



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

**Case references** : **LON/00AY/LVM/2022/0016  
LON/00AY/LVM/2022/0017**

**Property** : **Denmark Mansions, 78-96  
Coldharbour Lane, London SE5  
9PX**

**Applicant** : **Mr Richard John Thwaites**

**Representative** : **Mr James Castle of Counsel  
instructed by J B Leitch Solicitors**

**Respondents** : **Residential Leaseholders of  
Denmark Mansions (1)  
The commercial leaseholders of 78  
– 96 Coldharbour Lane (2)  
Earl Limited (3)  
Various residential lessees appeared  
in person**

**Representative** : **Mr Soltanie, a Director, appeared on  
behalf of Earl Limited**

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

**Tribunal members** : **Judge N Hawkes  
Mrs S Redmond BSc (Econ) MRICS**

**Date and venue of  
London Panel** : **26 May 2023 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **5 June 2023**

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**DECISION AND ORDER**

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## **Decision of the Tribunal**

Mr Phil Heywood AIRPM of Firstport Property Services Limited, Queensway House, 11 Queensway, New Milton, Hampshire BH25 5NR is appointed Manager of Denmark Mansions, 78-96 Coldharbour Lane, London SE5 9PX in accordance with the terms of the Management Order below.

## **The application**

1. By a Management Order dated 11 April 2007 (“the Management Order”), the Tribunal first appointed a manager for Denmark Mansions, 78-96 Coldharbour Lane, London SE5 9PX (“Denmark Mansions”) under section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”).
2. The Management Order was made after a significant period of inadequate management by the then freeholder.
3. Orders were made by the Tribunal varying the Management Order on 26 September 2012, 18 September 2017, 19 November 2017 and 20 January 2021.
4. The Applicant Manager, Mr Richard Thwaites of Firstport Property Services Limited, has applied under section 24(9) of the 1987 Act to vary the Management Order so as to remove him as Manager and appoint Mr Phil Heywood, also of Firstport Property Services Limited, in his place. The grounds for this application are that Mr Thwaites was due to leave Firstport Property Services and was about to commence a period of “gardening leave”.
5. Variations of the Management Order are also sought which include extending its term, varying the residential leaseholders’ respective contributions to the service charge (ensuring 100% recoverability), varying the fees payable to the appointed manager, making provision for the creation of a reserve fund, and making provision for the possibility that the landlord might forfeit or accept surrenders of leases and grant leases on different terms.
6. Directions were given in this matter by the Tribunal on 21 July 2021 and 3 November 2023.

## **The hearing**

7. The final hearing took place by CVP video on 26 May 2023. Mr Castle of Counsel represented the Applicant at the hearing. The proposed new Manager attended the hearing but the Applicant did not attend. A number of lessees appeared in person including Mr Strawbridge, Ms St Kilda, Dr Selby and Mr Crawley. Mr Soltanie, a director, represented the current freehold company, Earl Limited.

8. At the commencement of the hearing, Mr Soltanie, applied for an adjournment on the grounds that Earl Limited had only become aware of these Tribunal proceedings two working days before the hearing.
9. Mr Soltanie accepted that the address which has been used to serve Earl Limited with the documents relating to these proceedings is the company's registered office. Rule 16 of Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 makes provision for the service of a company its registered or principal office.
10. Mr Soltanie informed the Tribunal that the current directors of Earl Limited acquired the share capital in 2020. He explained that the documents which were served on Earl Limited had only recently come to his attention because the company's registered address is its accountants' address and the accountants have been "in the middle of a move".
11. Mr Soltanie stated that Earl Limited does not object to the proposed appointment of Mr Heywood. However, he expressed concern that there were factual inaccuracies in the Applicant's skeleton argument regarding the granting of new leases by the landlord and submitted that Earl Limited should have the opportunity to respond to these errors and to take advice.
12. The Tribunal declined to adjourn the proceedings. The Applicant's applications are dated June 2022 and it is likely that they would have been served on Earl Limited by the Tribunal shortly after issue. Directions would have been sent to Earl Limited on 21 July 2022 and 3 November 2022, as well as procedural orders dated 21 October 2022 and 27 October 2022. Two versions of the hearing bundle were filed and served and notice of a case management hearing and then of the final hearing was sent out by the Case Officer. No other parties informed the Tribunal that they had failed to receive any relevant documents or correspondence.
13. The fact that Earl Limited only recently became aware of these proceedings is due to its own failure, over a considerable period of time, to update the address of its registered office. There would have been significant prejudice to the lessees in terms of wasted time and legal costs if the hearing had been adjourned, as well as continued uncertainty over the long-term management of Denmark Mansions. Further, Mr Castle confirmed that the matters which Mr Soltanie objected to in his skeleton argument were not assertions of fact but rather they were submissions concerning what may potentially happen. In all the circumstances, the Tribunal determined that it would not be fair and just to adjourn the hearing.

### **The Tribunal's determinations**

14. The relevant principles to be applied on an application to vary a management order are set out at section 24(9) and (9A) of the 1987 Act:

*“(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section ...*

*(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.”*

15. Mr Heywood confirmed the accuracy of the contents of three witness statements which he prepared for these proceedings, and he was carefully questioned by the Tribunal. He has been a temporary manager of Denmark Mansions since 21 July 2022 and neither the lessees nor Mr Soltanie raised any concerns at the hearing concerning his potential appointment as a permanent manager. The Tribunal has been provided with a copy of an insurance policy under which FirstPort Limited has professional indemnity insurance of £5 million and correspondence confirming that this policy will cover Mr Heywood personally in the capacity of a Tribunal appointed manager. In all the circumstances, the Tribunal is satisfied that Mr Heywood is a suitable appointee.
16. During the course of the hearing, the Tribunal noted that there is a draft management order annexed to the Appointment of Manager Practice Statement (December 2021) which differs from the Management Order in the present case. We considered that it would not be fair and just to make substantial amendments to update the Management Order so as to better reflect that draft when the parties had not been put on notice of the possibility in advance of the hearing and not all of the leaseholders were present.
17. The Applicant’s proposed variations were considered by all parties who attended the hearing. After certain amendments were made by the Tribunal with the agreement of Mr Castle, all of the lessees who were present were content for the Management Order to be varied in the terms set out below. Mr Soltanie did not object to any of the proposed terms, but he indicated that he was not in a position to positively agree because he had only had a limited period of time in which to read the papers.
18. Mr Soltanie adopted a constructive approach and made a positive contribution to the hearing. There has been a change in landlord since the Management Order was originally made and it is hoped that, going forward, Earl Limited will make a positive contribution to the management of Denmark Mansions.
19. However, in light of (i) the history of poor management; (ii) the fact that the leases do not contain a consistent scheme for the calculation of service charge contributions; and (iii) the absence of any opposition to the variations, we find that it is just and convenient to vary the Management

Order so that, from the date of this decision, the Management Order will be in the terms set out below.

20. Having considered the terms of the Management Order set out below line by line with Mr Heywood and with all parties who were present at the hearing, we are satisfied that the variations will not result in a recurrence of the inadequate management which led to the order being made.

### **MANAGEMENT ORDER**

1. Mr Phil Heywood (“the Manager”) of FirstPort Property Services Limited, Queensway House 11 Queensway, New Milton, Hampshire, BH25 5NR is hereby appointed the Manager and Receiver of the all that freehold land with the blocks of shops and flats erected thereon known as numbers 78-96 (even numbers) Coldharbour Lane and Denmark Mansions in the London Borough of Lambeth, London SE5 9PX as the same is registered at HM Land Registry with Absolute Title under Title Number LN191146 in the name of the Respondent (“the Property”) with immediate effect until 31 March 2025.
2. In this Order, references to “Lessees” includes lessees of both commercial and/or residential parts of the Property and “Leases” refers to the respective leases by which the premises at the Property are demised.
3. Subject to the prior payment of monies requested by the Manager from the Lessees, the Manager shall manage the Property in accordance with:
  - (i) the terms of this Order and the Directions set out below:
  - (ii) the respective obligations of the Lessor and Lessees under the Various Leases:
  - (iii) With particular regard to the repair, decoration, provision of services to and insurance of the Property; and
  - (iv) 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

- (v) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.
4. Without Prejudice to the generality of the foregoing, during the period of his appointment the Manager shall:
- (i) Collect and receive the various sums reserved and made payable by the Lessees under the Leases either by way of insurance premiums, payment of service charges or otherwise but not any ground or market rents;
  - (ii) Where any unit of the property is not subject to a long lease raise his own service charge in respect of that unit to cover any shortfall in respect of costs incurred;
  - (iii) Apply the amounts received (other than those representing his fees specified below) in the performance of the Lessor's covenants contained in the Leases;
  - (iv) Immediately arrange for the remedying of any disrepair which requires urgent attention;
  - (v) Commence collection of contributions;
  - (vi) Enforce Lessee's covenants; and
  - (vii) Comply with all statutory requirements including those set out in the Landlord and Tenant Acts 1985 and 1987 as amended, but especially those relating to statutory consultation for major works
5. 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
6. The Manager will take over responsibility for the insurance of the Property immediately. If the Manager is satisfied with the present insurance arrangements, the Manager will notify the present insurers of his appointment and request that his interest as Manager is noted on the policy.
7. The Manager will be entitled to engage, if he thinks fit, any surveyor, architect, engineer, solicitor, and other appropriate person to assist him in carrying out the management of the Property and be entitled to cover the costs thereof from the Lessees through the service charge, provided always that such costs are reasonably incurred and that the services of such a person are of a reasonable standard.

8. The Manager shall maintain a policy of professional indemnity insurance and public liability insurance to cover his obligations and liabilities as manager and receiver.
9. The Manager will register this order against the Respondent's freehold title in accordance with section 24(8) of the 1987 Act.
10. The proportion of the total service charge which is to be borne by each of the properties is as follows:-

PLOT NO	UNIT TYPE	Service charge %
Flat 4 Coldharbour Lane	Residential	2.910000%
Flat 5 Coldharbour Lane	Residential	2.910000%
Flat 6 Coldharbour Lane	Residential	3.440000%
7 Denmark Mansions	Residential	2.900000%
8 Denmark Mansions	Residential	2.670000%
9 Denmark Mansions	Residential	3.580000%
Flat 10 Denmark Mansions	Residential	3.200000%
11 Denmark Mansions	Residential	4.020000%
12 Denmark Mansions	Residential	4.040000%
13 Denmark Mansions	Residential	4.020000%
14 Denmark Mansions	Residential	4.040000%
15 Denmark Mansions	Residential	3.530000%
16 Denmark Mansions	Residential	4.030000%
17 Denmark Mansions	Residential	3.480000%
18 Denmark Mansions	Residential	4.030000%
19 Denmark Mansions	Residential	3.910000%
20 Denmark Mansions	Residential	3.820000%
21 Denmark Mansions	Residential	3.910000%
22 Denmark Mansions	Residential	3.820000%
Unit 78- 80 Coldharbour Lane	Commercial	9.540000%
Unit 82-84 Coldharbour Lane	Commercial	3.240000%
Unit 86 Coldharbour Lane	Commercial	2.680000%
Unit 88 Coldharbour Lane	Commercial	2.680000%
Unit 90 Coldharbour Lane	Commercial	2.720000%
Unit 92 Coldharbour Lane	Commercial	5.270000%
Unit 94 Coldharbour Lane	Commercial	2.360000%
Unit 96 Coldharbour Lane	Commercial	3.250000%
		<b>100.000000%</b>

11. The Manager shall be entitled to collect and maintain a sinking fund of a reasonable size to which the Lessees are required to contribute in accordance with the table at paragraph 10 above. The contributions shall be calculated by dividing the cost of future works, including an allowance for VAT and fees, by the number of years which may be expected to pass before it is incurred. The level of contributions should

be reviewed annually, as part of the budget process, and the underlying survey information should be reviewed at appropriate intervals.

12. In the event that -

- (i) one or more of the leasehold units identified at paragraph 10 above ceases to be let by the freeholder, the freeholder of the Property shall be liable to pay to the Manager the proportion of the total service charge in respect of that or those units for the period for which said unit(s) are not let, on receipt of a demand from the Manager, or
- (ii) one or more of the leasehold units identified at paragraph 10 above is let after the date of this order on terms such that the service charge obligations set out in the lease are narrower in scope than the scheme set out in the extant leases of units in the Property as at the date of this order, the freeholder shall be liable to pay to the Manager the shortfall in recoverable service charge under that or those units compared to what would be recoverable from that or those units if their leases had been granted on terms identical to the extant leases of units in the Property as at the date of this order, on receipt of a demand from the Manager such that at all times the Manager is able to recover 100% of the costs incurred in managing the property.

13. The Manager shall be entitled to reasonable remuneration based on the proposed Pricing Matrix provided by FirstPort Property Services Ltd, a copy of which is annexed to this order along with a schedule of property transfer services which clarify the additional charges which may fall due outside of the management fees , or such sum or sums as shall be agreed between the Manager and Denmark Mansions Leaseholders Association (provided its members comprise all Lessees) or otherwise determined on application to the tribunal. VAT shall be payable in addition to the fees attached.

14. Upon any written demand by the Manager, the Respondent shall:

- (i) give all reasonable assistance and co-operation to the Manager while acting in pursuance of his duties under this Order;
- (ii) pay forthwith to the Manager monies held by it at the date of this Order and which have been previously collected by or on behalf of the Respondent in respect of the Property (other than rents) and any money so received by the Manager shall be applied in accordance with the Manager's obligations under this Order; and



(iii) Deliver forthwith to the Manager such records and copy documents (to include any accounting records) as it may have in its possession or under its control as are reasonably required for the proper management of the Property.

15. The Manager shall have express power to bring proceedings to enforce any of the terms of this Order, but nothing in this Order shall impose an obligation on the Manager to do so. The power to bring proceedings includes proceedings, if so advised, against the Respondent freeholder for an account and/or for the recovery of any leaseholders' money held by the Respondent, which it has not paid over to the Manager pursuant to this order

16. The Manager shall have permission to apply to the tribunal for any further directions which are necessary or for variation of this order

**SCHEDULE 1**

Part I of Schedule 1 - Services

SERVICES COVERED IN MANAGEMENT FEE

<b>DESCRIPTION</b>	<b>FREQUENCY</b>
1. Opening and handling bank accounts.	On takeover or as required
2. Demand and collect service charges, variable rent charges, and reserve fund contributions, and any other payments due from leaseholders/freeholders of the Development, including collection of any arrears of any payments due (but for the avoidance of doubt not requiring legal or FTT work).	As required
3. Prepare and produce annual service charge estimates in advance of the commencement of the service charge year for the Development.	Annually
4. Processing payments relating to the Development within the funds available or as reasonable expediency shall dictate.	As required
5. Providing information to accountants for preparing annual accounts.	As required
6. Preparing specifications and administering and negotiating contracts for the benefit of the Development for minor works and services such as cleaning, gardening and window cleaning, no such contract to have a term exceeding 12 months.	As required
7. Arranging for building maintenance repairs and renewals where the total value of each contract does not exceed	As required

£2,500 plus VAT per calendar year. <b>OR</b> the Section 20 consultation limit.	
8. Procuring buildings and other insurances but so far only as such risks remain insurable from time to time in the UK insurance market and at reasonable rates.	As required
9. Providing reasonable management information to the lessees.	As required
10. Liaising with the Client.	As required
11. Liaising with any recognised resident(s) association(s).	As required
12. Checking and approving invoices for goods and services supplied for the benefit of the Development.	As required
13. Viewing, without the use of inspection equipment, such of the common parts of the Development as can be inspected safely and without undue difficulty to check the condition of the Development and deal with any necessary repairs other than major works.	As required
14. Organising periodic health and safety checks (but not specialist checks and tests) and ensuring appropriate risk assessments are in place.	Annually
15. Consultation with the Client on management matters.	As required
16. Attendance at reasonable meetings with the Client during working hours.	As required
17. Consultation with the Client on long-term arrangements except for consultation on the appointment of a managing agent.	As required
18. Directly employing, engaging and supervising on behalf of the Client site staff for the Development and dealing with all matters relating to their employment.	As required
19. Visiting the Development.	As required
20. Dealing with day-to-day lessee/freeholder issues.	As required
21. Advising the Client on general interpretation of the leases.	As required
22. Maintaining files and records on the management of the Development for a period of 12 years.	Ongoing
23. Providing copy documents including insurance policies, copies of invoices and receipts, for which there may be a charge.	As required
24. Keeping records of residents and tenancy details, where provided.	Ongoing

25. The provision of lessee 'welcome packs'.	On assignment of a property
26. Issuing demands for administration charges and required summaries of rights.	As required
27. As soon as practicable after the expiry of an Accounting Period for the Development arrange for the final accounts to be audited or certified in accordance with the terms of the Leases/Transfers for the Development and provide the Tenants with a final copy of those accounts and demand any balancing service charge if appropriate.	Annually

Part II of Schedule 1 – Additional Services

SERVICES INCURRING ADDITIONAL CHARGES

<b>DESCRIPTION</b>	<b>FREQUENCY</b>	<b>CHARGING BASIS</b>
1. The collection of arrears existing at the time of takeover.	On demand	No charge for initial billing of arrears. Where possible, charges will be recovered from defaulting owner.
2. Fees for specialist advice on assessment of major repairs and decoration or other issues.	On demand	As per specialist quotation (at least 3 to be obtained).
3. Drawing up and reviewing risk assessment plans. Advising on health and safety matters and other legislative requirements.	On demand	As per specialist quotation (at least 3 to be obtained).
4. Preparation of specifications and supervision of building works where the total value exceeds £2,500 plus VAT but is lower than the Section 20 consultation limit	On demand	2% plus VAT of the total costs of the Major Works

<p>5. Preparing and or preparing specifications, obtaining tenders and supervising major works, dealing with S20 consultations, including serving the required notices, instructing and liaising with specialist consultants, inspecting work in progress and handling retentions.</p> <p>Where specialist surveyors are required</p>	<p>On demand</p>	<p>10% plus VAT of the total costs of the Major Works.</p> <p>5% plus VAT of the total costs of the Major Works, plus specialist fees (see below)</p>
<p>6. Holding annual meetings with residents, if more than two occasions per annum.</p>	<p>On demand</p>	<p>Property Managers - £50 plus VAT per hour, such to be reviewed annually.</p>
<p>7. Offering any vacant property to let.</p>	<p>On demand</p>	<p>n/a</p>
<p>8. Subletting, changes of use, handling requests for necessary approvals under the terms of the Leases or Transfers and management advice in relation to lease extensions and variations.</p>	<p>On demand</p>	<p>n/a</p>
<p>9. Advising and providing property management information on the transfer of leases.</p>	<p>On demand</p>	<p>Platinum (within 48 hours of payment) £550  Gold (within 5 working days of payment) £450  Standard (within 15 days of payment) £395  Remortgage/Equity Release £175</p>
<p>10. Providing property management information to Solicitors and others in connection with enquiries on sale, assignments and mortgages.</p>	<p>On demand</p>	<p>Management packs are comprehensive.  Additional questions £60</p>
<p>11. Providing reasonable management information to lessees and freeholders including the provision of copies and or facilities for inspection of insurance policies, invoices and receipts.</p>	<p>On demand</p>	<p>Insurance certificates, policies, invoices and receipts are provided electronically at no charge. If documents are copied and posted £50 plus VAT per hour.</p>
<p>12. Dealing with any pension issues relating to site staff.</p>	<p>On demand</p>	<p>N/a</p>
<p>13. Advertising and recruiting site staff on behalf of the Client.</p>	<p>On demand</p>	<p>N/a</p>
<p>14. Supplying additional copies of the accounts and other documents.</p>	<p>On demand</p>	<p>One additional copy will be provided electronically at no cost. Additional paper copies £50 plus VAT per hour</p>

15. Legal recovery of unpaid service charges, variable rent charges or action for non-compliance with Leases or Transfers including instructing solicitors and preparing for and attending Court/FTT.	On demand	Not capable of being agreed in advance. To be agreed. Where possible such costs to be recovered from the defaulting owner.
16. Preparing and having audited Development service charge accounts.	Annually	Not capable of being agreed in advance
17. Provide billing and administration services for the collection of individually metered utility services where appropriate and agreed between the parties.	On demand	n/a
18. Fees of specialist advisers.	On demand	As per specialist quotation (at least 3 to be obtained).
19. Preparing and arranging insurance valuations.	On demand	As per specialist quotation.
20. Preparing schedules of dilapidation or condition in respect of individual dwellings.	On demand	As per specialist quotation.
21. Providing any form of management services to the Client over and above this Agreement in relation to the exercise by the lessees of enfranchisement, the Right to Manage or as the result of the Appointment of a Manager by a FTT.	On demand	Fees available on application.
22. Company secretarial services, including acting as company secretary to the Client.	On demand	n/a.
23. Arranging venues for AGMs and EGMs.	On demand	As per quotation from the venue (at least 3 to be obtained).
24. Attending meetings outside of working hours.	On demand	Property Managers - £50 plus VAT per hour, such to be reviewed annually.
25. Dealing with any applications, including but not limited to government grants, in relation to the installation of electric vehicle charging stations at the Development on behalf of the Client.	On demand	n/a

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 June 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).

