FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/22UN/LAM/2022/0002**
Property	:	**Brannam Court** **High Street, Dedham** **Colchester, Essex CO7 6DE**
Applicant	:	**Katherine Fenton (Brannam 2)**
Respondents	:	**1. Mary Nicolette Mann (Dr Nicky Hart)** **2. Louise Hart (Brannam 1)** **3. Jayesh Kotecha** **4. Mandeep Sandhu** **5. Linda Barrett**
Type of application	:	**Appointment of a manager**
Tribunal members	:	**Judge David Wyatt** **Mr G F Smith MRICS FAAV REV**
Date of decision	:	**21 March 2023**

DECISION

Decisions of the tribunal

(1) The tribunal has decided to appoint Lewis Paul Cassar MIRPM AssocRICS as manager of the Property on the terms of the accompanying management order.

(2) The tribunal office will arrange to send this decision and the order to the e-mail and postal contact details it has for the parties, but the Applicant shall send electronic copies to Mr Cassar, the Respondents and the freeholders of Brannam Cottage to ensure they receive them as soon as possible.

Reasons

Background

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1. This decision should be read with our decision dated 23 December 2022 determining payability of service charges and all historic matters in relation to the application for appointment of a manager (the "**2022 Decision**"). In this decision, we use the expressions defined in the 2022 Decision but for brevity and to avoid confusion with the neighbouring freeholders we refer to the First Respondent freeholder of the Property simply as the "landlord".

2. In January 2023, under the provisions for this in the 2022 Decision, the Applicant provided a detailed management plan from their new proposed manager (Lewis Paul Cassar MIRPM AssocRICS of Transparent Property Management Ltd ("**TPM**")) with supporting documents. The landlord produced their submissions and supporting documents in response. On 2 February 2023, we reviewed these documents and directed a further hearing to enable the tribunal to decide whether to appoint and, if so, on what terms.

3. In view of the potential costs proposed in the management plan, we directed the Applicant to write to Jayesh Kotecha and Mandeep Sandhu (leaseholder and sub-lessee, respectively, of the larger commercial unit trading as the Dedham Pharmacy), Linda Barrett (leaseholder of the smaller commercial unit, trading as The Salon) and Louise Hart (the leaseholder of the residential unit known as Brannam 1). They had all previously been notified of the proceedings; those who had responded before the previous hearing had been in favour of appointment of a manager, but the documents from the previous proposed manager had given little detail about what works and costs might be involved. Copies of the new management plan and other documents were sent to these leaseholders with copies of the directions, which noted that the tribunal was minded to add them as parties to the proceedings. They were encouraged to liaise with the new proposed manager and attend the hearing. They were directed to by 1 March 2023 send to the tribunal any representations about whether they should be joined, the proposed manager and the proposed terms of appointment.

4. On 28 February 2023, the Applicant produced a slightly revised version of the management plan (removing an estimated £1,600 for drafting the specification of works, because this was included in the figure for professional fees). The landlord sent a note that Rose builders, under the supervision of Mr Greenwood, had now completed items 5 and 7 of the structural repairs specified in 2020, but Mr Greenwood had recommended installation of an additional prop for the ground floor of the pharmacy. The landlord said item 6 (the salon guttering and downpipe with new shoe to discharge at ground level) was "pending" a visit from a roofer and items 8-10 remain (the crack and parapet wall on the western elevation and the split roof rafter in Brannam 2) ("*...with quotes, listed building consent and instructions in place ready to proceed...*").

5. On 1 March 2023, Louise Hart sent written representations with supporting documents, confirming she wanted to be added as a party

and was in favour of appointing a new manager but did not agree with parts of the management plan. Later on 1 March 2023, Mr Sandhu wrote to confirm he would like to attend the hearing, expressing concerns about the additional costs and other matters. On 8 March 2023, the Applicant sent a copy of communications which had apparently been sent by the Respondent to all leaseholders, and written submissions from the Applicant. There were no submissions from Linda Barrett.

6. The hearing by video from 10am on 9 March 2023 was attended by the Applicant and Mr Brown, the landlord, Louise Hart, Mr Sandhu, Mr Kotecha and Mr Cassar. Since Ms Hart confirmed she wanted to be joined and there were no objections to joining the other leaseholders, we added them to these proceedings as additional Respondents.

The proposed manager

7. Mr Cassar confirmed he was independent, having responded to an e-mail enquiry from the Applicant around early December 2022. He had not been appointed or proposed as a tribunal-appointed manager before. He was a founder and is a director of TPM, which is regulated by RICS. He had worked in property management for over 14 years and at TPM since 2019. TPM manage about 70 properties, from small four-unit blocks to large estates with hundreds of units, including three listed buildings, in Essex and London. He proposed to do the day to day work for the Property himself, but if he was unavailable members of staff with the same level of accreditation would be. TPM currently has three full-time property managers and administration staff, and the other director is an accountant. TPM is based in Rayleigh, but Mr Cassar explained that it will generally take less than an hour to drive to the Property. He anticipates most of his work will be liaising with the relevant parties and professionals remotely, with some site visits. He produced evidence of professional indemnity insurance cover for himself and TPM, expressed to include cover for an manager appointed under section 24 of the 1987 Act, with a limit of £5 million per claim. He had reviewed the leases, inspected the site, discussed matters with the landlord and met or offered to meet the leaseholders. He had not yet discussed matters with Mr Greenwood, the structural engineer.

8. In his draft management plan, Mr Cassar noted that any works which may affect the character of the building were likely to need the involvement of a conservation surveyor or architect who were expert in listed buildings. Two potential firms (Purcell and NJ Architects) had produced initial proposals, enclosed with the management plan, for assisting with the current proposed major works. The plan produces a helpful summary specification of potential works, including the remaining items from Mr Greenwood's list, investigation and repair of the western elevation and corner post, rainwater goods and other matters. On the information currently available, some of which will be out of date, this estimates that the costs of such works might be in the region of £60,000 plus VAT. The plan proposes to spread this over

three years, with more collected in the earlier years. Together with the proposed general estimated service charges this might result in service charges for those paying the highest proportions of about £14,000 in the first year, about £10,000 in the second and about £7,000 in the third. If the leaseholders of Brannam 2 and the Salon wish the manager to arrange woodwork repairs for them the same time at their own cost (since the relevant window frames and so on are demised to them), the combined additional costs for them were estimated at £10,000 plus VAT.

Scope of works and how to procure them

9. There were no real objections to the scope of potential repair work described in the management plan, but the landlord and Ms Hart said that in addition the third roof valley gutter should be re-lined (with lead, they said, for durability and because alternatives had to be applied with heat which was not safe for this roof) while scaffolding is erected for the other works. The landlord said the two other roof valley gutters had already been re-lined with lead and this remaining valley gutter was the widest, inaccessible and difficult to clean. They also produced extracts from e-mail correspondence between the landlord and Mr Greenwood discussing arrangements to investigate the long-outstanding timber post on the rear corner of the western elevation; that was included in the proposals in the management plan. Mr Greenwood appears to be saying initially, in response to an undisclosed question, that the architect's proposals seem appropriate, not something he can or would challenge.

10. Mr Cassar confirmed that the works described in the management plan were only estimates of the types of work and cost which might be involved. If he was appointed, a surveyor or architect would be engaged to inspect the entire building, including the roof areas, to identify what repair is now needed and enable the most urgent items to be identified and planned, depending on what funding was available over the relevant period and what works can best be carried out at the same time or in packages to make payments manageable. He referred to a listed building in London managed by TPM where an initial survey was carried out by the relevant professionals (using scanning equipment to minimise the need for intrusive tests) to enable assessment of the most important works. Although the appointment was proposed for three years, he would prepare a five-year plan with sinking/reserve fund contributions to help prepare for the next set of works in future.

11. Mr Cassar had proposed a fresh consultation exercise for the proposed major works. The landlord and Ms Hart opposed this, arguing that items of repair work had been included in previous consultation exercises and it would be better to proceed with Rose builders and apply to the tribunal to dispense with the consultation requirements. Mr Cassar pointed out that the previous consultation exercises and reports had been several years ago. He advised a fresh assessment

based on inspection of the current condition of the building. Some new or alternative items of work might be identified depending on what has happened over recent years and what now needs to be prioritised and it would probably be better to protect leaseholders by going out to the market afresh under the consultation requirements. Since some of the leaseholders might need to arrange loans, he did not expect the necessary funds to be available until the end of the consultation period. Of course, the management plan is only a starting point and he is not precluded from applying for dispensation if that becomes appropriate or if the need for additional works is identified later in the process.

12. The landlord and Ms Hart argued strongly that the remaining items planned by Mr Greenwood should be carried out by Rose builders to his designs and under his supervision, to avoid duplicating costs. The landlord and Ms Hart anticipated that the costs of these items will be modest (the landlord referred to £9,000 and lower figures; Mr Greenwood's informal estimate of his fees is noted in the 2022 Decision). We understand their concern, but Mr Cassar confirmed that if he was appointed he would seek a detailed discussion with Mr Greenwood with a view to arranging for his designs to be part of the information provided to the professional responsible for the overall planning of the works, whether or not Mr Greenwood or another structural engineer is engaged to assist with that. His or their fees would be involved in any event. Mr Greenwood had rightly pointed out in the earlier hearing that he cannot advise on other repair work, only structural engineering elements.

13. We consider it is likely to be better to carry out these works as part of a fresh package of planned works. We were glad that after the lack of any real work since 2021 the landlord had, following the last hearing, arranged for items 5 and 7 (which include propping in the pharmacy) to be carried out in January and/or February 2023. However, developments since Mr Greenwood's specification had been prepared and seeing the work carried out had led Mr Greenwood to advise installation of an additional prop and now in addition that strapping be provided, to new designs which he is said to be preparing. The same may well happen in relation to at least some of the other remaining items (particularly the crack and parapet wall). Further, the landlord said based on advice from Mr Greenwood by reference to e-mail correspondence with the conservation officer from 2021 that the earlier listed building consent could still be relied upon. We note that argument, but we would expect Mr Cassar to liaise (or ensure the relevant professional liaises) with the conservation officer afresh about such matters to keep them up to date and ensure that listed building consent is in place or obtained in advance for any proposed works.

14. Mr Sandhu confirmed two props had now been installed in the pharmacy but noted it had not been clearly communicated to him that there was any proposal to put in another prop or strapping. He said the works arranged by the landlord had been "*very stop-start*", so the interruptions over time had a major impact on his pharmacy business.

Funding

15. It was not disputed that the Landlord had not produced service charge demands for or since 2022 and the Applicant had promptly paid to the Landlord the remaining service charges we determined in the 2022 Decision to be payable for the years to and including 2021. We had checked with the Applicant at the previous hearing that she could afford the types of contributions envisaged for major repair works, having set aside some funds for such costs when she purchased her lease. Mr Cassar understood that some of the other leaseholders might need to borrow to fund their share of the costs of repair works, but had explained the need to fund preventative works now to avoid losing more later when disrepair allows more damage and/or affects the values of their leases.

16. Linda Barrett of the Salon had not attended the hearing but had discussed matters with Mr Cassar when they met and said she would liaise with her business partner about funding. Mr Cassar confirmed that, like the Applicant, she understood that the timber window frames and door leased to her were her repair responsibility, and would be glad to have a manager to organise works to repair these at the same time as the works to the rest of the building. TPM's systems could accommodate collecting the necessary funds to ensure the service charge accounting is separate. Mr Sandhu agreed it was obvious that substantial work would be involved for the building and it was important to get it "up to scratch". It was not said that the pharmacy leaseholders could not afford the type of contribution (£30,000 or more for those paying the larger proportions, in the potential instalments noted above) being suggested. Their main concern was the proposed substantial increase in the proportion to be paid by the pharmacy, considered below.

17. Louise Hart had said in her written submissions that she could not afford the sums being proposed. We asked whether she had budgeted for repair costs when purchasing her lease in 2020, knowing of the circumstances from her family and the website published by the landlord. Ms Hart said she had and had already contributed towards repair costs so far. Ms Hart confirmed she had no mortgage, but told us she had taken out personal loans to pay for internal refurbishment works for her flat costing £100,000. She rents the flat out for £1,675 per month. We noted that the landlord now estimated £50,000 should be spent on major works, in addition to general service charges, estimating an average budget of £20,000 for each of the next three years. When we asked what Ms Hart could afford, she could not initially give a figure but later in the hearing said that she could afford £6,000 per year.

18. We noted that each leaseholder other than Mr Sandhu (who is the occupying sub-tenant running the pharmacy business) has a very long lease at nil rent. A full survey may identify the potential for works costing hundreds of thousands of pounds, but Mr Cassar is not

proposing an immediate budget of that size. He is proposing to prioritise the most urgent works and prepare for future work based on what can reasonably be funded in the short to medium term, to seek to protect the building. We cannot advise, but it appears the leaseholders each need to make appropriate arrangements to ensure they will be in a position to contribute substantial sums to enable repair of the exterior of this Grade II* listed building if they are to protect their own property interests.

Manager's proposed fees and professional fees

19. Mr Cassar's proposed annual management fee was in effect £3,000 plus VAT. He proposed to allocate £2,800 plus VAT of this to Building Expenses and £200 plus VAT to Estate Expenses. Mr Cassar had estimated that he would spend at least 28/30 hours each year at his standard £100 hourly rate. It was noted that at the equivalent of £700/£750 per unit this is substantially higher than normal property management fees (the landlord referred to Block Management in Sudbury, who she had ultimately decided in 2019/2020 not to appoint). However, we are satisfied that his proposed fixed fee and allocation is reasonable. This is not a simple small block; there are few units relative to the work which will be involved. More is expected of a tribunal-appointed manager than a normal property manager. Mr Cassar will need to spend substantial amounts of time liaising with the relevant parties, professionals and contractors, and make appropriate decisions based on realistic funding and what the building needs most urgently, while planning for the future.

20. There were concerns about the potential for excessive fees from whichever architect or surveyor (in addition to any structural engineer) might be involved, where it had been suggested that the manager could charge 8% plus VAT of the major works cost where external professionals were involved and 15% plus VAT where no external professionals were needed. Mr Cassar acknowledged that the latter would be at the top of the range of potential fees and was intended only to estimate the highest potential fee. He said that when specialists were involved his input would normally be minimal, so there would be no additional fee. He would only seek to charge a major works fee if he was spending substantial amounts of time in preparing a basic specification, assessing tenders and overseeing work, or the like. He was not a chartered surveyor and confirmed generally his role would be to identify the need for experts and engage the right specialists as appropriate. Again, the 8% plus VAT was an example of his highest potential fee where professionals might be involved and would depend on their role and fees.

21. We checked everyone understood that as matters stood all we could do in a management order was to specify what proportions of estimated costs each leaseholder should pay in advance and make provision for a reasonable major works fee for the manager if in any case it is reasonable to charge this in addition to the fixed annual management

fee and any external professional fees. This would not prevent Mr Cassar or the leaseholders from applying to the tribunal (under section 27A of the 1985 Act, in the case of the residential leaseholders) to determine what estimated fee would be reasonable for specific proposed major works or, ultimately, what major works fees or costs had been reasonably incurred. There were no objections to this.

Apportionments

22. Ms Hart said she had not previously asked to take part in the proceedings, having attended the inspection and previous hearing to support the landlord, because until now she had not taken her own legal advice. She said that, when we inspected the Property and asked what people wanted us to look at, she had not asked us to inspect the interior of her flat because she had been deferring to the landlord. She argued that she should pay a lower service charge proportion and the pharmacy should pay a much higher proportion. Her arguments largely repeated those which were made by the landlord for the previous hearing. She added a new assertion (made with the landlord with her previous application for permission to appeal) that the apportionment(s) for the commercial premises "*fits closely*" with their rateable values and repeated various other assertions, including that proportions are based on inaccurate lease plans.

23. With her submissions, Ms Hart produced a floor plan from a different provider, which is marked "*information only*". She also produced a better-quality copy of the ALS measurement plans which had been produced by the landlord for the previous hearing; this was helpful because they are much clearer. She argued again that the pharmacy basement or 50% of its area should be included in the floor area calculation for the pharmacy. She asserted that load bearing walls had been removed by the "*retail*" premises and the display windows put "*significant pressure*" on the building. She argued again that the exterior wall areas were relevant and there should be different apportionments for this. She produced a document described as an exterior refurbishment wall survey asserting total exterior wall areas of 20% for Brannam 1, 58% for Brannam 2, 19% for the Salon and 3% for the pharmacy. She argued that her proposed proportions in "*Row 4*" of the table enclosed with her submissions were the "*most fair and reasonable for service charges, moving forward*", saying her calculations did not exclude the stairwell area. Ms Hart's proposals were 42.9% (up from 29.6%) for the pharmacy, 6.9% (down from 9.8%) for the smaller commercial unit, 25.1% for Brannam 1 (down from 31%) and 25.4% (down from 29.6%) for Brannam 2.

24. Mr Kotecha said that in addition to the matters noted in the 2022 Decision the height in the basement was restricted; that was not disputed. Mr Sandhu said he had taken his sublease in 2017 at the historic service charge proportion of 29.6% and argued that anything more than this was unfair. For the 2021 service charges the landlord had sought and he has been paying a 40% proportion for the time

being. Ms Hart seemed to accept that calculating the proportions by including 50% of the pharmacy basement area (as her proposed proportions appear to do) would be too much. We consider that (even disregarding all other factors) including 5% of the area of this basement would be too much. We noted her submissions were that, if the basement were disregarded but the upper floor stairwell and restricted-height areas were included, the floor areas reported by ALS would be 35% for the pharmacy, with the smaller unit at 6.4%, Brannam 1 at 29% and Brannam 2 at 29.6%. Those are almost exactly the same proportions as those we estimated at [54] in the 2022 Decision. When we asked, Ms Hart said "*even that*" would be more reasonable and confirmed she was open to a fair and reasonable proportion.

25. Having heard from Ms Hart, Mr Sandhu and Mr Kotecha, and reviewed the better-quality copy plans from Ms Hart, we are not satisfied that for the purpose of the estimated charges payable under the proposed management order for Building Expenses there should be any change to the proportions payable by The Salon or Brannam 2, or that there should be any substantial change to the proportions payable by the larger commercial unit or Brannam 1. However, we are satisfied that Brannam 1 should pay the same proportion as Brannam 2 and the difference should be made up by the larger commercial unit. For the purpose described above, the fair and reasonable proportion of future estimated costs for Brannam 1 is 29.6% and the resulting fair and reasonable proportion for the larger commercial unit is 31%. This in effect substitutes their historic proportions. In our assessment, this gives appropriate weight to the matters relied upon by Ms Hart, mainly the fact that it appears and is now not disputed that Brannam 1 probably has a similar or slightly smaller floor area than Brannam 2 and the larger commercial unit represents 35% (or slightly more, if a suitably small proportion of their basement area is included) of the total floor area. These matters are balanced against all the other factors noted at [50] to [55] in the 2022 Decision, keeping in mind the scope of potential works and sinking/reserve fund contributions, which appear likely to include estimated/potential costs in relation to the roof areas.

Insurance

26. Despite the earlier direction to do so and reminders from the tribunal and the Applicant, the landlord had not produced adequate details of the buildings insurance cover she had arranged. Accordingly, and because it appears from an initial estimate that Mr Cassar was likely to be able to procure buildings insurance at a lower cost, it was proposed that the landlord cancel her insurance policy from a specified date and the manager arrange cover with effect from that date. The landlord said she had decided to "*hold off*" sending the requisite details until she knew whether Mr Cassar would be appointed, she had then spoken to Mr Cassar and she understood he could take the policy over.

27. Again, we cannot advise, but we warned of the need to ensure that adequate insurance cover is in place but two different policies do not

enable two insurers to deny cover by reference to the other. Mr Cassar noted there would be a need for an up to date reinstatement cost assessment. The landlord said her policy runs from 1 January for 12 months and has "*everything necessary and more*" with a reinstatement cost value of £1.4m. Mr Smith warned that figure may be inadequate for a building of this type, particularly in case of partial damage being limited to a proportion of the specified value. We encouraged the landlord to without further delay send Mr Cassar a copy of the policy details and discuss the reinstatement cost and insurance arrangements with him. However, in the circumstances our order will make provision requiring the landlord to cancel her own policy with effect from a specified date, if Mr Cassar does not elect to take it over, so that Mr Cassar can take out his own and manage it appropriately.

General

28. Ms Hart said it was not reasonable to expect her to contribute towards any estimated costs of scaffolding for the wall outside the Applicant's premises when work could have been carried out under the surface repair/decoration arrangements to which the Applicant had objected in 2021. We do not consider this argument has any force. As we noted in the 2022 Decision, in 2020 and 2021 the Applicant had paid as much as was reasonable to expect her to pay in the circumstances. Further, as we observed at the hearing and was not disputed, it seems that scaffolding would be needed in any event for the structural and other substantive repair works to the western elevation and the roof works said by the landlord and Ms Hart to be pressing.

Conclusion

29. At the end of the hearing, the landlord helpfully confirmed she did not oppose appointment of Mr Cassar and hoped he would be successful. She noted that, while the proposed costs were spread, the larger payments were in the first and then second years; we can see that is likely to be necessary. She and Ms Hart supported creation of a sinking/reserve fund. Mr Sandhu had confidence in Mr Cassar. Mr Kotecha supported appointment of Mr Cassar; he was particularly concerned to have someone producing statements of account and was reassured by Mr Cassar's description of TPM's accounting and portal/information arrangements. Mr Cassar confirmed service charge funds would be held in a separate client account, reconciled daily. Mr Kotecha also pointed out that he would be glad to have a UK-based manager only about an hour from the Property, since the landlord was based abroad. Ms Hart said she had been encouraged by what had been said during the hearing and endorsed appointment of Mr Cassar.

30. In all the circumstances, we are satisfied that it is just and convenient to make the enclosed management order. We understand the concerns expressed about the professional fees likely to be involved, but it is important to seek to ensure that pressing works are now properly identified, planned, funded and carried out as soon as practicable. If

there are disputes about reasonableness of estimated costs, an application can be made to the tribunal to determine this, but the leaseholders may wish to make appropriate payments to the manager when demanded even if they wish to do so under protest, to avoid further delay. Again, we cannot advise.

31. Our comments on the draft management plan are set out in this decision; it represents a helpful starting point before appropriate investigations, planning and liaison with the parties. The landlord did not object to the bullet points on page seven of the management plan but as matters stand some of the wording in the last two bullet points may go a little too far (Ms Hart is the landlord's daughter and we have not been asked to make a specific order about the landlord's website). We hope it will not become necessary to apply to the tribunal about such matters, but the order makes the usual provision for such applications. As set out in the order, all the parties must ensure they co-operate with the manager and do not interfere with his management, whether by making representations to his proposed contractors or professionals, obstructing access or otherwise.

Name: Judge David Wyatt **Date:** 21 March 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).