



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

**Case reference** : LON/00BK/LVM/2022/0003

**HMCTS code** : P: PAPERREMOTE

**Property** : 17 and 17A Manchester Street, London,  
W1U 4DJ

**Applicants** : Carol Ellis-Jones (Flat 1)  
Sarah Buckley (Flat 2)  
Roger and Sylvia Storey (Flat 3)  
Mohammed, Adnan and Tariq Chida  
(Flat 4)  
Shantial and Chandabaia Shah (Flat 5)

**Representative** : Teacher Stern LLP

**Respondent** : Jamil Ahmud

**Representative** : Bloomsbury Law

**Type of application** : Variation of Order for appointment of  
manager

**Tribunal members** : Judge Robert Latham  
Christopher Gowman MCIEH

**Date of decision** : 4 August 2022

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**SUPPLEMENTRAY DECISION  
ON THE TERMS OF THE MANAGEMENT ORDER**

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

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face

hearing was not held because outstanding issues could be determined on the papers and no-one requested the same.

### **Decisions of the Tribunal**

- (1) On 30 May 2022, the Tribunal extended the current Management Order which was made on 21 January 2019 until 30 June 2025 (which is the end of the existing service charge year) on the terms of the existing order.
- (2) The Tribunal now varies this order in the terms attached to this supplementary decision as Appendix 1 with the Schedule of Additional Fees attached as Appendix 2. The Tribunal amended the current order to give the Manager: (i) the power to erect on the property a key safe; and (ii) to be responsible for consents in place of the landlord.
- (3) the Respondent is directed to notify the Tribunal within seven days whether he wishes to proceed with its current application for permission to appeal, or whether he would wish to amend his grounds to extend to an appeal against this supplementary decision.

### **Introduction**

1. On 30 May 2022, the Tribunal issued its decision to extend the current Management Order which was made on 21 January 2019 until 30 June 2025 (which is the end of the existing service charge year) on the terms of the existing order. We declined to attach a penal notice to the Management Order.
2. The Tribunal directed that, should the Applicants seek any other variation to the existing order, they should apply to the Tribunal for further Directions. Although the Applicants had indicated the additional variations that they sought, the written materials filed by the parties did not adequately address the implications of these variations and there was insufficient time to hear oral submissions. The Tribunal was also concerned about the impact on the Freeholder. At [68] of our decision, we indicated that we were sympathetic to the variations sought, given the past problems that have arisen in respect of the management of the Building.
3. On 10 June, the Applicants notified the Tribunal that they wished to pursue their application for variations to the previous order. The draft Management Order submitted by the Applicants reflects the Practice Statement on the Appointment of Managers which was given by the Chamber President in December 2021. The Applicants supplied a draft Management Order which provides for:
  - (i) The Manager to have the power to erect on the property a key safe (see para 5(h) of the attached proposed form of order); and

- (ii) The Manager to be responsible for consents (see paras 14 and 15 of the attached proposed form of order).
4. The Applicants stated that their Counsel has sought to agree these variations with the Respondent's Counsel or in the alternative to agree Directions for the determination of this aspect of the matter. No substantive response has been received. The Applicants were content for the outstanding issue to be determined on the papers.
  5. On 16 June, the Tribunal issued Directions pursuant to which:
    - (i) On 24 June, the Applicants filed a Statement of Case, drafted by Adrian Carr (Counsel);
    - (ii) On 15 July, the Respondent filed a Statement in Response drafted by Bloomsbury Law.
    - (iii) On 29 July, the Applicants filed a Reply, dated 29 July 2022, which is also drafted by Mr Carr.
  6. The Directions made provision for the Freeholder to file a Statement of Case. It has decided not to do so.
  7. On 24 June, the Respondent applied for permission to appeal our decision. On 5 July, the Respondent applied for a stay of the Directions so that any appeal could be determined, before this Tribunal determines the scope of the Management Order. On 6 July, the Tribunal informed the parties that we were not willing to grant the proposed stay. We also stated that we were minded to determine the terms of the Management Order before considering this application for permission to appeal. In the light of this supplementary decision, the Respondent is directed to notify the Tribunal within seven days whether he wishes to proceed with its current application for permission to appeal, or whether he would wish to amend those grounds to extend to the supplementary decision.

### **The Law**

8. We considered the relevant law at [29] to [32] of our decision. We highlight the following principles:
  - (i) The legislature has not thought it fit to embody in section 24(9) the various criteria set out in section 24(2) of the Landlord and Tenant Act 1987 ("the Act"). There is a clear contrast between the requirements when an order is made and when an order is varied.
  - (ii) Sections 24(2) and 24(9) deal with quite different situations. Section 24(2) is concerned with making an order where one does not exist, whereas section 24(9) is dealing with an order that is already in existence because the tribunal has already been satisfied that the tests in section 24(2) have been met.

(iii) In exercising its discretion under section 24(9), a tribunal must have regard to all relevant considerations. Part II of the Act is a “problem solving jurisdiction”.

(iv) The purpose of appointing a manager is to enable the property to be managed, subject to the control of the tribunal, in circumstances where the landlords’ management or discharge of its obligations under the provisions of the lease have been found wanting. The whole purpose of the jurisdiction is to enable the tribunal to ensure that what has hitherto been done inadequately and/or improperly is done adequately and properly.

9. The Applicants refer to two additional authorities.

In *Cawsand Fort Management Co Limited v Stafford* [2007] 1 EGLR 85 Mummery LJ stated (at [31]) that the practical purpose of the appointment of a manager is:

“to protect the interests of the lessees of premises which form part of the building, by enabling them to secure, through the flexible discretionary machinery of the appointment of a manager, the carrying out of the management functions which they are entitled to enjoy “in relation to” the premises of which their flats are part”.

10. In *Queensbridge Investments Ltd v Lodge* [2015] UKUT 635 (LC), one of the grounds of appeal was that the FTT had ordered that the power to grant consents was to rest with the manager. HHJ Huskinson considered the circumstances in which a management order can be made and stated:

“43. The power in section 24(1) is to appoint a manager to carry out in relation to any premises such functions in connection with the management of the premises or such functions of a receiver or both as the F-tT thinks fit. It is functions in connection with the management of the premises which the manager can be appointed to carry out, not the functions of the particular landlord under the particular lease in question.”

“44. I accept that as a matter of general principle, as well as for the purpose of complying with the relevant human rights legislation including in particular Article 1 of the first protocol to the ECHR, there must be a reasonable relationship of proportionality between the terms of the management order and the aim sought to be realised, in the interests of the community, by the management order. I respectfully agree with the Deputy President’s analysis in paragraph 51 in *Sennadine Properties Limited v Heelis* where he stated that the scope of an order under section 24 should be proportionate to the tasks which the tenants are entitled under their leases to look to their landlord to perform.”

11. The Applicants highlight that in *Lodge*, the leaseholders did not argue as a justification for the making of a management order, that the landlord had behaved wrongfully in relation to the granting of consent under the leases and that the removal of the landlord's power regarding the granting of consent was therefore unnecessary and disproportionate. HHJ Huskinson found (at [56]):

“... it is true that the application for the appointment of a manager did not include, as one of the grounds for appointment, any complaint regarding the granting or withholding of consent by the appellant under the leases. However, having regard to the criticisms made of the appellant by the F-tT, I conclude that the F-tT was justified in including within the management order a provision that the power of granting consent was to rest with the manager.

12. The Respondents argue that in considering any extension of the Manager's powers, the Tribunal must have regard to whether: (i) it is just and convenient to do so; (ii) whether such an order being an order of last resort, is appropriate; and (iii) it is appropriate to deprive a landlord of the right to maintain his own building by making such an order.
13. The Tribunal does not accept that this is an accurate summary of the law. The Tribunal has previously decided that a Management Order should be made and that the statutory requirements for making such an order have been satisfied. We are satisfied that our primary concern is what powers should be granted to the Manager to ensure that the property is properly managed. We should have regard to what is just and convenient having regard to the interest of the leaseholders, the landlord and the freeholder. The powers granted to the Manager must be proportionate to the outcomes sought to be secured through the making of a management order.

### **The Key Safe**

14. The Tribunal considers this to be a minor issue. We addressed this at [49] – [52] of our decision. It has only become a significant issue because of the entrenched position taken by the Respondent. The proposed key safe is small and unobtrusive (see photos at p.102-105). Four screws are required to fix it to the wall. Upon its removal, the screw holes can be filled and redecorated. The Manager has considered that a key safe is required so that contractors can have access to the Building to repair and maintain it. None of the leaseholders currently occupy their flats.
15. The Respondent objects on the grounds that the erection of the key safe is prohibited by Clause 3.15.4 of the Lease. In the past, the key safe has been abused. It is suggested that the safe is ugly, spoils the façade of the building and is out of character with the other period properties in the street. A key safe is not required, particularly given that the residential parts of the Building have now been refurbished.
16. The Tribunal is satisfied that we have jurisdiction to allow the Manager to instal a key safe when this is required:

(a) It is a function “in connection with the management of the premises” within section 24(1) of the Act; and/or

(b) as a matter “relating to the exercise by the manager of [her] functions under the order” or “such incidental or ancillary matters” within the meaning of section 24(4) of the Act.

17. The Tribunal is satisfied that it is appropriate for the Manager to have a power to install a key safe. It is not unusual for key safes to be provided to afford access for contractors. The major works have now been executed and the occasions when it will be required will be limited. The purpose of the key safe is solely to ensure that have access to the Building to repair and maintain the Building. It should only be used for this purpose. When a key safe is not strictly required, it should be removed.
18. We reject the arguments raised by the Respondent. The aesthetic objections are greatly exaggerated. We have made no findings as to whether the key-safe has been abused in the past; it was not necessary for us to do so. The Tribunal is satisfied that were the key safe to be used more generally so that leaseholders, their sub-lessees or visitors could have access to the Building, this would prejudice the security of the Building. It would be inappropriate for the key safe to be used for these extraneous purposes. The Manager must ensure that the key safe is not abused. She always has the option to vary the combination. Were the safe to be abused, it would be open for the Respondent to apply to this tribunal.

### **Consents to Assign and Underlet and for Improvements**

19. The Applicants apply for a variation whereby the Manager is responsible for the grant of all consents required under their lease, in place of the Respondent. Under the terms of their leases, leaseholders must obtain the prior written consent of the landlord before any assignment or underletting of a flat, such consent not to be unreasonably withheld or delayed. The Applicants contend that it is essential that they should be able to sell or underlet their flats, subject of course to the stipulations of the lease. These flats are very valuable and the leaseholders should be able to deal with such valuable assets without undue delay or obstruction from the landlord.
20. The Applicants submit that their leases contain a number of protections for the landlord in the event of an application for consent to assign or underlet:
- (a) By Paragraph 3 of Part II of the Second Schedule, the leaseholders may only underlet their flats under an AST or an underlease under which the undertenant gains no security of tenure. This clause gives the landlord with the security of knowing that the undertenant will have limited statutory security of tenure.

(b) By Paragraph 4 of Part II of the Second Schedule, the leaseholders must procure that every assignee covenants directly with the landlord to pay the rents and perform the covenants in the lease. This clause gives the landlord the security of knowing that every assignee will covenant directly with the landlord to perform the covenants under the lease.

(c) By paragraph 4 of Part II of the Second Schedule, leaseholders must ensure that every undertenant covenants directly with the landlord to perform all the leaseholder's covenants in the lease (other than those in relation to the payment of rent). This gives the landlord the comfort of knowing that it may proceed directly against the undertenant if the undertenant fails to comply with the obligations of the leaseholder in the leases.

(d) By paragraph 4 of Part II of the Second Schedule, leaseholder must procure that in the case of both an assignment and an underletting, such surety as may

reasonably be required by the manager shall join as a surety and enter into direct covenants with the landlord similar to the covenants in clause 6 of the lease. Once again, this gives the landlord the comfort of knowing that in appropriate cases the manager can require a surety, so that the landlord can recover any loss or damage he suffers as a result of any breach of the terms of the lease by an assignee or undertenant.

(e) By Paragraph 5 of Part II of the Second Schedule, leaseholders are required to include such provisions into any underlease to ensure it is in all respects consistent with the terms of the lease and shall: (i) contain covenants on the part of the undertenant to comply with the regulations in the Fourth Schedule to the lease; (ii) not contain any matter or be likely to give rise to any contravention of the lease; and (iii) not to permit the undertenant to sub-underlet.

(f) Paragraph 6 of Part II of the Second Schedule contains a number of requirements for leaseholders after an underlease is granted, which provide the landlord with additional protections, but are not necessarily relevant to consents to underlet.

21. By clause 3.15.2 of the lease, leaseholders must obtain the prior written consent of the landlord before carrying out alterations to a flat, such consent not to be unreasonably withheld or delayed. The Applicants contend that the Freeholder will not be prejudiced by this variation, as applications for consent for alterations need to be approved by the Freeholder under clause 3.14 of the landlord's own lease. Therefore, no consent for alterations may be given by the landlord, without first obtaining the approval of the Freeholder. The Freehold has not opposed the proposed variation.

22. At [55] of our decision, we found that on two occasions in 2016 and 2017, Mr Chida had tried to sell his flat and that on each occasion the sales have fallen through because the landlord failed or refused to provide a management pack. We did not accept the suggestion of Mr Ahmad that the sales fell through because the price was too high nor that no willing purchaser would withdraw because of a failure to provide a management pack. We accepted Mr Chida's evidence.
23. The Respondent notes that at the beginning of the hearing, Mr Chida no longer proceeded with his allegation that he had refused consent to carry out improvements (see [11] of our decision). He maintains that Mr Chida "made false allegations... to besmirch the good character of the Respondent. We found Mr Chida to be an honest and truthful witness. The problem was that the relevant letter seeking the landlord's consent had not been sent.
24. The Respondent submits that the Applicants can only rely on the problems that arose in 2016 and 2017 and that there has been no evidence of problems since the Management Order was made. To remove the ability from the Respondent to provide the requisite consents would deprive the Respondent from earning an income where an administration charge is payable. It is further a breach of his human rights.
25. At [44] to [42] of our decision, we discussed the additional difficulties that the Applicants faced in respect of the landlord's refusal to release their solicitor from the undertaking that it had given in 2014. At [57] to [59], we discussed the landlord's attitude to both his leaseholders and the Manager. At [64], we found that there had been a catalogue of management failures which led to the making of the Management Order. There was no evidence that the approach adopted by the Respondent had improved over the three year period that the Management Order has been in place. Rather, it seemed to have become more confrontational. The Respondent had not accepted any responsibility for the past failings that led to the making of the Management Order. Neither had he come up with any proposals for the future management of the Building.
26. In the light of these findings, we are satisfied that the Management Order should be varied so that the Manager is responsible for the grant of all consents required under their lease, in place of the Respondent. We are satisfied that this variation is required to enable the Building to be properly managed and to protect the interests of the leaseholders. We note that it had not been considered necessary to include this in the original Management Order. However, the terms of this Order were agreed by consent.
27. We are not impressed by the Respondent's argument that he would lose an income from the administration charges that he would be able to charge in respect of the granting of any consents. A landlord is only entitled to levy an administration charge in respect of any costs that he has reasonably incurred in granting such consents. Such Consents are required to protect



the interests of landlord and freeholder. They are not intended to generate a profit for the landlord.

28. The Tribunal had been concerned that the Freeholder might be prejudiced were the Manager to assume responsibility for consents for alterations. However, the Applicants have satisfied us that the Freeholder's consent will still be required and no prejudice will. The Freeholder does not oppose the proposed variation.

**Judge Robert Latham**  
**4 August 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).







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

**Case Reference** : **LON/00BK/LVM/2022/0003**

**Property** : **17A Manchester Street, London,  
W1U 4DJ**

**Applicants** : **Carol Ellis-Jones (Flat 1)  
Sarah Buckley (Flat 2)  
Roger and Sylvia Storey (Flat 3)  
Mohammed, Adnan and Tariq  
Chida (Flat 4)  
Shantial and Chandabaia Shah  
(Flat 5)**

**Representative** : **Teacher Stern LLP**

**Respondent** : **Jamil Ahmud**

**Representative** : **Bloomsbury Law Solicitors**

**The Manager** : **Alison Mooney**

**Tribunal members** : **Judge Latham  
Christopher Gowman MCIEH**

**Date of Order** : **4 August 2022**

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**MANAGEMENT ORDER**

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## **Interpretation**

1. In this Order:

**“The Property”** means 17 and 17A Manchester Street, London W1U 4DJ (including for the avoidance of doubt the first to third floors thereof, the door and entrance thereto at ground floor and all common parts thereof and all structure (both internal and external) including the roof and all common facilities therein) but excluding the Commercial Property as defined below.

**“the Commercial Property”** means all non-structural internal areas of the ground floor and the lower ground floor of the Building at 17 and 17A Manchester Street, London W1U 4DJ accessed through the door numbered “17” and which are used for commercial/office use and all services exclusively serving the same.

**“The Landlord”** shall mean the Respondent 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 Alison Mooney

**The Management Order** means the Order of the Tribunal dated 21 January 2019

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

### **RECITAL**

The Manager is appointed pursuant to the terms of the Management Order, which expired on 20 January 2022. The Management Order was extended temporarily pending determination of Applicants’ application dated 18 January 2022 for a continuation of the Manager’s appointment by a further period of 3 years.

### **ORDER**

2. In accordance with section 24(9) of the Landlord and Tenant Act 1987 (“the Act”) Alison Mooney’s appointment as manager of the Property shall be extended to 30 June 2025, which is the end of the service charge year.

3. 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.
4. The purpose of this Management Order is to provide for the management of the Property which includes taking steps to resolve the following problems of inadequate management identified by the tribunal:
  - (a) The general day to day management of the Property moving forward
  - (b) Dealing with consents under the Leases and providing pre-contract enquiry information
5. To address the steps identified in the previous paragraph the Manager is empowered to:
  - (a) Subject to the payment of the service charges by the lessees preform the Landlord's repairing and other obligations in Schedule 3 to the Leases;
  - (b) Arrange, manage and where appropriate supervise all repair and maintenance, building work and service contracts applicable to the Property and instruct contractors to attend the same, as appropriate;
  - (c) Give consideration to the works to be carried out to the Property, in the interest of good estate management;
  - (d) Engage insofar as necessary external experts to inspect and report upon what works are required/necessary;
  - (e) Set up a planned maintenance programme, as appropriate;
  - (f) Erect upon the Property and keep in place scaffolding or any other apparatus required with respect to the maintenance and repair thereof;
  - (g) Ensure that all necessary and relevant statutory consultation exercises are undertaken in relation to all qualifying works and any qualifying long term agreements.
  - (h) Erect upon the Property a key safe
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.

### Licences to assign, approvals and pre-contract enquiries

- 14. The Manager shall be responsible for carrying out those functions in the residential Leases concerning approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the Leases provide should be carried out by the Landlord.
- 15. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

### Legal Proceedings

- 16. 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.
- 17. 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.



18. 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

19. The Tenants are responsible for payment of the Managers' fees, which are to payable under the provisions of this Order but which may be collected under the service charge mechanisms of their Leases. A Schedule of Additional Fees is appended as an Appendix.

20. The sums payable are:

- (a) an annual fee of £625 plus VAT per flat 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.

### Service charge

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 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 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 her servants, agents and contractors) and their employees and agents access to all parts of the Commercial Property and 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.
  - (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**

34. To protect the direction in paragraph 32 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) NGL737746. 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 18 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 32 of an Order of the Tribunal dated [28 April 2022] have been complied with”

## **DIRECTIONS TO MANAGER**

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

### Registration

36. 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

37. 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

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

### Insurance

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

40. 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

41. 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

42. The Manager must:

- (a) by 26 May 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.

43. 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.

## Section 20C

48. All costs incurred by the Landlord of and in respect of these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Tenants.

(A Schedule of Additional Fees is attached as an Appendix)

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## Schedule of Additional Fees

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## Schedule of Management Fees and other Charges

Management fees are generally set on a "per unit" basis, with additional charges of 10% in respect of ground rental collection, and a fixed fee in relation to the management of any commercial elements within the building.

In the case 17 Manchester Street we suggest that annum for the period under FTT Manager Appointment should be set at £625 + VAT per unit per annum held for 3 years, which will include all standard block management tasks as well as the appointed manager role for the duration of the management.

NB All fees are quoted exclusive of VAT at the prevailing rate

Hourly charge out rates

• Director

hour

£250 + VAT per

• Team Leader

hour

£200 + VAT per

• Senior Property/Accounts Manager

hour

£200 + VAT per

• Property /Accounts manager

hour

£150 + VAT per

• Administrator £50 + VAT per hour

Westbury Residential Ltd reserves the right to review these rates on an annual basis.

Reduced daily rates are available for necessary attendance at court/tribunal etc.

### Other fees:

Licence for alterations

(Fee met by the lessee concerned) Administration fee of between £150 to £750

(exclusive of VAT) depending on the complexity of the application and the degree of liaison required. Building surveyors fees and legal fees will be charged separately by the professionals concerned.

Licence to Assign/Notice of Transfer or Mortgage(if applicable)

(Fee met by the lessee concerned) Administration fee of £115.00 (exclusive of VAT) per notice. Legal fees for the preparation of the documentation will be charged separately by the solicitors concerned.

Pre-sale enquiries

(Fees met by the lessee concerned) Our standard fee for the provision of information relating to pre-sale enquiries is £300 (exclusive of VAT). We offer an express service (replies within 24 hours) for an additional £175 (exclusive of VAT).

The information packs that we provide are tailored to the flat in question and include comprehensive replies to all the questions normally raised by solicitors along with all relevant documentation.

Credit Control Action (further than standard reminder process)

(Fee met by lessee concerned) Westbury Residential reserve the right to charge on our hourly basis for any additional credit control work required where a leaseholder does not pay their due service charges or ground rental following the third

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reminder, including writing further letters, referral to legal action, and attendance at court or Tribunal as and where may be required.

Licence to sublet (If applicable)

(Fee met by the lessee concerned) Fee of £150 (exclusive of VAT) for the approval of references and the grant of a formal licence. Renewals to the same tenant charged at £50 (exclusive of VAT).

Works Supervision Services

Administration of Major Building Works (this fee includes all relevant site meetings, attendance, inspections, assisting with preparation of specifications, tendering and general contract administration) not to exceed 1 % of the contract sum (projects of over £50k) and 2% of the contract sum (projects under £50k). Compliance with CDM Regulations will be arranged via a separate contractor and a fixed fee (or percentage of the contract sum if appropriate) agreed with the Board, Major works are normally defined as those requiring formal consultation with lessees under the Landlord and

Tenant Acts.

Preparation/Attendance at Court/FTT for Client

Reduced daily rates are available for necessary attendance at Tribunal/Court etc.

Preparation in contemplation of action at FTT or for nomination for appointment as manager, fee subject to individual quotation.