



**PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **LON/00AH/LVM/2022/0020**

**Property** : **Liberty Point, Blackhorse Apartments,  
335 Lower Addiscombe Road, Croydon,  
Surrey CR0 6RF**

**Applicant** : **London & Quadrant Housing Trust**

**Representative** : **Mr B Meltz of counsel**  
**(1) Mr R Datoo**  
**(2) Mr A Datoo**

**Respondents** : **(3) Mrs N Datoo**  
**(4) Mr H Datoo**  
**(5) Blackhorse Inn Management Ltd**

**Representative** : **Mr A Datoo**

**Type of application** : **Appointment of a manager**

**Tribunal member(s)** : **Judge S Brilliant**  
**Mr R Waterhouse FRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **17 March 2023**

**Date of Decision** : **17 April 2023**

**Decision of the tribunal**

1. In accordance with section 24(9) Landlord and Tenant Act 1987 we vary the management order dated 20 July 2017 by appointing Mr M Wareham of Rendall & Rittner Ltd in place of Ms S Short as manager of the property at Liberty Point, Blackhorse Apartments, 335 Lower Addiscombe Road, Croydon, Surrey CR0 6RF (“the Property”).
2. The order shall continue for a period of 5 years from 01 July 2022. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
3. The Manager shall manage the Property in accordance with:
  - (a) The directions and schedule of functions and services attached to this order;

- (b) The respective obligations of the landlord and the lessees by which the flats at the Property (“the Flats”) are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
  - (c) The duties of a manager set out in the Service Charge Residential Management Code (‘the Code’) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
4. The Manager shall register the order against the landlord’s registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
5. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondents’ costs before the Tribunal shall not be added to the service charges.

### **The hearing**

6. The hearing was held face-to-face. Mr B Meltz of counsel represented the Applicant which is a social landlord company. The First to Fourth Respondents were represented by Mr A Dato. These Respondents are members of the same family, namely mother and father and their two sons. Mr A Dato (whom for convenience we shall referred to as “Mr Dato”), is one of the sons.
7. The Fifth Respondent is a party to the Lease (defined below) in its capacity as a management company. It did not appear nor was it represented.
8. The Applicant called (a) Ms Short, the original manager, (b) Mr Wareham, the proposed new manager (“the Manager”) and (c) Ms L Hallet, who has overall control on behalf of the Applicant for the district in which the Property is situated.

### **The ownership structure**

9. The Property consists of a purpose-built building containing commercial units (“the Shops”) on the ground floor and the 23 Flats above.
10. By a lease dated 18 October 2005 (“the Lease”), Milford Group Ltd as freeholder demised the Flats (but not the Shops) to Tower Homes Ltd (a social landlord) for a term of 999 years commencing on and including 01 January 2005.
11. On 31 January 2007, the Respondents purchased the freehold of the Property for £769,000 and became the lessor under the Lease. The Applicant is now the lessee under the Lease.
12. Accordingly, the Respondents are the freeholders of the Shops and the direct landlords of those occupying shops.
13. On the contrary, whilst the Respondent are the freeholders of the Flats, they are not the direct landlords of those occupying the Flats. The Applicants have sub-demised the Flats on occupational leases. We were told that nine of these residential leases are shared long leases, two are full long leaseholds, eight are let at 80% percent of the market rent and four are assured short shorthold tenancies.

### **The previous proceedings**

14. Unfortunately, disputes have arisen between the parties as to be quality of the repair

and maintenance services provided by the Respondents. There was substantial litigation between the parties in the Central London County Court.

15. By a Tomlin Order dated 01 March 2017, those proceedings were compromised on the basis that the Applicant would apply to the Tribunal for the appointment of a fault-based manager under Part II Landlord and Tenant Act 1987 and the Respondents would not oppose such an order.

16. The Applicant duly made such an application which came on before Judge Tagliavani and Mr Cartwright JP. In paragraph 5 of their decision dated 20 July 2017 the Tribunal said that, having regard to the evidence provided by the Applicant, it was satisfied that the conditions specified in s.24 Landlord and Tenant 1987 Act were met. It therefore determined that it was just and convenient to appoint Ms S Short as the manager for five years.

### **What is the effect of the previous proceedings?**

17. We heard excellent submissions from both parties as to the extent to which we should take the previous proceedings into account.

18. Mr Dato submitted that they were of no real relevance. Because the Respondents had agreed in the Tomlin Order not to oppose the order for the appointment of a manager, none of the faults required to be shown under Part II had been resolved by the Tribunal in the Applicant's favour. Accordingly, he felt he was entitled to persuade us that there were in fact no grounds to appoint a manager and never had been.

19. On the other hand, Mr Meltz submitted that we could not unpick the previous decision. The Tribunal, having found the required faults in the previous proceedings, we were not just entitled to but were bound to renew the management order.

20. He referred to us the decision of the Court of Appeal in Orchard Court Residents Association v St Anthony's Homes Ltd [2003] ECWA 1049 Admin on this point. This is also referred to in paragraph 21-59 Service Charges and Management fifth edition written by Tanfield Chambers.

21. In a judgment made at the hearing, we found in favour of the Applicant on this point. It is clear from this decision that extending an order is very different from making the order in the first place. There was no need for the Applicant to prove fault again. We were quite satisfied that in the previous proceedings the Tribunal did not just rubberstamp the Tomlin Order, but found for itself the necessary fault. Indeed, it only had jurisdiction to make the order if it was itself so satisfied.

22. Further, we find that the Respondents, in view of the Tomlin order, are now estopped from arguing that there was no fault committed by them.

### **The Respondents' current objections**

23. We turn now to the Respondents' two objections to the appointment of the Manager.

24. The first is that the Applicant should no longer be entitled to appoint a manager as the job not been done satisfactorily and the Respondents were fit and proper people to take back the management of the Property.

25. The second is that the Manager should not in any event be appointed because, like Ms Short, he was employed by the well-known managing agents Rendall & Rittner Ltd. It was said

that this company has a far too a close and cozy relationship with the Applicant because of the amount of work provided to it.

26. We look at these two objections in turn, starting with the second one.

**Is there an improper relationship between Applicant and Rendall & Rittner Ltd?**

27. We are quite satisfied that there is nothing in this point.

28. First, Ms Hallet told us that the Applicant has 120,000 homes. There are only 550 sites owned by the Applicant where managing agents are engaged, and of these sites only 30 have managing agents appointed by the Applicant itself. Rendall & Rittner Ltd only manage three sites.

29. Secondly, as we understand it, Mr Datoosaid that if a manager had to be appointed, he was quite content with the Manager being appointed.

**Has the Applicant done the job satisfactorily?**

30. It is clear from the photographs we have seen that the Property does not have an attractive cosmetic appearance, and needs smartening up.

31. Mr Datoosays that the lack of repair prejudices the First to Fourth Respondents in two respects. First, it affects the capital value of the freehold. Secondly, it affects the amount of the market rent they can achieve for the Shops.

32. We have some sympathy for Mr Datoos's submissions. However, this does not mean that Ms Short has been failing in her duties as the manager.

33. Both Ms Short and Ms Hallet gave comprehensive, and we thought impressive, evidence about the management of the Property and the difficulties they have faced.

34. There was no adequate reserve fund to cover the works when the management responsibilities were taken over. The Applicant cannot simply make payments for repairs in advance, as that would seriously impact on its cash flow. Cosmetic matters, albeit important to the First to Fourth Respondents, have had to wait.

35. When Ms Short took over the management of the building she was not put in funds and there was a serious deficit in the service charge funds which needed to be built up. There were a great number of issues of maintenance that were required to the Property. It was not possible to do them all at once and she had to produce a maintenance plan (prepared by surveyors) which spanned 10 years rather than 5 years because there needed to be monies in the sinking fund. Serious and urgent fire safety issues had to be prioritised over other lesser issues.

36. As the Applicant put it in the present application:

“Since being appointed the tribunal-appointed manager has remedied a number of the general maintenance issues at Liberty Point including the post boxes, the storage rooms, bin area lock, internal redecorations, and replacement of the rear entrance door. A number of health and safety issues have been remedied but there remain action points to implement in key areas such as fire safety that the applicant would wish to see the managing agent complete.

Other capital expenditure projects are planned over the next 5 years as well as a full internal redecoration scheme. In the accounts for the year ending 2018, the managing agent

reported that there was a £14,520 deficit due to the condition the building was left in by the respondents.

The manager has confirmed that since this point, under their budget forecasts they have achieved consolidated surpluses on the accounts every year to fund ongoing projects but that further time is required to implement these”.

37. In his witness statement, the Manager explained:

(a) Work on the seals/gaskets as set out in the 10 year plan will be scheduled to start once appropriate funds have been collected.

(b) Cleaning is carried out weekly by a reputable cleaning company. The last site inspection was carried out on 06 February 2023 where the condition of the walls was noted due to heavy people traffic.

(c) Internal redecoration was carried out in March 2022 with three coats of hard-wearing internal wall paint, however as above the heavy people traffic within the communal areas shows signs of wear and tear already.

(d) There is no evidence or reports from tenants of a faulty window at the Property, not picked up on the most recent site inspection either.

(e) There were issues with the door locks which had many repairs until they became a

(f) The AOV system is maintained by Highgrove Fire Maintenance Ltd and is certified.

(g) The block paving had work carried out to it in 2019, however, with the bin lorry using the entrance it does need doing again, which is planned to be carried out in 2023.

(h) Redecorating the external parts of the Property, as set out in the 10 year plan, will be scheduled to start once appropriate funds have been collected. (As we said above, this is particular concern to the First to Fourth Respondents).

(i) At the last site inspection on the 06 February 2023 one light was identified as not working on the Third floor, and a contractor has been appointed to fix the light”.

38. We conclude that in all the circumstances the present manager has done the job satisfactorily. However, we would encourage greater transparency. There should be more communication between the parties. The First to Fourth Respondents should be kept better informed and should receive a copy of the 10 year maintenance plan.

### **Is the Manager a fit and proper person to be the manager?**

39. We are satisfied from his written and oral evidence that the Manager is a fit and proper person to be the manager. Again, as we understand it, Mr Datoo said that if a manager had to be appointed, he was quite content with the Manager being appointed.

### **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).

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## **MANAGEMENT ORDER**

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### ***Interpretation:***

In this Order:

- (a) "Common Parts" means, as defined in the Leases, the areas and amenities in the Estate available for use in common by the Lessees and occupiers of the Building and all persons expressly or by implication authorised by them, including the pedestrian ways, forecourts, landscaped areas and gardens, entrance halls, landings, staircases, passages, car parking and areas designated for the keeping and collecting of refuse but not limited to them.
- (b) "Leases" means the long leases vested in the Lessees of the flats and the commercial premises.
- (c) "Lessee" means a tenant of a dwelling holding under a long lease as defined by Section S9(3) of the Landlord and Tenant Act 1987 ("the Act") or a tenant of the commercial leasehold premises.
- (d) "the Manager" means Mr Michael Wareham of Short of Rendall & Rittner of 13B St George Wharf, London, SW8 2LE.
- (e) "the Premises" means all that property known as Liberty Point, 335 Lower Addiscombe Road, Croydon CR0 6RF to include the 23 residential flats, common parts, the commercial leasehold premises and the car park.
- (f) "The Respondent" means the First to Fourth Respondents.

### ***Preamble***

UPON the Applicant having applied for the appointment of a Manager under Part 11, Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal being satisfied that the Applicant is entitled to so apply and that the jurisdiction to appoint a Manager is exercisable in the present case

AND UPON the First-Tier Tribunal noting that a management order in respect of the Premises is already in place and it is just and convenient to continue to appoint a Manager

AND UPON the First-Tier Tribunal being satisfied that the appointment of the Manager by virtue of this order is not a qualifying long-term agreement for the purposes of section 20ZA(2) of the Landlord and Tenant Act 1985.

IT IS ORDERED THAT

***The Manager***

1. The appointment of the Manager of the Premises pursuant to s.24 of the Act for a period commencing with the date of this Order shall continue, initially for five years, and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Respondent and in particular:
  - (a) To receive all service charges, interest and any other monies payable under the Leases from the date of appointment.
  - (b) The Power and duty to carry out the obligations of the Respondent contained in the Leases and in particular and without prejudice to the foregoing:
    - (i) The Respondent's obligations to provide services;
    - (ii) The Respondent's repair and maintenance obligations; and
    - (iii) The Respondent's power to grant consent.
  - (i) The obligation to provide notices under the Leases shall be met if such Notices are sent to the Manager and not to the Respondent.
  - (c) The power to delegate to other employees of Rendall & Rittner, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions, and pay the reasonable fees of those appointed.
  - (d) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
  - (e) The power of the Manager on behalf of the Respondent to bring any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee in respect of arrears of service charges accruing from the date of appointment or other monies falling due under the Leases from that date and to make any arrangement or compromise on behalf of the Respondent. The Manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account.

- (f) The power to commence proceedings or such other enforcement action as is necessary to recover sums due from the Respondent pursuant to Paragraph 1(e) of this Order.
  - (g) The power to enter into or terminate any contract, or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
  - (h) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 or any replacement and to hold those funds pursuant to s.42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the lease (if any) or to power given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.
  - (i) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent or any Lessee owing sums of money under his or her Lease.
  - (j) The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, or service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e., on the leasehold interest of any Lessee, and the freehold of the Premises in respect of the Respondent).
  - (k) The power to insure the whole building as a cost to the service charge account.
2. The power to raise a reserve fund.
  3. The Manager shall manage the Premises in accordance with:
    - (a) The Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;
    - (b) The respective obligations of all parties - landlord and tenant - under the Leases and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and
    - (c) The duties of managers set out in the Service Charge Residential Management Code (the "Code") or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to S.87 of the Leasehold Reform, Housing and Urban Development Act 1993.
  4. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.
  5. From the date of this Order, the Respondent shall not, whether by any agent, servant or employee, demand any payments of future service charges, administration charges or any other monies from the Lessees at the Premises, such functions having been transferred to the Manager from the date of this Order.



6. The Respondent and the Lessees and any agents or servants thereof shall give all reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
7. Without prejudice the generality of the foregoing hereof:
  - (a) The Respondent shall permit the Manager and assist in as he shall reasonably require to serve upon Lessees any Notices under s.146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.
  - (b) So far as is still necessary, if at all, the Respondent shall deliver to the Manager any contract relating to the caretaker and cleaners at the Premises including all PAYE slips and P46, if applicable. If the Respondent fails to deliver such documentation, the Manager shall be entitled to terminate the employment contract(s) of those persons and arrange such other similar services as, in his absolute direction, he thinks fit.
  - (c) So far as is still necessary, if at all, it is the obligation of the Respondent to provide the Manager with all information necessary to deal with the management of the Premises. This shall include, but is not limited to, up to date details of each leaseholder, full details of any employment contracts, full details of any ongoing contracts relating to the Premises, full details of all funds held by the Respondent with copies of all bank accounts relating thereto, the transfer of such funds to the Manager shall be undertaken by the Respondent without delay and without set off, together with the depositing of any monies recovered from lessees in respect of service charges accruing prior to the date of appointment.
  - (d) So far as is necessary, if at all, the Respondent shall deliver to the Manager all keys, fobs and other access/entry cards to the Premises, including keys to services and the meter cupboards and safety equipment. If the Respondent fails to deliver such keys etc, the Manager shall be entitled to remove the existing locks and other security systems currently installed at the Premises and install such locks and other security as, in his absolute direction, he thinks fit.
  - (e) The rights and liabilities of the Respondent arising under any contracts of insurance to the Premises shall continue as rights and liabilities of the Manager.
  - (f) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.
8. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be 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 and shall ensure they have appropriate professional indemnity cover in the sum of at least £2,000,000 providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.
9. The Manager shall act fairly and impartially in his dealings in respect of the Premises.

The Manager's appointment shall continue from the date of this Order and the duration of his appointment shall be limited to an initial period of five years.

10. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leaseholder interest (whether by assignment or fresh grant) or freehold.

Liberty to apply

11. The Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with s.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
  - (a) Any failure by any party to comply with an obligation imposed by this Order;
  - (b) For directions generally;
  - (c) Directions in the event that there are insufficient sums held by them to discharge their obligations under this Order and/or to pay their remuneration.

Signed

Tribunal Judge Simon Brilliant

Dated 17 April 2023

## **SCHEDULE FUNCTIONS AND SERVICES**

### **Financial Management:**

1. Administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the proportions under the terms of the Leases at year end.
2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees in the proportions set out in paragraph 1 above. Instruct solicitors to recover any unpaid service charges and any other monies due to the Respondent.
3. Continue with the reserve fund.
4. Produce for inspection (but not more than once in each year) within a reasonable time following a written demand by the Lessees or the Respondent, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
6. Continue to manage the Premises in accordance with the existing 10 year plan.
7. Before the expiration of the five year period, that is to say at least one month before expiry, attend before the Tribunal to provide a full report and, if required to seek an extension of his appointment, which the Tribunal will consider, taking into account all representations received.
8. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises.

### **Insurance:**

9. Retain an insurance policy in the Manager's own names in relation to the buildings and the contents of the common parts of the Premises with a reputable insurer, and provide a copy of the cover note/schedule to all Lessees and the Respondent.
10. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

### **Repairs and Maintenance**

11. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary subject to the priorities given at paragraph 5 above.
12. Administer contracts in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.
13. Manage the Common Parts and service areas of the Premises, including the arrangement and supervision of maintenance.
14. Carry out regular inspections (at the Manager's discretion but not less than monthly) without use of equipment, to such of the Common Parts of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

### **Administration and Communication**

15. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquiries from the Lessees or their solicitors.
16. So far as is reasonably possible liaise with the Respondent and keep it informed in general terms of proposed works.
17. Provide the Lessees with telephone, fax, postal and email contact details and complaints procedure.
18. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

### **Fees**

19. Fees for the management services are to be determined in accordance with the present fee structure.
20. Manager third party administration costs are to be determined in accordance with the present fee structure.