr Draper was able to provide good answers to the questions by Mr Barnden, the expert member of the panel. In particular, he explained his portal system for keeping leaseholders (and tenants where appropriate) informed, confirmed his experience in running formal consultations in accordance with section 20 of the Landlord and Tenant Act 1985 and provided further details of the company's staff and offices based in Oxford, London and Henley – although the team largely worked at home as a result of the pandemic and current preferences for remote working.
25. Mr Miller, the lay member of the panel, asked for details of Mr Draper's approach to planning, his insurance cover and the length of the term if appointed. Mr Draper stated that his preference would be 5 years but 2-3 would be sufficient to get the property back into effective management and deal with urgent works. Again, his answers were satisfactory.
26. Mr Smith challenged Mr Draper on the basis that he had refused to return his calls and indicated that he did not wish to work with him. There appeared to be a potential issue around proposed development of the property by building an extension on the roof, although planning permission had not been sought. Mr Draper also pointed out that he had arranged a site visit with Mr Smith which he failed to attend.
27. The tribunal was concerned that Mr Draper stated his plan was for Mr Smith to have as little involvement as possible in the property, describing Common Ground as a "leaseholder led" company. Although a tribunal appointed manager has the authority to act without instruction from the freeholder, a constructive relationship with them is likely to be in the best interests of everyone. It was also a concern that the letter dated 24 November 2021 was inaccurate in respect of prior appointments. That said, his condition survey was thorough and his evidence to the tribunal at the hearing indicated he would be an effective manager of the property, particularly given his undoubted ability to understand the leaseholder perspective.
28. In the circumstances the tribunal considered that Mr Draper would be a suitable appointee as manager.

### **Just and convenient**

29. In addition to proving grounds under section 24, the tribunal has to be satisfied that it is just and convenient to make an order appointing a manager in all the circumstances of the case.
30. Mr Gibson summarised his application by saying that he and Mr Guerriero had been trying to persuade the agents and the freeholder to carry out the necessary works to the property since 2019. There was



clear evidence of long term neglect and Gatekeeper had been incompetent in terms of their service and administration of service charges. His preference was for a 5 year appointment as he submitted that there could be no confidence in the freeholder taking responsibility given previous failures.

31. Mr Smith stated that he had previously arranged for works to be undertaken to the property – for example the replacement of the original crittal windows. He is a Chartered Architect and therefore has expert knowledge of the works required to the property but did not have the time to deal with the extensive correspondence generated by the application. He would like to appoint a managing agent that would work with everybody and Gatekeeper had promised him there would be an orderly handover.
32. In all the circumstances of the case the tribunal considers that it is just and convenient to make an order appointing Mr Alan Draper of Common Ground as the manager of the property. Although Mr Smith attended the hearing, he has been slow to accept the problems with Gatekeeper and has failed to take responsibility on behalf of the freeholder to ensure the property is maintained in a good state of repair. As stated above, it is imperative that Mr Draper works with both the freeholder and the leaseholders to get the urgent works completed as soon as practicable, in particular in relation to any penetrating damp. As this will be Mr Draper's first appointment, the tribunal considers that a period of just over 2 years is appropriate, to terminate at the service charge year end in 2024. As stated in the summary of the decision, an application may be made by the manager to extend that period or otherwise vary the order, for example by substituting a different manager.
33. The tribunal has taken into account the draft Management Order submitted by the applicant and Mr Draper, which was not challenged by Mr Smith. This draft contains some ambitious provisions which would have affected the respondent's proprietary rights – for example powers to vary leases or borrow money secured against the property, which the tribunal does not consider reasonable in all the circumstances. The Management Order is therefore based on the tribunal's template which has recently been approved by the Chamber President.

### **Section 20C**

34. The applicants included an application for an order under section 20C, restricting the ability of the respondent to include his costs as part of a service charge. It is not clear whether the respondent has in fact incurred any costs and he indicated that he would not charge for his attendance at the hearing but given the circumstances of the case and for the avoidance of doubt, the tribunal considers that it is just and equitable for an order to be made in favour of the applicants.

**Name:** Judge Wayte

**Date:** 14 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).