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

Case Reference:	CHI/18UB/LAM/2022/0002
Property:	Gaveney House, 5 Salterton Road, Exmouth, Devon EX8 2BW
Applicants:	Graham Loomes (Flat 1) Michael Hooper (Flat 2) Gordon & Susan Pullin (Flat 4)
Representative:	Graham Loomes
Respondents:	Graham Loomes Michael Hooper James Scullion (Flat 3) Gordon Pullin (Joint Freeholders, “the landlord”)
Type of Application:	Section 24 of the Landlord and Tenant Act 1987 (Appointment of a Manager)
Tribunal Members:	Judge A Cresswell (Chairman) Mr J Reichel MRICS Ms T Wong
Date and venue of Hearing:	9th May 2022 by Video
Date of Decision:	13th May 2022

DECISION

The Application

1. On 8 January 2022, the Applicants, the owners of leasehold interests in Gaveney House, 5 Salterton Road, Exmouth, Devon EX8 2BW, made an application to the Tribunal for the appointment of a manager under Section 24 Landlord and Tenant Act 1987. The application followed the service of a Notice on the Respondents under Section 22 of the 1987 Act by the Applicants dated 15 October 2021.
2. The Applicants also made an application under Section 20C Landlord and Tenant Act 1985.
3. The Notice on the Respondents under Section 22 recorded the following:

Second Schedule: Grounds for the appointment of a manager

2.1 The Landlord is in breach of an obligation owed to the tenants under the terms of the lease.

2.2 The Landlord is in breach of the Code of Practice approved by the Secretary of State under Section 87, Leasehold Reform, Housing and Urban Development Act 1993.

2.3 There are other circumstances which make it just and convenient for the appointment of a manager.

Third Schedule: Matters relied upon by the tenants

3.1 The Landlord is failing to keep the property in a good state of repair, as required by the Sixth Schedule of the leases.

3.2. The Landlord has failed to raise service charges to meet the costs of maintaining the property. No appropriate bank account exists and there is thus no means of making provision to pay for necessary repairs or maintenance as they become due.

3.3. There is a long history of disagreements between tenants about appropriate behaviour in communal areas and there are no means of making

or enforcing regulations intended to promote the common enjoyment and security of the residents.

Inspection and Description of Property

4. The Tribunal did not inspect the property The property in question comprises a Grade II listed Georgian manor house in substantial grounds split in 1960 into 4 flats.

Summary Decision

5. The Tribunal has determined that Ms Jenny Clark is to be appointed as Manager for the period of 3 years on the basis of a Management Order, which is detailed below this Decision.
6. The Tribunal allows the tenants' application under Section 20c of the Landlord and Tenant Act 1985, thus precluding the landlord from recovering its cost in relation to the application by way of service charge.

Directions

7. Directions were issued on various dates. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
8. This determination is made in the light of the documentation submitted in response to those directions and the evidence and oral representations received at the hearing. The Tribunal heard evidence from Dr Scullion, all 3 Applicants, Mr M Woodhead, the previous manager, and Ms J Clark, the prospective manger. At the conclusion of the hearing, the parties confirmed to the Tribunal that they had been able to submit all of the evidence that they wished to submit.

The Law

9. The relevant law is set out in Landlord and Tenant Act 1987 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and is set out below:

S21 Tenant's right to apply to court for appointment of manager.

- (1) The tenant of a flat contained in any premises to which this Part applies may,

subject to the following provisions of this Part, apply to a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises.

- (2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.
- (3) This Part does not apply to any such premises at a time when—
 - (a) the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or
 - (b) the premises are included within the functional land of any charity.
- (3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.
- (4) An application for an order under section 24 may be made—
 - (a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and
 - (b) in respect of two or more premises to which this Part applies; and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.
- (5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.
- (6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.
- (7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

S22 Preliminary notice by tenant.

- (1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be

served by the tenant on—

- (i) the landlord, and
 - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.
- (2) A notice under this section must—
- (a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;
 - (b) state that the tenant intends to make an application for an order under section 24 to be made by a leasehold valuation tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;
 - (c) specify the grounds on which the court would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;
 - (d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and
 - (e) contain such information (if any) as the Secretary of State may by regulations prescribe.
- (3) a tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section[on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but a leasehold valuation tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.
- (4) In a case where—
- (a) a notice under this section has been served on the landlord, and
 - (b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

S23 Application to court for appointment of manager.

- (1) No application for an order under section 24 shall be made to a leasehold valuation tribunal unless—
 - (a) in a case where a notice has been served under section 22, either—
 - (i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or
 - (ii) that paragraph was not applicable in the circumstances of the case; or
 - (b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—
 - (i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or
 - (ii) no direction was given by the court when making the order.

S24 Appointment of manager by the court.

- (1) A 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 court thinks fit.
- (2) A tribunal may only make an order under this section in the following circumstances, namely—
 - (a) where the court 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
 - (iii) that it is just and convenient to make the order in all the circumstances of the case; or
 - (ab) where the court 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;

(ac) where the court 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;

(b) where the court 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 court 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 court thinks fit; and, on any subsequent application made for the purpose by the manager, the court 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 court thinks fit, and in particular its operation may be suspended on terms fixed by the court.
- (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 court 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) A leasehold valuation 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 court 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 a leasehold valuation 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.

Ownership and Management

10. The Applicants are the owners of three of the leasehold interests in the property. The Respondents are the owners of the freehold of the property; they are, together, the landlord.

The Lease

11. The Tribunal had all 4 leases before it.
12. The construction of a lease is a matter of law and imposes no evidential burden on either party: **((1) Redrow Regeneration (Barking) Ltd (2) Barking Central Management Company (No2) Ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill [2012] UKUT 373 (LC))**.
13. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court in **Arnold v Britton and others [2015] UKSC 36** Lord Neuberger:

“15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”, to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party’s intentions. In this connection, see *Prenn* at pp 1384-1386 and *Reardon Smith Line Ltd v Yngvar Hansen-Tangen* (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, *Bank of Credit and Commerce International SA (in liquidation) v Ali* [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in *Rainy Sky*, per Lord Clarke at paras 21-30.”

The Parties’ Arguments

The Applicants

14. The Applicants argue that following the end (in July 2020) of the earlier Management Order and the disbursement of funds from the account used in the management of the property, the landlords (the four Respondents who share the freehold) have failed to set up a bank account into which funds could be paid to meet the repair and maintenance obligations required by the leases.
15. No service charges have been raised, there are no arrangements for accounts to be kept, no programme of works has been agreed and there appears to be no prospect that the Respondents will reach a voluntary consensus about how to establish and maintain the necessary accounts and how to agree and implement an appropriate programme of works.
16. Hence the landlord is in breach of obligations in the leases and the Applicants believe it would be just and convenient for the Tribunal to appoint a manager

to take the necessary steps to ensure that the requirements of the leases are fulfilled.

17. The previous Order had been made by the Tribunal on 30 June 2016 following the breakdown of the then Gaveney House Freeholders' Association ("GHFA") as a result of disharmony and lack of action.
18. Despite continued disharmony, the previous Order had allowed progress to be made.
19. The parties were unable to agree a system for management as the previous Order came to an end. No new joint bank account was opened and the manger disbursed remaining funds to the parties.
20. Further attempts were made to resolve the issues, including the suggestion of forming a Right to Manage Company, but this did not come to fruition.
21. Disputes arose about the renewal of insurance for the building.
22. Dr Scullion opposed external management and set demands before he would meet with the other freeholders.
23. The Applicants have no wish to return to the failed GHFA. The fact is that none of the other freeholder/leaseholders trusts Dr Scullion (or Laurence Scullion) to respect their wishes unless they align with the Scullions' own agenda and none of them has the desire or capacity to engage in active management (which they fear would inevitably involve many arguments and much abuse, if the history of the collapse of the GHFA is indicative).
24. MH has suffered bereavement and he and his late wife felt that they had experienced considerable unpleasantness from JS and LS and the prospect of more conflict is unpalatable to him. GP and SP are in their mid-70s and hoped to have a peaceful retirement but felt subjected to hostility and insult when they declined to conform with Dr Scullions' demands. GL has a demanding job 180 miles away and wants to be able to relax when he spends time at Gaveney House. They feel unable to sell or to let their properties until the disputes are resolved. All of the other freeholders are willing to pay the costs of professional management and to pay for the necessary repairs and maintenance identified by a manager and to assist that person in setting up and maintaining an effective and efficient managerial environment.
25. A witness statement from the previous manager, Mr M Woodhead, details a challenging task managing the property, made more difficult by, as he says in

his statement, “*a level of personal animosity between the owners of one of the flats and the remainder which is unique in my experience.*”

26. There is no conflict of interest for the proposed manager as the tenancy she arranged is for 6 months from 5 November 2021, following which Professor Loomes will return to occupation. There was nothing unlawful about the let. It is understood that Mrs Clark would answer to the Tribunal and not the parties.
27. Dr Scullion has refused to cooperate in taking forward required works decisions without his own conditions being met.
28. Relationships have not improved and there has been a souring of relationships between the Pullins and the Scullions.

The Respondent (Dr Scullion)

29. The Respondents are truly the 4 freeholders, but the only objecting party is Dr Scullion. For convenience, he is hereafter referred to as the Respondent.
30. The Respondent says that the proposed manager is not a suitable person because of a conflict of interest.
31. She currently is hired by Professor Loomes to oversee the rental of his flat in her role as managing director of a lettings agency. She responded to a legal issue raised by Professor Loomes about the ability of Professor Loomes to rent out his flat. She provided an incorrect lease schedule and made a false allegation in a somewhat threatening tone about an irrelevant matter.
32. The Section 22 Notice contains a solution which is not viable and is not accurate.
33. He does not admit the breaches forming a part of the Applicants’ case.
34. A 5-year plan of works was made by Mr Woodhead and was reviewed in 2019 and actively implemented up to March 2020. Proposals by the Respondent for further schedule works foundered as a result of preconditions by the Applicants as to future management. The proposals still require resolution and he has not been informed of other required works. The proposed works to the portico roof are urgent and affect the insurance policy.
35. Self-help maintains the grounds and the cleaning of common areas.
36. Neither the lease nor circumstances require a joint bank account. He is willing to pay for the repair work to the portico roof and be reimbursed by the others.
37. There is no risk to the renewal of the building insurance. Other brokers could be used. He had previously drawn to the attention of insurers only matters of

which they should be aware. It was a part of his disclosure to the insurance company that led to the work to the portico roof being a condition of cover.

38. Relationship problems are in the past. There has been a more amicable relationship in recent times as a dispute about ventilation via keeping the front door open exemplifies.
39. Mr Hooper and Professor Loomes are seeking regulations to assist them with a sale of their properties.
40. The previous Order did not lead to repairs keeping pace with the schedule. Service charges of some £60,000 were paid and, of that, £27,000 was returned unused.
41. Most of the issues now complained about occurred also in the early days of the previous Order and led to his complaint to the Tribunal. Only later did he learn that Flats 1 and 2 had not been paying a service charge and this was only resolved at the time of the fund disbursement at the end of the Order. There was a lack of access to documentation. The manager sided with the Applicants in not doing works until a management structure was agreed.
42. He believes that the main reason for the Application is that it is seen as the most expedient way of making regulations on priority use of grounds and basement that benefit the two ground floor flats. He believes it is the same motivation for freeholders in these flats that drives their demand to set up a freeholder management company and reject a simpler unincorporated management association.
43. He is concerned about the transfer of communal land to individual flats, to his loss.
44. If and when the law permits, he is willing to join a leaseholder RTM company and hire a managing agent for administrative support if that is the wish of the majority. He did not join in with the earlier attempt to form a RTM company because it was not legally sound.
45. Immediately, he is willing to join the other freeholders in hiring a managing agent for administration purposes if they wish, with or without setting up an unincorporated management association if it is the majority wish. In order to find a simpler solution, on 7 & 8 April 2022 he emailed the Applicants his willingness to immediately hire a managing agent with or without an unincorporated association and later, if the law allows, join them in forming a

leaseholder RTM. His offer was rejected in their reply; they demand to join a freeholder company or go to Tribunal.

The Tribunal

46. The Tribunal has determined that the likelihood of consensual progress being made between the parties here is nil, such that essential repairs and maintenance are highly unlikely to be achieved. This is due to the complete lack of accord between the 4 freeholders. The very fact that Dr Scullion appeared confident of there being cooperation by him with the other 3 freeholders spoke volumes, in the face of their resolute contrary view as to the likelihood of there being any form of accord.
47. It was clear to the Tribunal that there was here a complete and apparently, at present, irretrievable breakdown in the relationships between the parties.
48. After such a short hearing and having heard two quite disparate accounts of how a situation of such disharmony could have arisen between people sharing the same living space, the Tribunal does not wish to lay blame at the door of either party. What is clear, however, is that something needs to be done so that all parties can live in one property trusting that they have a measure of involvement and control of the maintenance of that property.
49. The Tribunal could not, on such a short analysis, conclude either the actual cause of the lack of harmony or attach any form of blame to any party and has no need to do so. The fact remains that there is no chance whatsoever of any common aims being taken forward by the 4 freeholders in unison in the near future.
50. There appears to be suspicion about future rights and regulations to forward those future rights, which have dogged the relationships. This may well be based upon a misunderstanding of the power of the lessor to make regulations, which the Tribunal explores more fully below.
51. The Tribunal looks at some clauses of Professor Loomes' lease, which have caused disparity of views. All appear in the Sixth Schedule of the lease.

Paragraph 14. Neither The Premises nor any part thereof shall be used for any illegal or immoral purpose nor shall any trade or business be carried on there nor shall any boarders or lodgers be taken but The Lessee shall use the same for the purposes of a single private or professional residence and private garage only

Paragraph 16. The Lessee shall within twenty one days of the date of every assignment underlease grant of probate or administration assent transfer mortgage charge discharge order of Court or other event Or document relating to the term give notice thereof in writing to The Lessor and in the case of a document send it to The Lessor's Solicitors for the time being with a registration fee of not less than Twenty Pounds plus Value Added Tax

52. Dr Scullion said that he had been advised by his solicitor that Paragraph 14 made it likely that the sublease by Professor Loomes of his flat was contrary to the terms of his lease, being contrary to the preclusion of use of the premises for any trade or business; taking boarders or lodgers; and the Lessee not using the premises for the purposes of a single private or professional residence and private garage only. Ms Clark argued that subletting must be permitted because of the requirement in Paragraph 16 for notice of same to be given to the Lessor.
53. The Tribunal is satisfied that the premises were not being used for any trade or business because the actual letting was done by Ms Clark's business (**Triplerose Limited v Beattie** (2020) UKUT 180 (LC)). The Tribunal is also satisfied that the subletting did not involve boarders or lodgers because neither of those people is entitled to sole occupation and the former involves the provision of food. The Tribunal is also satisfied that the Lessee was by the sublet using the premises for the purposes of a single private residence (**Nemcova v Fairfield Rents Ltd** [2016] UKUT 303 (LC) "*In short, for the covenant to be observed, the occupier for the time being must be using it as his or her private residence.*"). Accordingly, the Tribunal agrees with the interpretation of the lease by Ms Clark. Her view is also supported by the wording of Paragraph 16.
54. The fact that no notice was given to the lessor nor payment was made to the lessor's solicitor may be a breach by Professor Loomes of the covenant contained in Paragraph 16, but that does not mean that there is also a breach of Paragraph 14.
55. The next issue surrounds Paragraph 15 and the ability of the freeholder to make regulations.

Paragraph 15. The Lessee shall comply with and observe any reasonable regulations which The Lessor may consistently with the provisions of this Deed make to govern the use of The Flats and The Reserved Property Such regulations may be restrictive of acts done on The Property detrimental to its character or amenities Any costs charges or expenses incurred by The Lessor in preparing or supplying copies of such regulations or in doing works for the improvement of The Property providing services or employing gardeners porters or other employees shall be deemed to have been properly incurred by The Lessor in pursuance of his obligations under the Seventh Schedule hereto notwithstanding the absence of any specific covenant by The Lessor to incur the same and The Lessee shall keep The Lessor indemnified from and against her due proportion thereof under Clause 17 of this Schedule accordingly

56. The parties require some guidance here because they appear to have given this topic a wider scope than is actually provided. First of all, the paragraph has to be read in the light of paragraph 5 of the Fourth Schedule, which provides the lessee with *The right to use in common with the owners and occupiers of all other Flats and their visitors the gardens drives paths and forecourts forming part of The Reserved Property subject to such reasonable rules and regulations for the common enjoyment thereof as The Lessor may from time to time prescribe*. So, the regulations referred to there are confined to those imposed for the common enjoyment of the external reserved property.
57. Any regulations imposed by the lessor under Paragraph 15 have to be consistent with the provisions of the lease, which means that they cannot reduce the demise or access thereto. The regulations are clearly directed at actions detrimental to the character or amenities of the flats and reserved property. Obvious examples might be not to allow the use of a window ledge for the drying of clothes or hallways for the storing of goods. An external example might be not to leave scooters on the main drive. None of those examples interferes with the provisions of the lease and both are directed at actions detrimental to the character and amenities of the property.
58. The Tribunal has concluded that, given the lack of any prospect of cooperation between the parties in the near future, it is satisfied that other circumstances

exist which make it just and convenient for the order of management to be made.

59. Dr Scullion asserted that Ms Clark was not a suitable person because she acted for Professor Loomes in his subletting of his flat. The Tribunal does not find this to be a factor counting against Ms Clark. It would be unusual in a small town for landlords not to know and do some business with a local agent. Here the business was discrete and there is no evidence of any continuing relationship and certainly no evidence of any partiality.
60. Dr Scullion said he believed she was not a suitable person because she made threats to him in correspondence. The Tribunal is satisfied that no threats at all were made. Ms Clark merely pointed out the correct legal position of a freeholder under the Occupiers Liability Acts of 1957 and 1984. She accepted that her questioning of Dr Scullion could have been better handled, but that doesn't make it any the more of a threat.
61. Whilst not having previously acted as a Tribunal appointed manager, Ms Clark has considerable experience as a property manager and was able to explain to the Tribunal her understanding of the difference between the 2 roles. She also provided evidence of sufficient insurance and administrative resources to take on a task of this nature.
62. She was under no illusions as to the disharmony at the property and was unwavering in her wish to take on the role.
63. The Tribunal makes an Order under Section 24 of the 1985 Act appointing Ms Jenny Clark as Manager of the property. The terms of the Tribunal's Order are detailed below this Decision and form a part of it. The Tribunal has concluded that without the appointment there is no resolution in sight to the ruptured relationship currently evident. The appointment will be at some cost to the lessees, but, given the assurance that the Manager will act in accordance with the RICS Code of Practice for residential management and apply the terms of the leases in a wholly impartial manner, seeking accord where possible, and given that the parties can make further application to the Tribunal at a later stage, the appointment of a Manager appears to the Tribunal to be the only way forward for these currently warring parties. The Manager will provide a

focus and forum for the healing of wounds; should that not be possible, the Manager will in any event provide to all parties an impartial and professional service.

Section 20c Application

64. The Applicants have made an application under Section 20C Landlord and Tenant Act 1985 in respect of the Respondent's costs incurred in these proceedings.

65. The relevant law is detailed below:

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal,are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(3) The ... tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

66. In considering an application under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances. *“Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them.”* *"In my judgement the only principle upon which the discretion should be exercised is to have regard to*

what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.” (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000)).

67. “An order under section 20C interferes with the parties’ contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances.” “The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order...; “The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else”. (**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). “In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make.” (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).
68. Because the Applicants appears to have been forced before the Tribunal by the inability of the landlord to operate in common, the Tribunal has no hesitation in allowing their application under Section 20c of the Landlord and Tenant Act 1985. It directs that the landlord’s costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.

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 rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.



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

Case Reference: CHI/18UB/LAM/2022/0002

Property: Gaveney House, 5 Salterton Road,
Exmouth, Devon EX8 2BW

Applicants: Graham Loomes (Flat 1)
Michael Hooper (Flat 2)
Gordon & Susan Pullin (Flat 4)

Representative: Graham Loomes

Respondents: Graham Loomes
Michael Hooper
James Scullion (Flat 3)
Gordon Pullin
(Joint Freeholders, “the landlord”)

The Manager: Jenny Clark
Eaton-Terry Clark

Tribunal Members: Judge A Cresswell (Chairman)
Mr J Reichell MRICS
Ms T Wong

Date of Order: 13 May 2022

MANAGEMENT ORDER

1. In this Order:

Interpretation

“The Property” means the flats and other premises known as known as Gaveney House, 5 Salterton Road, Exmouth, Devon, EX8 2BW and registered at HM Land Registry under title numbers **DN218589, DN650083, DN652149, DN643255 and DN658198** 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, collectively, Graham Loomes, Michael Hooper, James Scullion and Gordon Pullin 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 Ms Jenny Clark

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

ORDER

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) **Ms Jenny Clark** of Eaton-Terry Clark Limited is appointed as Manager of the Property.
3. The Manager’s appointment shall start on **20 May 2022** (“the start date”) and shall end on **19 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 purpose of this Management Order is to provide for the management of the Property.
6. 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.

7. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
8. The 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.
9. 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.
10. 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.
11. 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

12. 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.

13. 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

14. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

Legal Proceedings

15. 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.
16. Such entitlement includes bringing proceedings in respect of arrears of service charge [and rent] attributable to any of the Flats in the Property, including, where appropriate, proceedings before this tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act or before the courts and shall further include any appeal against any decision made in any such proceedings.
17. 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

18. The Tenants are each properly responsible for payment of 25% of the Manager's fees, which are payable under the provisions of this Order but which may be collected under the service charge mechanisms of their Leases.
19. The sums payable are:

- (a) an annual fee of £607.50 inclusive of VAT per flat to be paid by 2 June 2022 and by that date in the following 2 years subject to a review of that sum by the parties on the anniversary of this Order (and any necessary application to the Tribunal by the manager in the event of there being no agreement) for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable);

- (b) any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code (so far as applicable); and

- (c) VAT on the above fees.

Ground Rent and Service charge

20. The Manager shall collect the ground rents payable under the residential Leases.
21. 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.
22. 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
23. 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.
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 Schedule 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 10 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 34 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate under title no(s) **DN218589, DN650083, DN652149, DN643255 and DN658198**. 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 8th day of January 2022.

“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 13th May 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 35, 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 £2 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 16 June 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

44. 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

45. 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).

46. 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.

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

Schedule of Additional Fees

All payments for below at an hourly rate of £54 plus VAT

Those services detailed in 3.5 of the RICS Code

Setting up systems for the management of the property

Major works and long- term agreements

Insurance claims

Preparing for and attendance at court for debt collection litigation (but, see 3.4 of the RICS Code)

Other litigation: Initiating, conducting, preparing evidence for attending hearings and attending hearings for and otherwise, application for a grant or consent, insurance claim, arbitration, or litigation.

Advising on and dealing with issues relating to breaches of covenants by lessees.

Advising or mediating on any disputes between leaseholders or Freeholders.

Handling 'excessive' correspondence or contact from any one Freeholder or Leaseholder - 'excessive' shall be defined as that which would require dedicated staff time of more than 90 minutes per three-month period. This is chargeable to the Freeholder or Leaseholder initiating the excessive correspondence or contact.

Provision of any physical documentation, current or historical, other than the annual budget, annual accounts and minutes of meetings (insurance documents will be sent via e-mail to Freeholders).

Arranging an inspection of the Property (other than the common parts thereof) or arranging a building survey or valuation of the Property as a security or for insurance purposes or preparing any schedule of dilapidations or inventory.

Dealing with local government matters including council tax valuations, planning permission, building regulation consent and grant applications.

Supplying extra copies of statements of account and copies of any other documents.

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Fire Risk Assessment and Asbestos Reports invoiced at cost. However, if there are any works required as a result of the reports, these could incur additional charges if the manager is required to oversee such works.

More than 5 photocopy pages at £0.25

Postage at cost

Other disbursements at cost

The cost of any advertising for recruitment of staff on behalf of the Freeholders.