



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

**Case reference** : **BIR/00CN/LAM/2023/0004**

**Property** : **58-60 Albion Street, Birmingham B1  
3EA**

**Applicant(s)** : **Ben Clark & Amy Clark**

**Respondent** : **MTH Properties Limited (landlord)**

**Type of  
application** : **Variation of Order for Appointment of a  
Manager**

**Tribunal Judge** : **Judge D Barlow**

**Venue** : **Remote via**

**Date of Order** : **5 October 2023**

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**MANGEMENT ORDER (VARIED)**

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## **INTERPRETATION**

### **IN THIS ORDER**

**“The Property”** means the flats and other premises known as 58-60 Albion Street, Birmingham B1 3EA as registered at the Land Registry under the Respondents’ titles numbered WM192390 and WM552599 and shall include the buildings; courtyard; passageways and common parts; and all other parts of the property.

**“The Landlord”** shall mean MTH Properties Limited, the Respondent to this Application, or its 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 the 8 flats or units in the Property and "Lease" shall be construed accordingly.

**“The Manager”** means Mr Joe Jobson MRICS of Principle Estate Management, 137 Newhall St, Birmingham, B3 1SF.

**“The Functions”** means any functions in connection with the management of the Property including any obligations and powers of the landlord under the Leases.

### **Preamble**

**UPON** the First-Tier Tribunal having been satisfied on 17 September 2020, that the conditions specified in S.24 Landlord and Tenant Act 1987 were met on the making of the Management Order, such that it was just and convenient to appoint a Manager.

**AND UPON** the Applicants having applied for a variation of the Management Order dated 17 September 2020, to extend the term of the appointment of a Manager to 8 October 2026.

**AND UPON** the First-Tier Tribunal being satisfied that it is just and convenient to extend the term of the appointment.

### **It IS ORDERED that**

1. The appointment of Mr Joe Jobson MRICS of Principle Estate Management, 137 Newhall St, Birmingham, B3 1SF as Manager of the Property pursuant the 2020 Order shall continue for a period of three years from 9th October 2020 to the 8 October 2026 (the end date) 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.

2. If any party or parties interested wish to apply for an extension of the Order they are encouraged to do so at least three months before this Order expires.
3. The Manager shall manage the Property in accordance with
  - a. the directions and schedule of functions and services attached to this Order;
  - b. save where modified by this Order, the respective obligations of the Landlord in the Lease whereby the Property is demised by the Landlord 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”) (3rd Edition) 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.
  - d. The provisions of sections 18 to 30 of the Landlord and Tenant Act 1985
4. The Manager shall register restriction under the Land Registration Act 2002 in accordance with the provisions of paragraphs 20-22 below.

## **DIRECTIONS**

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. Where there is a conflict between the provisions of the Management Order and the lease, the provisions of the Management Order take precedence.
7. That the Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of their said rights, duties or powers by due process of law. For the avoidance of doubt this shall not prevent the Landlord from bringing legal proceedings (or any other due process of law) should the Manager act unlawfully and/or negligently and/or contrary to the powers and duties set out in this Order.
8. That the Landlord allows the Manager and his employees and agents access to all parts of the Property in order that the Manager might

conveniently perform his functions and duties and exercise his powers under this Management Order.

9. The Manager shall act fairly and impartially in his dealings in respect of the Property.
10. 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.
11. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £5 million and shall provide copies of the certificate of liability insurance to the Tribunal prior to the 9th October 2020 and upon request being made by any Tenant of all or part of the Property, and the Landlord. The Certificate should specifically state that it applies to Mr Jobson's duties as a Tribunal appointed Manager.
12. That no later than two weeks after the date of this Order the Landlord shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Landlord shall transfer to the Manager all the accounts, books, records and funds relating to the Service Charge and Insurance of the Property.
13. The rights and liabilities of the Landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon the date of the appointment become rights and liabilities of the Manager subject to the right of the Manager to decide in his absolute discretion which of any contracts he will assume the rights and liabilities such decision shall be communicated in writing to the relevant parties within 56 days from the date this order.
14. The Manager shall be entitled to remuneration, which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the property in accordance with the Schedule of Functions and Services attached.
15. By no later than six months from the date of appointment the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the Property up to that date providing a copy to the Tenants of the Property and the Landlord and the Freeholder at the same time.
16. Within 56 days of the conclusion of the Management Order the Manager shall prepare and submit a brief written report for the Tribunal on the progress and outcome of the management of the Property up to that date, to include final closing accounts. The Manager shall also serve copies of the reports and accounts on the Landlord and Tenants who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter the Manager shall reimburse any

unexpended monies to the paying parties, or, if it be the case any new Tribunal appointed manager or, in the case of dispute, as decided by the Tribunal upon application by any interested party.

17. The Manager may apply to the First-Tier Tribunal for further directions, in accordance with section 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 him to discharge his obligations under this Order and/or to pay his remuneration.

## **DIRECTIONS TO THE LANDLORD**

18. The Landlord must comply with the terms of this Order.
19. 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.

### Entry of a Form L restriction in the Register of the Landlord's Registered Estate

20. To protect the direction in paragraph 19 for procurement by the Landlord, of a direct covenant with the Manager, the Manager must apply for the entry of the following restriction in the register of the Landlord's estate under title no(s) WM192390 and WM552599

*“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 19 of an Order of the Tribunal dated 5 October 2023 have been complied with”*

21. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 20, within 14 days of the date of this Order.
22. A copy of this Order should accompany the application (unless it is submitted by a solicitor able to make the necessary declaration at Box 8(c) of the RX1 application form). The application should confirm that:

- This is an Order made under the Landlord and Tenant Act 1987, Part II (Appointment of Managers by a Tribunal) and that pursuant to section 24(8) of the 1987 Act, the Land Registration Act 2002 shall apply in relation to an Order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- Consequently, pursuant to Rule 93(s) of the Land Registration Rules 2003, the Manager is a person regarded as having sufficient interest to apply for a restriction in standard Form L or N.

## **SCHEDULE OF FUNCTIONS AND SERVICES**

### **Insurance**

1. Maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.
2. Throughout the appointment, the Manager must ensure that he has appropriate professional indemnity insurance cover in the sum of at least £5 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.

### **Service charge**

3. Prepare an annual service charge budget, and make provision for interim payment in advance, and a balancing payment by, or credit made to, the Tenants at the end of the year as appropriate.
4. Administer the service charge and prepare and distribute appropriate service charge accounts to the Tenants.
5. Demand and collect service charges and Insurance due from the Tenants under the leases.
6. The Manager shall have the authority to demand payments in advance and balancing payments at the end of the accounting year, to establish a sinking fund to meet the Landlord's obligations under the lease, to allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund, and to collect arrears of service charge and insurance that have accrued before his appointment which includes the interim service.
7. The Manager will produce his first estimate of the service charge for the current year within 21 days of the date of the Management Order, and send it the relevant leaseholders. In all respects, thereafter the Manager will comply with the provisions of the Leases in respect of its service charge provisions.
8. The Manager is entitled to recover through the service charge the cost of any surveyors, architects, solicitors, counsels and other professional persons or firms fees incurred by him whilst carrying out his functions under the Order.

9. Place, supervise and administer contracts and check demands for payments of goods services and equipment supplied for the benefit of the Property with the service charge budget.

### **Administration Charges**

10. The Manager may recover administration charges from individual Tenants for his costs incurred in collecting service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. The Manager should publish the costs of his charges for debt recovery and the timetable allowed for each course of action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002.

### **Accounts**

11. Prepare and submit to the Landlord and the leaseholders an annual statement of account detailing all monies receivable, received and expended. The accounts to be certified by the external auditor.
12. Maintain efficient records and books of account, which are open to inspection by the Landlord and the Tenants. Upon reasonable request, produce for inspection, receipts or other evidence of expenditure.
13. Maintain on trust an 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.
14. All monies collected will be accounted for in accordance with the Code 3rd edition.

### **Repair and Maintenance**

15. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property which includes compliance with all regulatory and statutory requirements and in the interests of good estate management.
16. The setting up and implementation of a planned maintenance programme to allow for the periodic redecoration and repair of the property.
17. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Property including preparing a specification of works and obtaining competitive tenders.
18. To liaise with the relevant statutory bodies responsible for buildings.
19. To ensure that the Landlord, Freeholder and the Tenants are consulted on any proposed works to the Property and to give proper regard to their views. Copies of programmes of planned and major works should be sent to the Landlord and Tenants.

## **Right to Bring Legal Proceedings**

20. The Manager shall be entitled to bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of his appointment.
21. Such entitlement shall include but shall not be limited to bringing proceedings in respect of any arrears of service charge attributable to any of the Flats in the property and for which these proceedings shall include any application under Part 7 or Part 8 of the Civil Procedure Rules for judgment in the County Court or High Court including a charging Order or any application made to the First-tier Tribunal under section 27A of the Landlord and Tenant Act 1985 or section 168(4) and schedule 11 of the Commonhold and Leasehold Reform Act 2002 and shall further include any appeal against any decision made in any such proceedings.
22. The Manager shall be entitled to be reimbursed from the service charge account any costs, disbursements or VAT for taking proceedings including any fees payable to solicitors, accountant, counsel or expert on a full indemnity basis. If any of those costs are recovered direct from the defaulting Tenant or Landlord those costs should be refunded to the service charge account.
23. The Manager has the right to instruct solicitors and counsel and other professionals for the taking of legal proceedings.

## **Fees**

24. The Manager's fee for the above-mentioned management services will be a basic of £1,800 per annum, adjustable by the Retail Prices Index (or any replacement for it) after the first year. The basic fee will include those services for the Annual Fee at paragraph 3.4 of the Code.
25. The Manager will provide an appendix setting out additional fees (if any) to be affixed to the order within 14 days.
26. VAT to be payable on all the fees quoted above where appropriate at the rate prevailing on the date of invoicing.

## **Complaints procedure**

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

## **End of Appointment**

28. 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).

29. 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.

30. 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.

Deputy Regional Judge D Barlow

Dated 5 October 2023