



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

Case Reference : **LON/00BA/LVM/2022/0018**

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

Applicants : **Mr R Thwaites (Tribunal appointed
manager)**

Representative : **Mr James Castle, counsel**

Respondent : **(1) Lessees of Kilmeny House
(2) Kilmeny House Limited**

Representatives : **I/P**

The Manager : **Mr Richard Thwaites**

Tribunal members : **Judge Tagliavini
Mr I Holdsworth FRICS**

Type of application : **Application to vary a management order
dated 17 June 2017**

Date of decision : **3 February 2023**

DECISION

Summary of tribunal's decisions

- (1) The tribunal varies the Management Order dated 17 June 2017 (as varied) and substitutes and appoints Mr Phil Heywood AIRPM as the Manager of the property known as Kilmeny House, 36 Arterberry Road, London SW20 8AQ ('the Property') until **31 December 2023**.
 - (2) As a condition of the variation and as an addition to and requirement of the Management Order dated 17 June 2017 (as varied) the tribunal requires the Manager to comply with the terms of Appendix A (included in this Decision).
-

Background

1. This has been a longstanding matter as the tribunal first appointed a Manager of the Property on 17 July 2017 . Since then, the tribunal has made various Orders which have had the effect of continuing the appointment of a Manager. A tribunal appointed Manager is said to be required due a fundamental defect in the leases, in that they fail to provide for the complete recovery of the relevant costs incurred and do not permit the charging of a management fee.
2. These defects render the service charge provisions unworkable without the intervention of the tribunal as the lessees cannot agree to vary their leases so that proper provision is made for the payability and collection of service charges and the payment of a managing agent.

The current application

3. Mr Thwaites, the tribunal appointed manager, was effectively put on 'gardening leave' from his post by his employer FirstPort of 30 June 2022. As Mr Thwaites employment with FirstPort effectively ended on that date, his insurance cover required as a condition of the Management Order also came to an end as well as the administrative and other support FirstPort had provided and consequently, Mr Thwaites was no longer able to carry out his duties as a Manager for the remaining term i.e. until **31 December 2023**.
4. In response to this change of circumstances, Mr Thwaites made this application for a variation of the Management Order seeking his replacement by the Manager by Mr Phil Heywood of FirstPort under s.24(9) of the Landlord and Tenant Act 1987.

The hearing

5. A hearing of the application was held by VIDEOREMOTE at which Mr Thwaites attended and was represented by Mr Castle of counsel. A

number of lessees also attended and represented themselves, namely Mr Jung (Flat 4); Mr Holiday (Flat 2) and Mr Walker (Flat 2).

6. Mr Castle submitted that it was 'just and convenient' for the variation sought to be made as without a Management Order, the defects in the lease would continue and the Property could not be provided with a proper range of services or reasonably maintained. Therefore, Mr Castle submitted that the substantive issue for the tribunal to consider was whether Mr Heywood is a suitable replacement as Manager. The applicant also contended that that no conditions were proposed or necessary or otherwise desirable to the variation sought.
7. In oral evidence to the tribunal Mr Heywood told the tribunal that he intended to hand day to management over to another employee of First Port and to hold monthly conversations about the progress of intended s.20 works. Mr Heywood told the tribunal he intended to recover the debt owed by several lessees but was unable to tell the tribunal how much was owed or the exact process he would utilise to achieve his stated aim as was currently 'working through the process' of understanding the service charges.
8. On questioning by Mr Jung, Mr Heywood told the tribunal he can rely upon a 'huge back office to undertake the necessary s.20 works although both Mr Jung and Mr Walker expressed concern about the scope of the works and the proposed budget.
9. The tribunal also heard oral evidence from Mr Thwaites who informed the tribunal that his previous employer FirstPort had effectively 'stepped in' as the Manager since 30 June 2023 after having reached a Settlement Agreement and pending the outcome of this application.
10. Mr Jung purported to speak in his capacity both as a freeholder and on behalf of some lessees although all lessees present made it clear to the tribunal that no party objected to the variation of the Management Order that had been sought. The tribunal also heard oral evidence from Mr Walker who like, Mr Jung expressed reservations about how necessary works of repair were to be identified, their extent and cost despite a Manager having been appointed to address these issues.

The tribunal's decision

11. The tribunal determines that the Management Order of 17 June 2017 (amended) is varied and Mr Phil Heywood AIRPM of FirstPort is appointed as the Manager of the Property until 31 December 2023.

Reasons for tribunals decision

12. Section 24(9) of the Landlord and Tenant Act 1987 states:

The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) the tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

13. In making this variation the tribunal had a number of reservations about Mr Heywood's intention of having limited contact with the management of the Property and the manner in which he intended to fulfil his obligations and responsibilities under the terms of the Management Order. The tribunal was also concerned about Mr Heywood's employment with FirstPort, who in the knowledge of Mr Thwaites appointment as Manager by the tribunal, had nevertheless agreed a severance and then had acted, without the tribunal's authority as the Manager of the Property.
14. The tribunal was also concerned as to the level and extent of the dispute among the lessees as to how to address the maintenance and repair problems identified at the Property and their cost. The tribunal was also concerned that these problems were both longstanding and that Mr Heywood's limited familiarity with the Property was likely to lead to further delay in their resolution.
15. Therefore, the tribunal attaches Appendix A as a condition of the variation and imposes in the Order a requirement on the Manager to comply with its terms.
16. However, the tribunal is persuaded that not to continue the appointment of a Manager in light of the significant defects in the leases, without providing the lessees with a proper opportunity to further consider (i) how the situation can be resolved without the appointment of a Manager and (ii) a suitable alternative to Mr Heywood and his proposed 'arm's length' approach to the management of the Property, is more prejudicial to the parties than to refuse to appoint Mr Heywood as Manager for a relatively short period.

17. Consequently, the tribunal is satisfied that the variation will not result in a recurrence of the circumstances that led to the original Order being made and that it is 'just and convenient' to make the variation sought.
18. However, the tribunal brings to the attention of the parties that the appropriateness of any further variation of this Management Order is likely to be extensively scrutinised in light of the date of the original Order; the apparent unwillingness of the parties to agree a variation of their leases for the long-term benefit of all the lessees in order to resolve for themselves the difficulty presented by the differing lease terms and the appropriate manager to appoint in light of Mr Heywood's expressed intention to have limited 'hands on' contact with the Property.

Name: Judge Tagliavini

Date: 3 February 2023.

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).

**Appendix A - addition to Management Order dated 17 June 2017
(as varied)**

Costed Cyclical Works Maintenance Programme

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

The Tribunal requires the appointed manager to facilitate and carry out the following tasks:

1. The instruction of a suitably qualified Chartered Building Surveyor to inspect all the premises and grounds.
2. The inspection to identify any material defects that require repair and maintenance works to remedy.
3. The identified and necessary repair and maintenance works to be categorised as follows:
 - **Works that need urgent attention.** These are necessary and required repairs works or enquiries to be undertaken immediately to ensure the safety and integrity of the property;
 -
 - **Required repairs or replacement works that are not urgent or serious.** These are necessary works typically carried out some 2-5 years following the inspection and reporting.
 -
 - **Longer term maintenance and improvement works.** These are identified repairs and maintenance that are necessary to maintain the fabric and integrity of the property and grounds. These typically are undertaken 5-10 years after the inspection and reporting.
4. All identified necessary works to be costed at current prices. Any required specialist advice to be obtained.
5. The preparation of a fully **Costed Cyclical Works Maintenance Programme** based upon the tasks 1-4 listed above. **This to be done within 6 weeks of issue of the Tribunal Order.**
6. After consultation with the tenants about the content of the drafted Costed Cyclical Works Maintenance Programme a **final works programme** to be agreed. **This to be done within 10 weeks of issue of the Tribunal Order.**

7. The Tribunal require the **final works programme** to be relied upon by the appointed manager as the principal reference source for the:
 - Identification of any future Section 20 consultation.
 - The calculation of Sinking fund charges; and
 - The assessment of service charge maintenance works budgets.