



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

Case reference : **LON/00AC/LAM/2022/0020**

Property : **72 Finchley Lane, London NW4 1DH**

Applicant : **Ms Denise Nazaret Ammar**

Representative : **In person**

Respondent : **Tenby (London) Limited**

Representative : **Mr David Landy BSc (Econ) FRICS of
Cedar Harp Limited**

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

Tribunal members : **Judge N Hawkes
Mr D Jagger MRICS
Mr J Francis PQM**

**Date and venue of
London Panel** : **24 May 2022 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **5 May 2023**

DECISION AND ORDER

Decisions of the Tribunal

Mr Timothy Taylor MARLA FNAEA of Wenlock & Taylor Limited is appointed Manager of 72 Finchley Lane, London NW4 1DH in accordance with the terms of the Management Order below.

The application

1. The Applicant seeks an order under section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”) appointing Mr Timothy Taylor MARLA FNAEA of Wenlock & Taylor Limited as the Manager of 72 Finchley Lane, London NW4 1DH (“the Property”).
2. The Tribunal has been informed that the Property is a Victorian building which contains four residential flats. Three of the flats are let on long leases and one the flats (Flat B) has been retained by the Respondent company, which is the freehold owner of the Property. The Applicant is the lessee of Flat A at the Property.
3. Directions were first given in this matter by the Tribunal on 12 January 2023 (“the Directions”). The Directions were amended on 26 January 2023, and again on 20 February 2023. The Direction included, at Paragraph 10, provision for the final hearing to take place as a face-to-face hearing on 24 April 2023.

The hearing

4. The final hearing of this matter took place at 10 Alfred Place, London WC1E 7LR on 24 April 2023. The Applicant appeared at the hearing in person accompanied by Mr Jack Atraghji and Ms Pnina Ammar. Mr Landy BSc (Econ) FRICS of Cedar Harp Limited represented the Respondent, accompanied by Ms Shipali Patel Bsc (Hons), also of Cedar Harp Limited.
5. In the Directions, the Tribunal identified that the issues to be determined include:
 - i. Is the preliminary notice compliant with section 22 of the Act and/or, if the preliminary notice is wanting, should the Tribunal still make an order in exercise of its powers under section 24(7) of the Act?
 - ii. Has the Applicant satisfied the Tribunal of any ground(s) for making an order, as specified in section 24(2) of the Act?
 - iii. Is it just and convenient to make a management order?
 - iv. Would the proposed manager be a suitable appointee?

The Tribunal’s determinations

6. The Respondent consents to the making of a Management Order and Mr Landy did not, having questioned Mr Taylor, seek to dispute any of points

(i) to (iv) at the hearing. The Management Order below was drawn up at the hearing in consultation with the Proposed Manager and both parties.

7. Section 21(1) of the 1987 Act provides:

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

(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.

8. Section 24(2) of the 1987 Act includes provision that:

24.— Appointment of manager by a tribunal.

...

(2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—

...

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

9. The Tribunal is satisfied, having considered the documents contained in the digital hearing bundle (which runs to 457 pages, including index), that the nature and extent of the issues raised by the Applicant demonstrate that relations between the parties have broken down. Further, at the hearing the parties accepted that this is the case.

10. The Tribunal does not make any findings of fact concerning the issues raised because it is not necessary or proportionate to do so in these proceedings. The final hearing was listed for one day and the available time was taken up by questioning Mr Taylor and hearing submissions on the terms of the Management Order. To have heard the evidence of fact and submissions on all of the factual issues raised in the hearing bundle would have taken several more days. This would not have been an appropriate use of Tribunal time and resources when the Tribunal had sufficient material before it to determine that a Management Order should be made.

11. The Tribunal finds that the breakdown in relations between the parties, together with the Respondent's agreement to the appointment of a Manager, comprise "other circumstances" within the meaning of section 24(2)(b) of the 1987 Act which make it just and convenient for an order to be made.

12. Mr Taylor was carefully questioned by the Tribunal with reference to the matters set out in the Appointment of Manager Practice Statement dated December 2021.

13. During the course of giving evidence, Mr Taylor stated that he understands that a Tribunal appointed manager must act independently and impartially and that, if appointed Manager, his overriding duty would be to the Tribunal rather than to either the Applicant or the Respondent. He understood that,

whilst he may use the resources of his company and receive support from others, he would be personally responsible and answerable to the Tribunal as Manager.

14. Mr Taylor has no previous Tribunal appointments. However, Mr Taylor gave evidence that he is an experienced property manager with a varied portfolio of around 600 units, including three in Hendon. We are satisfied that he has the required knowledge and experience and that he understands what is expected of him under the terms of the Management Order.
15. In all the circumstances, the Tribunal is satisfied that Mr Taylor is a suitable appointee.
16. The terms of the Management Order set out below were considered line by line at the hearing and were agreed with Mr Taylor. The Tribunal finds that the Manger rather than the Respondent should be responsible for arranging building insurance and ensuring that the insurance valuation is correct, because this is a primary management function.
17. Any application concerning costs should be made in writing (copied to the other party) within 28 days of the date of this decision.

MANAGEMENT ORDER

1. In this Order:

“**The Property**” means the flats and other premises known as known as 72 Finchley Lane, London NW4 1DH and registered at HM Land Registry under title number MX139952 and shall include the building, gardens, amenity space, drives, pathways, landscaped areas, flower beds, passages, bin-stores, common parts, and all other parts of the property.

“**The Landlord**” shall mean Tenby (London) Limited 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 Mr Timothy MARLA FNAEA of Wenlock & Taylor

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

ORDER

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) **Mr Timothy Taylor** of Wenlock & Taylor Limited is appointed as Manager of the Property.
3. The Manager’s appointment shall start on **25 June 2023** (“the start date”) and shall end on **24 June 2025** (“the end date”).
4. For the avoidance of doubt, this Order supplements but does not displace covenants under the Leases and the Tenants remain bound by them. Where there is a conflict between the provisions of the Order and the Leases, the provisions of the Order take precedence.
5. The purpose of this Management Order is to provide for the management of the Property.
6. The Manager shall manage the Property in accordance with:
 - (a) the terms of this Order and the Directions set out below;

(b) the respective obligations of the Landlord and the Tenants under the Leases whereby the Property is demised by the Landlord (save where modified by this Order);

(c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors (“RICS”) and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993(whether the Manager is a Member of the RICS or not); and

(d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.

7. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
8. The Tribunal requires the Manager to act fairly and impartially in the performance of his 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 his 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.

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

Legal Proceedings

15. The Manager may bring or defend any Court or Tribunal proceedings relating to management of the Property (whether contractual or tortious) and, subject to the approval of the Tribunal, may continue to bring or defend proceedings relating to the appointment, after the end of their appointment.

16. Such entitlement includes bringing proceedings in respect of arrears of service charge (including insurance) attributable to any of the Flats in the Property, including, where appropriate, proceedings before this Tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4)

of that Act or before the Courts and shall further include any appeal against any decision made in any such proceedings.

17. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account (including any service charge payable by the Landlord in respect of Flat 72B) in respect of costs, disbursements or VAT reasonably incurred in doing so during, or after, this appointment. If costs paid from the service charge are subsequently recovered from another party, those costs must be refunded to the service charge account.

Remuneration

18. Each Tenant is responsible for payment of 25 % of the Managers' fees, which are payable under the provisions of this Order but which may be collected under the service charge mechanisms of their Leases and the Landlord is responsible for payment of 25% of the Manager's (if 100% of the Manager's fees are not payable by the Tenants).
19. The sums payable are:
 - (a) an annual fee of **£350 per flat** for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable), payable in advance by way of two half yearly payments;
 - (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

20. 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.
21. The Manager may set, demand and collect a reasonable service charge to be paid by the Landlord (as if it were a lessee), in respect of Flat 72B at the Property whilst retained by the Landlord, or let on terms which do not require the payment of a service charge.
22. To ensure that the Manager has adequate funds to manage the Property, the Manager may immediately collect **£750** from each

Tenant and, **£750** from the Landlord. Any sum demanded by the Manager under this paragraph shall be payable **by 24 June 2023**.

23. 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

24. The Manager may recover administration charges from individual Tenants for the 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

25. 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.
26. 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.
27. 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.
28. 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

29. The Landlord must comply with the terms of this Order.
30. On any disposition (other than a charge) of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager, that the said person will (a) comply with the terms of this Order; and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed.
31. 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.
32. The Landlord is to allow the Manager and their employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform their functions and duties, and exercise their powers under this Order.
33. By **23 June 2023** the Order the Landlord must provide all necessary information to the Manager to provide for an orderly transfer of responsibilities, to include the transfer of:
 - (a) all accounts, books and records relating to the Property, including a complete record of all unpaid service charges; and
 - (b) all funds relating to the Property including uncommitted service Charges.

DIRECTION TO CHIEF LAND REGISTRAR

34. To protect the direction in paragraph 34 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate under title number MX139952. 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 26 day of October 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 34 of an Order of the Tribunal dated 5 May 2023 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 and it is noted that the Manager has in place a system for logging complaints.

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 has appropriate professional indemnity insurance cover in the sum of at least £1.25 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 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 28 July 2023** 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 from the date of the appointment) the Manager must prepare and submit a brief written report to the Tenants, and the Landlord, on the progress of the management of the Property up to that date, providing a copy to the Tribunal at the same time.

End of Appointment

45. No later than 56 days before the end date, the Manager must:

(a) apply to the Tribunal for directions as to the disposal of any unexpended monies;

(b) include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a “Final Report”); and

(c) seek a direction from the Tribunal as to the mechanism for determining any unresolved disputes arising from the Manager’s term of appointment (whether through court or tribunal proceedings or otherwise).

46. Unless the Tribunal directs otherwise the Manager must within two months of the end date:

(a) prepare final closing accounts and send copies of the accounts and the Final Report to the Landlord and Tenants, who may raise queries on them within 14 days; and

(b) answer any such queries within a further 14 days.

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

Schedule of Additional Fees

ADDITIONAL SERVICES	CHARGING BASIS
Preparing statutory notices and dealing with consultations where qualifying works or qualifying long-term agreements are proposed, preparing specifications, obtaining tenders, and supervising substantial repairs or works	10% (plus VAT) of the total cost of the work net of VAT
Attending Courts and Tribunal proceedings	£50 per hour (plus VAT)
Dealing with any breaches of the leases, for example, late payment of service charges and dealing with any breach of the Respondent's obligations pursuant to this Management Order	£50 per hour (plus VAT)
Giving information to prospective purchasers, vendors or their agents of the leasehold interests in the individual dwelling including pre-contract enquiries	£300 (plus VAT)

All charges should be proportionate to the time and amount of work involved and any service or provision of information should be delivered within a reasonable timeframe.

Name: Judge N Hawkes

Date: 5 May 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).