



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

Case Reference : CHI/21UC/LVM/2013/0002

Property : Westhill Court, 20 Ratton Road,
Eastbourne, East Sussex, BN21 2LS
and
St Helena Court, 7 Mill Road,
Eastbourne, East Sussex, BN21 2LY

Applicants : Mr Charles Bramly

Representative : None

Respondent : G&O Investments Limited (i)
Leaseholders Westhill Court and Helena
Court (ii)

Representative : None

The Manager : Mr Nigel Duffy

Tribunal members : Mrs J Coupe FRICS
Mr D Banfield FRICS, Regional Surveyor

Date of Order : 22 June 2023

MANAGEMENT ORDER

Interpretation

1. In this Order:

“The Property” means the flats and other premises known as known as Westhill Court, 20 Ratton Road, Eastbourne, East Sussex, BN21 2LS and St Helena Court, 7 Mill Road, Eastbourne, East Sussex, BN21 and shall include [the building, outhouses, gardens, amenity space, drives, pathways landscaped areas, flower beds, passages, bin-stores, common parts,

storage rooms basements, electricity and power rooms; and all other parts of the property].

“The Landlord” shall mean G&O Investments 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 Nigel Duffy.

“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”) Nigel Duffy of Stiles Harold Williams Partnership LLP is appointed as Manager of the Property.
3. The Manager’s appointment shall start on 22 June 2023 (“the start date”) and shall end on 31 March 2028 (“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 is empowered to:
 - (a) Demand service charge payments in advance.
7. 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.

8. 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.
9. The tribunal requires the Manager to act fairly and impartially in the performance of their 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.
10. 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.
11. 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.
12. 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

13. 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 their 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.

- 14. 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.

Pre-contract enquiries

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

Legal Proceedings

- 16. 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.
- 17. Such entitlement includes bringing proceedings in respect of arrears of service charge [and rent] 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.
- 18. 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 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

- 19. The Tenants are responsible for payment of 100% of the Managers' fees, which are to be payable under the provisions of this Order but

which may be collected under the service charge mechanisms of their Leases.

20. The sums payable are as follows:

- (a) an annual fee of £5,337.50 for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable), such fee to be reviewed annually;
- (b) 2.5% of the first £100,000 of the final contract sum net of VAT and 1% of any additional balance of the contract sum, subject to a minimum of £750 (or a figure calculated at £50/flat if greater) in relation to any work necessitated by Section 20 Landlord and Tenant Act 1985;
- (c) £250.00 fee payable for the service charge year 2023/2024 in regard to inspection of fire doors; and
- (d) VAT on the above fees;
- (e) Any other additional fees, proposed to be recovered under the service charge mechanism, to be subject to the approval of the Tribunal. For the avoidance of doubt, this excludes fees charged to individual lessees.

Ground Rent and Service charge

- 21. The Manager shall collect the ground rents payable under the residential Leases.
- 22. 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.
- 23. Whether or not the terms of any Lease so provides the Manager shall have the authority to:
 - (a) demand payments in advance and balancing payments at the end of the accounting year;
 - (b) establish a sinking fund to meet the Landlord's obligations under the Leases;
 - (c) allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund;
 - (d) alter the accounting year and to collect arrears of service charge and insurance that have accrued before their appointment; and
- 24. The Manager may set, demand and collect a reasonable service charge to be paid by the Landlord (as if he were a lessee), in respect of any

unused premises in part of the Property retained by the Landlord, or let on terms which do not require the payment of a service charge.

25. 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

26. The Manager may recover administration charges from individual Tenants for their costs incurred in collecting ground rent, 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.

Disputes

27. 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.
28. 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.
29. 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.
30. 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

31. The Landlord must comply with the terms of this Order.
32. 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.

33. 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.
34. 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.

DIRECTIONS TO MANAGER

35. The Manager must adhere to the terms of the Order above.

Conflicts of Interest

36. 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

37. The Manager must operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.

Insurance

38. The Manager must maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.
39. From the date of appointment, and throughout the appointment, the Manager must ensure that he/she has appropriate professional indemnity insurance cover in the sum of at least £2 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

40. 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 ground rent, 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

41. The Manager must:

- (a) By 1 September 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.

42. 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

43. By no later than eight weeks from each service charge year end 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

44. 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).

45. 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.

46. 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.