



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

Case reference : **BIR/00FN/LAM/2023/0002**

Property : **Stoughton Court, 24 Stoneygate Road,
Leicester LE2 2AD**

Applicants : **Mr Andrew Willis (1)
Ms Claire Simmons (2)**

Representative : **Mr Andrew Willis**

Respondents : **The Respondents listed in the appendix
to this decision**

Representative : **Frisby & Small, Solicitors (for the
leaseholder of flat 8 only)**

**The Current
Manager** : **Ms Lyndsey Cannon-Leach**

The New Manager : **Mrs Alison Mooney**

Tribunal Members : **Judge C Goodall
Mr G Freckelton FRICS**

Date of Order : **21 December 2023**

MANAGEMENT ORDER

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INTERPRETATION

1. In this Order:

“The Property” means the flats and other premises known as Stoughton Court, 24 Stoneygate Road, Leicester LE2 2AD and as registered at HM Land Registry under title number(s) LT13402 and LT14834 comprising all of the land and buildings included in the freehold title(s) referred to above; including all of the common parts of the property; such as garden areas, amenity space, drives, pathways, landscaped areas, flower beds garages, storage rooms, basements, electricity and power rooms.

“The Landlord” means Talvinder Singh Billen & Satbir Kaur Billen or their successor in title to the reversion immediately expectant upon the Leases.

“The Tenants” means the proprietors for the time being of the Residential Leases whether as lessee or under-lessee and "Tenant" shall be construed accordingly.

“The Residential Leases” means all leases of flats in the Property

“The SCML Lease” means the management lease dated 14 November 1980 and made between First State Properties Ltd (1) and Stoughton Court Management (Leicester) Ltd (2).

“The Existing Order” means an order dated 7 October 2020 by the Tribunal appointing the Current Manager to be the manager of the Property

“The Current Manager” means Lyndsey Cannon-Leach

“The New Manager” means Alison Mooney of Westbury Residential Limited of 200 New Kings Road, London SW6 4NF.

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

ORDER

2. In accordance with Section 24(9) of the Landlord and Tenant Act 1987 (“the Act”) the Existing Order is varied by substituting the Existing Manager with the New Manager with effect from 1 January 2024.
3. The term of the Existing Order is extended until 31 December 2028.
4. The provisions of the Existing Order are, as from 1 January 2024, substituted with the provisions appearing in this Order.
5. For the avoidance of doubt, the Directions (supported by penal notice) made by the Tribunal on 18 August 2021 requiring Mr Billen to cease all further building works in the basement of the Property, to clear the car park of building waste and rubble, and to grant access to the basement to the Current Manager

continue in full force and effect and the right to enforce those Directions shall pass to the New Manager from the commencement of her appointment.

6. For the avoidance of further doubt this Order supplements but does not displace covenants under the Leases and the Landlord and 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.
7. The purpose of this Management Order is to provide for the management of the Property which includes taking steps to resolve the following management problems and disputed legal issues as identified by the Tribunal being:
 - a. Recovery of unpaid service charges;
 - b. Ensuring compliance with all statutory health and safety obligations that apply to the Property;
 - c. Carrying out the maintenance obligations imposed upon the lessee in the SCML Lease;
 - d. Seeking a resolution to the adverse legal impact upon all parties of the lessee of the SCML Lease having been struck off the register of companies, and the SCML Lease not having been registered with HM Land Registry upon its grant;
 - e. Seeking a resolution to the dispute about ownership and rights to develop the basement in the Property and ownership of the basement and the garages.
8. To address the issues and problems identified in the previous paragraph the New Manager is empowered to manage the Property as if the SCML Lease was in full force and effect and was binding upon the current freeholder and the Respondents and so to exercise the powers and rights vested in the lessee of that Lease (including for the avoidance of doubt the power to demand service charges from the Landlord in respect of Flat 3 under clause 4(6) of the SCML Lease) until a determination of its legal effect is obtained;
9. The New 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 Residential 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 New 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.
10. 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 New Manager under this Order.

11. The tribunal requires the New Manager to act fairly and impartially in the performance of her 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.
12. 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 the Order, both during its term, and after its expiry.
13. The New 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.
14. 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 New Manager's appointment will continue until that application has been finally determined.
15. The New Manager is appointed to take all decisions about the management of the Property necessary to achieve the aims and purpose of this Order. If the New Manager is unable to decide what course to take, she may apply to the Tribunal for further directions, in accordance with section 24(4) of the 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 New Manager to discharge her obligations under this Order and/or for the parties to pay the New Manager's remuneration; and
 - c. where the New Manager is in doubt as to the proper construction and meaning of this Order; and
 - d. the possibility of litigation to apply for a vesting order under section 1017 of the Companies Act 2006 (or such other applications as might be permitted by the Tribunal) in respect of the SCML Lease.
 - e. Any action contemplated by the New Manager to carry out works in the basement of the Property the cost of which the New Manager considers should be borne by the freeholder.

Contracts

16. 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 New 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 New Manager, save that:
 - a. the Landlord shall indemnify the New Manager for any liabilities

arising before commencement of this Order; and

- b. the New Manager has the right to decide, in her absolute discretion, the contracts in respect of which she 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.
17. The New Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.

Licences to assign, approvals, pre-contract enquiries and lease extensions:

18. The New Manager shall be responsible for carrying out those functions in the Residential Leases and in the SCML Lease (on the assumption contained in paragraph 8 above) concerning approvals and permissions, including those for sub-lettings, assignments, alterations and improvements that the Leases provide should be carried out by the Landlord.
19. The New Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

Legal Proceedings

20. The New 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.
21. Such entitlement includes bringing proceedings in respect of arrears of service charge attributable to any of the Residential 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.
22. The New 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

23. The Lessees and the freeholder in respect of Flat 3 are each responsible for payment of one tenth of the New Manager's 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 or by the authority of this Order.

24. The sums payable are:
- a. an annual fee of £400 per unit for performing the duties as set out in paragraph 3.4 of the RICS Code (so far as applicable); and as contained in the Schedule to this Order.
 - b. additional fees for the duties as set out in paragraph 3.5 of the RICS Code (so far as applicable); and as contained in the Schedule to this Order.
 - c. VAT on the above fees.

Ground Rent and Service charge

25. The New Manager shall not collect the ground rents payable under the Residential Leases.
26. The New Manager shall collect all service charges and insurance premium contributions payable under the Residential Leases, in accordance with the terms and mechanisms in the Residential Leases and the SCML Lease (which shall be deemed to be in full force and effect and enforceable by the New Manager until such time as its proper status is determined).
27. Whether or not the terms of any Lease so provides, the New 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 fund to meet the Landlord's obligations under the Leases;
 - c. allocate credits of service charge due to Lessees at the end of the accounting year to the reserve fund;
 - d. collect arrears of service charge, administration charges, legal costs and insurance that have accrued before her appointment (including, but not limited to, the reasonable and properly incurred costs fees and expenses of the Current Manager is so far as those costs are demanded from the New Manager by the Current Manager);
28. The New 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.
29. The New Manager may collect all commercial rents being charged by the Landlord for use or occupation of the garage premises comprised in title number LT14834 or for rent being charged by the Landlord for the use of residents parking spaces; and to set off the income against any service charge arrears or other monies that are owed by the Landlord.
30. To ensure that the New Manager has adequate funds to manage the Property, she may immediately demand and collect the sum of five thousand pounds (£5,000.00) from the lessee of each Residential Lease in their capacity as lessees and five thousand pounds (£5,000.00) from the Landlord in his capacity as owner of Flat 3. The sum demanded by the New Manager shall be payable

within 28 days. Payments made under this clause shall be treated as on account payments of service charges properly demanded and so shall be set off against future demands.

31. The New Manager is entitled to recover by authority of this Order and / or 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

32. The New Manager may recover administration charges from individual lessees and the Landlord for their costs incurred in collecting service charges and insurance which includes the costs of reminder letters, the 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.

Disputes

33. 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 New Manager and litigation costs incurred by the New Manager), a Lessee, or the New 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.
34. 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 New 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.
35. In the event of dispute regarding the conduct of the management of the property by the New 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.
36. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the New Manager's appointment, she, 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 THE LANDLORD

37. The Landlord must comply with the terms of this Order.
38. 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 New 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.
39. The Landlord shall give all reasonable assistance and co-operation to the New 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 New Manager's said rights, duties or powers except by due process of law.

40. The Landlord is to allow the New Manager and her employees and agents access to all parts of the Property and must provide keys, passwords, passcodes, and any other documents or information necessary for the practical management of the Property in order that the New Manager might efficiently perform her functions and duties and exercise her powers under this Order.

DIRECTIONS TO THE CURRENT MANAGER

41. Within 14 days from the date of this Order the Current Manager must provide all necessary information to the New Manager to provide for an orderly transfer of responsibilities, and is to include the transfer of:
- a. all reports, accounts, books, papers and computer records, minutes, correspondence, emails and other documents as are relevant to the management of the Property, including all H&S reports, fire risk assessments, asbestos management plans, section 20 consultation notices and responses complete with estimates, specification of works; copies of keys; passwords or codes; and
 - b. all records and books of account, including receipts or other evidence as are relevant to service charge income and expenditure, including a complete record of all unpaid service charges and all documentation associated with recovery of arrears or debt collection; and
 - c. all funds relating to the Property including uncommitted service charges and any monies standing to the credit of a reserve or sinking fund are to be transferred to the account as set up by the New Manager within 5 days of the date of this Order; and
 - d. all records of legal advice and email correspondence in connection with disputed issues with the Lessees or the Landlord; and
42. The Current Manager must complete the obligations she has in her terms of appointment to manage the Property (including preparation of accounts for the period of her management and discharge of any liabilities she has incurred) to the end of her appointment. She is entitled to demand payment of her outstanding reasonably incurred fees and expenses from the New Manager when they are calculated (whether before or after the termination of her appointment).

DIRECTIONS TO THE NEW MANAGER

43. The New Manager must adhere to the terms of the Order above.

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

44. To protect the direction in paragraph 38 for procurement by the Landlord, of a direct covenant with the New Manager, the New Manager must apply for the entry of the following restriction in the register of the Landlord's estate under title no(s) LT13402 and LT14834.

“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 37 of an Order of the Tribunal dated the [*New Manager to insert*] have been complied with”.

Registration

45. The New Manager must make an application to HM Land Registry for entry of the restriction referred to above, within 14 days of the date of this Order.
46. 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 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.

Conflicts of interest

47. The New 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 New Manager should apply to the Tribunal for directions.

Complaints

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

Insurance

49. The New Manager must maintain appropriate building insurance for the Property and ensure that the New Manager’s interest is noted on the insurance policy.
50. From the date of appointment, and throughout the appointment, the New Manager must ensure that 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 lessee or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

Accounts

51. The New Manager must:
 - a. Prepare and submit to the Lessees and the Landlord an annual statement of account detailing all monies receivable, received and expended. The accounts are to be certified by an external auditor, if required under the Leases.

- b. maintain efficient records and books of account and to produce these for inspection, to include receipts or other evidence of expenditure, upon request by a Lessee under section 22 of the Landlord and Tenant Act 1985.
- c. maintain on trust in an interest-bearing account at such bank or building society, as the New Manager shall from time to time decide, into which service charge contributions, insurance premiums, and all other monies arising under the Leases and the New Managers demands shall be paid; and
- d. hold all monies collected in accordance with the provisions of the Code.

Repairs and maintenance

52. The New Manager must:

- a. Within 90 days of this Order draw up a management plan and planned maintenance programme to address the management issues identified in paragraph 7 of this Order 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 Lessee 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 or major works to the Property and to give proper regard to their views.

53. The New Manager has the power to incur expenditure in respect of health and safety equipment reasonably required to comply with regulatory and statutory requirements.

Reporting

54. By no later than six months from the date of appointment (and then annually) the New Manager must prepare and submit a brief written report to the Lessees, 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

55. No later than 60 days before the end date, the New Manager must:

- a. apply to the tribunal for directions as to the disposal of any unexpended monies; and
 - 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 New Manager’s term of appointment (whether through court or tribunal proceedings or otherwise).
56. Unless the tribunal directs otherwise the New Manager must within 28 days 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 28 days; and
 - b. answer any such queries within a further 28 days.
57. The New Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed manager within 28 days of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.

SCHEDULE TO THE MANAGEMENT ORDER

ANNUAL FEE:

The New Manager shall be entitled to charge an annual fee of £400.00 per unit (exclusive of VAT) for performing the duties as set out below and in accordance with paragraph 3.4 of the RICS Code (so far as applicable);

The New Manager shall be entitled to review the fee annually upon each anniversary of this Order. Any increase shall not exceed the percentage rate of increase in the UK Consumer Prices Index (CPI) measured by reference to the index for that measure published in November of that year unless directed otherwise by the Tribunal.

FEES FOR ADDITIONAL SERVICES:

For services that are not included in the annual fee, the New Manager shall be entitled to charge additional fees as set out below and in paragraph 3.5 of the RICS Code (so far as applicable);

The New Manager shall be entitled to review the fees annually upon each anniversary, any increase shall not exceed the value of the (12 month) UK Consumer Prices Index (CPI) unless directed otherwise by the Tribunal.

SCHEDULE OF SERVICES

1. Hourly Charge Out Rates

Director	£250 + VAT per hour
Senior Property/Accounts Manager	£200 + VAT per hour
Property/Accounts Manager	£150 + VAT per hour
Assistant Property/Accounts Manager	£100 + VAT per hour
Administrator	£50 + VAT per hour

2. Licence for Alterations

(Fee to be paid by the Lessee concerned or the Landlord)

The administration fee is between £250.00 to £750.00 (ex VAT) depending on the complexity of the application and the degree of liaison required.

Building surveyors fees and legal fees (if applicable) will be charged separately by the professionals concerned.

3. Pre-sale Enquiries

(Fee to be paid by the Lessee concerned or Landlord)

The administration fee for the provision of information relating to pre-sale enquiries is £360.00 (ex VAT). The information packs provided should be tailored to the flat in question and include comprehensive replies to all the

questions normally raised by solicitors along with all relevant documentation. The information pack should be provided within 14 days of a written request.

4. Licence to Assign / Notice of Transfer or Mortgage (if applicable)

(Fee to be paid by the Lessee concerned or Landlord)

The administration fee of £115.00 (ex VAT) per notice. Legal fees for the preparation of the documentation will be charged separately by the solicitors concerned.

Credit Control Action (further than standard reminder process)

5. (Fees to be recovered from the Lessee concerned or the Landlord)

The New Manager reserves the right to charge on an hourly basis for any additional credit control work required where either a Lessee or the Landlord does not pay their due service charge / administration charges (or ground rent) following the third and final reminder; including for the writing of further letters; referral to legal action and attendance at court or Tribunal as and where may be required.

6. Preparation and Attendance at Court / FTT

Reduced daily rates would be charged for necessary attendance at Tribunal / FTT.

7. Major Works Supervision Services

The fee for the administration of major building works (which includes all relevant site meetings, attendance, inspections, assisting with preparation of specifications, tendering and general contract administration) is not to exceed 1 % of the contract sum (for projects of over £50k) and 2% of the contract sum (for projects under £50k). Compliance with CDM Regulations will be arranged via a separate contractor and a fixed fee (or percentage of the contract sum if appropriate). Note: Major works are normally defined as those requiring formal consultation with leaseholders under the Landlord and Tenant Acts.