



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

Case Reference : **BIR/00CN/LAM/2023/0003**
Subject premises : **Flats 93-104
Rupert Street
Nechells
Birmingham
B7 5DS**
Applicant : **Foziur Raza**
Representative : **Joseph Chiffers (of Counsel)**
Respondent : **Sycamore Management (Nechells) No 1 Ltd**
Representative : **Mark Strangward**
Type of Application : **Application under section 24 of the
Landlord and Tenant Act 1987 for the
appointment of a manager**
Tribunal Members : **Deputy Regional Judge Nigel Gravells
David Satchwell FRICS**
Date of Order : **16 October 2023**

MANAGEMENT ORDER

Interpretation

1 In this Order -

‘The Property’ means the self-contained block, the flats within the block and all other appurtenant property known as 93-104 Rupert Street, Nechells, Birmingham B7 5DS and registered at HM Land Registry under title number WM399821.

‘The Landlord’ means Sycamore Management (Nechells) No1 Ltd or its successors in title to the reversion immediately expectant upon the Leases.

‘The Tenants’ mean the proprietors for the time being of the Leases whether as lessee or under-lessee and ‘Tenant’ shall be construed accordingly.

‘The Leases’ mean all leases and/or underleases of the flats in the Property.

‘The Manager’ means Mr Ian Smallman.

‘The Tribunal’ means the First-tier Tribunal (Property Chamber).

Order

2 Pursuant to section 24(1) of the Landlord and Tenant Act 1987 (‘the 1987 Act’) Mr Ian Smallman is appointed as Manager of the Property.

3 The Tribunal notes that Mr Smallman is a Director of the residential management company of MetroPM Limited. For the avoidance of doubt, Mr Smallman is entitled to delegate general administrative functions under this Order to other officers and employees of the company but Mr Smallman must take full responsibility for the management of the development himself. Any person exercising administrative functions as permitted above will not acquire any rights or functions under this Order but will merely be permitted to assist Mr Smallman in the discharge of his functions under this Order.

4 The Manager’s appointment shall commence on 1 November 2023 (or such other date specified by the Tribunal) (‘the commencement date’) and shall terminate on 30 September 2026 (‘the termination date’).

5 For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the Tenants remain bound by those covenants. Where there is a conflict between the provisions of this Order and the Leases, the provisions of this Order take precedence.

6 The purpose of this Management Order is to provide for the management of the Property.

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 commencement date no other party shall be entitled to exercise a management function in respect of the Property where that function is the responsibility of the Manager under this Order.

- 9 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.
- 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 1987 Act.
- 11 The Tribunal may, upon receipt of information or notification of change of circumstances, issue directions to the parties, or any other interested person, concerning the operation of this Order, both during its term, and after its expiry.
- 12 Any application to extend or renew this Order must be made before the termination 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 termination date, then the Manager's appointment will continue until that application has been finally determined.
- 13 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) of the 1987 Act. 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 his obligations under this Order and/or 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

- 14 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 the commencement of this Order; and
 - (b) the Manager has the right to decide, in his absolute discretion, the contracts in respect of which he 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.
- 15 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.

Dealings with the flats

- 16 The Manager shall be responsible for carrying out those functions in the Leases concerning approvals for subletting that the Leases provide should be carried out by the Landlord.

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

Legal Proceedings

- 18 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 his appointment.
- 19 Such entitlement includes bringing proceedings (i) in respect of arrears of service charge 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, (ii) in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002, (iii) under section 168(4) of that Act or (iv) before the courts; and shall further include any appeal against any decision made in any such proceedings.
- 20 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

- 21 The Tenants are responsible for payment of the Manager's fees, which are to payable under the provisions of this Order but which may be collected under the service charge mechanisms of their Leases.
- 22 The Manager shall be entitled to remuneration in the sum of £200.00 per flat per annum plus VAT, rising by the change in the CPI on 1 October 2024 and 2025.
- 23 Where the Manager undertakes qualifying works or enters into a qualifying contract that would come within the terms of section 20 of the Landlord and Tenant Act 1985, he shall be entitled to charge an additional cumulative fee, calculated in accordance with the table below, and that fee shall be included in the service charge accounts.

Reasonable cost of works/contract	Maximum fee (percentage of (further) cost)
Cost of works not exceeding £20,000	10.0%
Further cost of works exceeding £20,000 but not exceeding £50,000	7.5%
Further cost of works exceeding £50,000 but not exceeding £100,000	5.0%
Further cost of works exceeding £100,000	1.0%

Where the consultation requirements are dispensed with pursuant to section 20ZA of the Landlord and Tenant Act 1985, the additional fee shall be discounted by 25%.

24 The Manager may charge an additional reasonable fee for any dealing with solicitors in respect of the development and that fee shall be included in the service charge accounts.

Ground Rent and Service charges

25 The Manager shall collect the ground rents payable under the Leases.

26 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.

27 Whether or not the terms of any Lease so provide, 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 reserve or sinking fund to meet the obligations of the Landlord or the management company under the Leases;
- (c) allocate credits of service charge due to Tenants at the end of the accounting year to a reserve or sinking fund;
- (d) to collect arrears of service charge and insurance premiums that have accrued before his appointment.

28 The Manager is entitled to recover through the service charge the reasonable costs and fees of surveyors, architects, solicitors, counsel, accountants and other professional persons or firms incurred by the Manager in carrying out his functions under the Order.

Administration Charges

29 The Manager may recover reasonable administration charges from individual Tenants for his costs incurred in collecting ground rent, service charges and insurance premiums which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges shall be subject to legal requirements as set out in Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Disputes

30 In the event of a dispute regarding the payability of any sum payable under this Order by the Tenants, 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.

31 In the event of a 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 1987 Act.

32 In the event of a dispute regarding the reimbursement of unexpended monies at the termination 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

- 33 The Landlord must comply with the terms of this Order.
- 34 On any disposition (other than a charge) of the Landlord's estate in the Property, the Landlord shall 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.
- 35 Within 14 days from the date of this 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 and any monies standing to the credit of a reserve or sinking fund.
- 36 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.
- 37 The Landlord is to allow the Manager and his 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 perform his functions and duties and exercise his powers under this Order effectively and conveniently.

Directions to the Manager

- 38 The Manager must comply with the terms of this Order.

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

- 39 To protect the direction in paragraph 34 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 number WM399821 –
- '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 xx October 2023 have been complied with.'

Registration

- 40 The Manager must, within 14 days of the commencement date, make an application to HM Land Registry for entry of the restriction set out in paragraph 39 above.
- 41 A copy of the 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 –

- (a) that this is an Order made under Part II of the Landlord and Tenant Act 1987 (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 it applies in relation to an order appointing a receiver or sequestrator of land; and
- (b) that, 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.

Conflicts of interest

- 42 The Manager must be astute to avoid any conflict of interest between his duties and obligations under this Order and his contractual dealings. Where in doubt, the Manager should apply to the Tribunal for directions.

Complaints

- 43 The Manager must operate a complaints procedure in accordance with, or substantially similar to, the requirements of the RICS.

Insurance

- 44 The Manager must maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.
- 45 From the commencement date, and throughout his appointment, the Manager must ensure that he 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

- 46 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 must be certified by an external auditor, if required under the Leases;
 - (b) maintain efficient records and books of account and to produce for these for inspection (together with receipts or other evidence of expenditure) upon request by the Landlord or a Tenant under section 22 of the Landlord and Tenant Act 1985;
 - (c) maintain an interest-bearing trust account at such bank or building society as the Manager shall from time to time decide, into which service charge contributions, insurance premiums 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

47 The Manager must –

- (a) within six weeks of the commencement date 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 and management company's covenants in the Leases, including instructing contractors to attend and rectify problems;
 - (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 his 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.

48 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

49 No later than six months from the commencement date (and then annually) the Manager must prepare and submit to the Tenants, the Landlord and the Tribunal a brief written report on the progress of the management of the Property up to that date.

End of Appointment

50 No later than 56 days before the termination 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).

51 Unless the Tribunal directs otherwise the Manager must within two months of the termination 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.

52 The Manager must reimburse any unexpended monies to the paying parties (or to any new Tribunal-appointed Manager) within three months of the termination date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.