



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

Tribunal case reference : **CAM/00KF/LAM/2023/0001**

Property : **Mont Dol, 58 Chalkwell Ave,
Westcliff-on-Sea, Essex SSo 8NN**

Applicant : **Gail Patricia King**

Respondents : **Mr Edward Beale, Ms Deborah
Burwood, Mrs Gillian Donovan
Buck**

Type of application : **Application for the appointment of
a Manager pursuant to s.24
Landlord and Tenant Act 1987**

Tribunal : **Tribunal Judge S Evans
Mrs M Hardman FRICS IRRV
(Hons)**

Date of decision : **24 January 2024**

DECISION

The Tribunal determines that:

- 1. The Application for an appointment of a manager is granted.**
- 2. Ms Ivory-Empegliazzo is appointed manager of the Property for an initial period of 3 years from 1 February 2024 on the terms of the Management Order attached to this decision.**
- 3. Mr Beale and Ms Burwood shall reimburse the Applicant the application fee of £100 and the hearing fee of £200 within 28 days of the date of this decision.**

REASONS

Background

1. The Application before the Tribunal is an application for the appointment of a manager, pursuant to section 24 of the Landlord and Tenant Act 1987.
2. The Applicant is the leasehold proprietor of flat 2 and garage 2 in the Property, which is a detached building, built circa 1920 and converted in 1957. The Property contains 4 flats.
3. Ms Burwood is the leaseholder of flat 1, Mr Beale is the leaseholder of flat 3, and Mrs Donovan Buck is the leaseholder of flat 4.
4. The lease of flat 2 is dated 26 September 2008, and runs for a term of 151 years from 27 March 1957. The Applicant took a new lease of flat 2 on 5 April 2022 (following an earlier decision of this Tribunal as to premium on lease extension payable).
5. The lease of flat 1 is for 151 years and is dated 30 September 2008. Ms Burwood acquired this interest on 14 December 2008.
6. The leases of flats 3 and 4 are for a term of 99 years only from 27 March 1997. Mr Beale acquired his interest in flat 3 on 22 June 2012. It is unclear when Mrs Donovan Buck acquired her leasehold interest in flat 4.
7. The freehold title is held jointly by the Applicant and the above-mentioned leaseholders, registered with effect from 31 July 2018.
8. Matters appear to have progressed without event until 15 November 2020, when the Applicant expressed dissatisfaction with the lack of repair of the garages, a deteriorating garden wall, the state of the roof, and the condition of the drives and paths, amongst other things.

9. By 11 December 2020 the Applicant was writing to the other leaseholders in their capacity of freeholders about the above issues, and others.
10. By 26 February 2021 the Applicant had instructed lawyers to write to the freeholders about the issues, threatening a Notice under s.22 under the Landlord and Tenant Act 1987 unless management improved.
11. It took a year before the freeholders were able to agree a block management agreement, with a body called Essex Guild Block Management (“EGBM”), part of Essex Homes Guild Ltd. Kelly Ivory-Empegliazzo is their Head of Block Management.
12. By 8 April 2022 an FRA had been commissioned by EGBM. This report identified the need for suitable fire detectors, fire resisting doors, clearing of routes, compartmentation, testing and signage. All the risks presented by these defects were rated medium to high.
13. By 28 April 2022 EGBM had served a s.20 Notice of Intent for roof works, including tile replacement, repointing, guttering replacement, repairs to render, and repairs to the columns in front of the main entrance.
14. By 10 May 2022 EGBM had obtained a schedule of works for the above repairs, later undertaking a tender analysis.
15. By October 2022 EGBM was writing to Mr Beale and Ms Burwood, expressing regret at what was considered to be their very hostile and aggressive emails. The email expressed the view that they were trying to make the s.20 process as difficult as possible.
16. On 21 October 2022 the Applicant wrote to the other leaseholders, making several points on the s.20 process, including that Mr Beale and Ms Burwood had ignored quotes which the Applicant had obtained for pointing and external decoration; that several attempts to convene a meeting had been hampered by others trying to unsuccessfully submit quotes. The Applicant complained that this stalling, and blocking of essential maintenance, had put thousands of pounds on the price of each job.
17. On 8 November 2022 EGBM wrote to all the leaseholders to provide 2 quotes for works.
18. On the following day, Ms Ivory-Empegliazzo of EGBM wrote to all parties to indicate that she had received 2 emails very late the previous night, from Mr Beale and Ms Burwood, advising that they no longer wished for EGBM to manage the building, but instead wanted a firm called Appointmoor to take over with immediate effect. The e-mail went on to state that EGBM intended to continue its contract, not only until the end of January 2023 on behalf of all freeholders and leaseholders, but also past that point, until all parties were in agreement as to the manager who would take over. Ms

Ivory-Empegliazzo added that it would be very unprofessional of her to walk away from the building with immediate effect, and the contract does not allow her to do so. She added that she cared a lot about the building and about protecting all leaseholders'/ freeholders' assets.

19. On 8 December 2022 the Applicant sent a s.22 Notice to the freeholders (i.e. all other lessees) complaining of the following: want of exterior redecorations, tiled and flat roof maintenance required, chimney stacks needing repair, fascia/barge boards and soffits requiring work, gutters and rainwater goods requiring attention, flashings requiring remediation, external facade render and vertical tiles requiring works, bathstone columns in want of repair, hard landscaping repairs needed, and garages in danger of collapse, with crumbling asbestos roofs.
20. The said Notice alleged that the landlord was in breach of obligations owed to the tenant under the lease, and that other circumstances existed which made it just and convenient to appoint a manager. Schedule 3 of the Notice alleged that clause 4(3) of the Lease had been breached by the freeholders. As regards other circumstances which made appointment just and convenient, the Notice alleged that Mr Beale and Ms Burr had totally dissociated themselves from all aspects of the maintenance and management of the Property by refusing to engage with the managing agents appointed. There was now an impasse, it was alleged.
21. Mrs Donovan Buck's response to the Notice was to agree with what the Applicant said. She considered that EGBM had acted quickly to engage a chartered surveyor, but the 2 of the leaseholders (namely Mr Beale and Ms Burwood) had obstructed progress, by not engaging with the manager in a transparent way, by not attending meetings to discuss issues and make decisions with all other lessees, and increasingly by engaging in negative communications with both the agent and other leaseholders, thereby creating the impasse which the Applicant had identified. Mrs Donovan Buck wished to add to the list of complaints in the section 22 Notice the following: fire certification and entryphone equipment upgrade are both much needed.
22. On 26 December 2022 the Applicant made the instant application to the Tribunal.
23. In January 2023 EGBM prepared a budget for 2023, and in the next month it provided an insurance renewal quotation and invoice.

The Application

24. On 9 February 2023 Ms Ivory-Empegliazzo had provided a professional indemnity insurance certificate.
25. Directions were given by the Tribunal on 22 February 2023.

26. On 3 March 2023 Ms Ivory- Empegliazzo wrote to the Tribunal to inform it that she would accept the proposed appointment as manager, and that she would manage in accordance with the RICS code.
27. Mediation was offered by the Tribunal, and a date was fixed for 20 July 2023. Unfortunately, one of the parties withdrew late in the process, and mediation was not effective.
28. Revised Tribunal directions were therefore required on 23 August 2023. The Respondent's statement of case was due on 29 September 2023, but none was filed.
29. On 6 October 2023 Mrs Donovan Buck did email the Tribunal to indicate that she intended to represent herself; that she had no witnesses; that no inspection of the Property was required; and that she was in favour of the appointment of Ms Ivory-Empegliazzo as manager for 2 years.
30. On 8 December 2023 Mrs Donovan Buck emailed the Tribunal in similar terms to her October 2023 email.

The Hearing

31. At the commencement of the hearing, the Applicant attended, being represented by a lay person, Mr Harold King. Mr Beale and Ms Burwood attended, unrepresented. Mrs Donovan Buck did not attend. The case was put back, so that she could be contacted. In due course she was able to attend by telephone.
32. Mr Beale and Ms Burwood informed the Tribunal they had not complied with the recent directions because they had not received them. The Applicant and Mrs Donovan Buck confirmed they had received them. Inquiries revealed the directions had been sent out on 24 August 2023 at 14:30 by email, and also by post. Mr Beale stated he had not received the February 2023 directions either.
33. Mr Beale and Ms Burwood therefore sought an adjournment.
34. Both Mr Beale and Ms Burwood accepted they had received a copy of the bundle some 6 weeks before the hearing date. They confessed they had not read the bundle in full. It was pointed out to them that section 2 of the bundle contained the February and August directions. They indicated to the Tribunal that they did not intend to oppose the grounds for the appointment of a manager, nor argue that the s.22 notice was invalid; but merely wished to make representations on the suitability of Ms Ivory-Empegliazzo.
35. The Tribunal refused the application for an adjournment. The Applicant and Mrs Donovan Buck were ready to proceed. The long history of the matter militated against an adjournment. Mr Beale and Ms Burwood were

in a position to have prepared fully for the hearing, had they wished. They were able to, and could be limited, to representations on any documents in the bundle, including emails which they had historically provided.

36. The Applicant via Mr King then set out why Ms Ivory-Empegliazzo would be a suitable manager. Mr King described how difficult it had been finding a manager. EGBM was a small company but hugely experienced, Mr King said. He explained how they had previously found a manager called PACE, but Mr Beale and Ms Burwood would not sign up to the agreement with them.
37. Mr King then described why the schedule of works dated 10 May 2022 had not been progressed, because the 4 leaseholders could not agree on the way forward. He pointed to extant grounds maintenance issues, with photographs showing overgrown parts of the external spaces, and diseased conifers. He pointed also to some photographs of garages in the bundle, which showed garage doors rotten at the bottom, and alleged asbestos sheeting on the roof, which was concerning, given that the garages would appear to be subsiding, thereby increasing the risk of release of asbestos fibres. He also explained that the intercom at the main entrance door, linked to all 4 flats, needed repair. For example, Flat 2 can release the door but the occupants cannot converse with anyone at the door.
38. When asked why the formal appointment of Ms Ivory-Empegliazzo would make a difference, when it would not have appeared to have worked so far, Mr King considered that there would be the potential for redress in law, as Mr Beale and Ms Burwood would, in effect have to “give up their rights”.
39. Ms Ivory-Empegliazzo then gave evidence. She explained her qualifications by reference to her CV, starting with her appointment as a residential and commercial property manager with Brickman Yale from June 2015 to May 2018. She explained that she then took a temporary position at Principia Estates but the commute to Kensington was too far. She lives in Basildon, not far away from the Property. She then explained about her time as a senior property manager at Outlook Property between November 2018 and January 2020. She then talked about her experience as the Head of Lettings and Block Management at EGBM, which is situated in Rayleigh. Personal circumstances recently had meant she had had to postpone her ARPM qualification.
40. Ms Ivory-Empegliazzo went on to explain that when EGBM were first appointed in relation to the Property, she had held a meeting with all the lessees/freeholders, and she thought that a good start had been made. From that point onwards, she would make herself fully available, even giving all lessees her availability months in advance. However, at every opportunity, Mr Beale or Ms Burwood would cancel the proposed meeting, and even give her the “silent treatment”. That made management very difficult.

41. When she first obtained the schedule of works in May 2022, she sent it out to the tender. She then tried to arrange meetings, but Mr Beale and Ms Burwood would not attend.
42. She indicated that she had not been a court-appointed manager before in relation to any other property.
43. She was taken to the accounts for the year ending 31 January 2023. She informed the Tribunal that they were arrears of service charge, because Mr Beale and Ms Burwood were refusing to pay the management fee of £188. When asked what she would do about this, Ms Ivory-Empegliazzo indicated that she would have to instruct a solicitor - not something she wanted to do, as she would prefer to get along with all of the freeholders.
44. The Tribunal then took Ms Ivory-Empegliazzo to the schedule of works of 10 May 2022, and in particular the total of £50,000. She indicated that she did not consider all of the works to be urgent ones, with expenditure capable of being spent over a couple of years. She informed the Tribunal that she expected to be able to get $\frac{1}{4}$ of the total sum from at least 3 of the leaseholders, but not from 1 of them. When asked what her solution would be to this difficulty, she informed the Tribunal that she would look to payment plans, and possibly at legal solutions as well, because the longer such a situation went on, the greater would be the depreciation of the Property as an asset.
45. When asked why she would be willing to be appointed as manager, given the history of the matter, and her personal difficulties over the last year, Ms Ivory-Empegliazzo stated that she loved her job. Although she had got into property management by accident, she loved the challenge. She said that behind it all, the parties wanted the same thing. She was not going to give up. She reminded the Tribunal that she had historically indicated that, even though EGBM might have been out of contract, she would keep the management going until someone else was appointed. She pointed it to the fact there had been no reserve fund when she took up the position, but now there was some £4500. She explained that she had initiated the section 20 process, but Mr Beale had wanted to use his own contractor, and thereafter he had not attended meetings, even though she had tried to arrange them. The process had thus stalled.
46. Ms Ivory-Empegliazzo considered that being appointed by the Tribunal would make a difference, because it would put matters in order. The leaseholders who were not complying would have to abide by a set of rules. She impressed upon us that she would be working on behalf of both the leaseholders and the freeholders, and that would help to remove some animosity. She equally recognised that she would be acting for the Tribunal, as it would have appointed her. She realised she would have to hit the ground running, as it were, and soon get up to speed on acting as a court-appointed manager.

47. Mrs Donovan Buck then added that she understood that the lease terms provided that external decoration should be done every 8 years, but it was now 13 years since it was last done; and that was one matter she would like the manager to get on with. She added that she certainly wanted a manager appointed, and believed the current person is working very hard behind the scenes, and had adequately explained why things had not taken place as they should have done. She pointed to the unfairness of 2 leaseholders paying for management, but the other 2 not. She added that she had endured a leak into her flat for about 4 years from the roof on the south side. She added that she had moved in during July 2018, and had obtained an estimate for the repair of the garage roofs. She had been told that there was low grade asbestos on them.
48. Mr Beale then made representations on behalf of himself and Ms Burwood. His points may be summarised as follows:
- (1) Ms Ivory-Empegliazzo had no experience as a court-appointed manager, which would prove a difficult task;
 - (2) Ms Ivory-Empegliazzo has been managing since 2022 via EGBM. The photographs showed the poor state of the property grounds, despite her appointment; it was unclear when Ms Ivory-Empegliazzo last inspected what the gardener was doing, but it was evident she was not supervising them properly;
 - (3) Ms Burwood denies not paying management fees (Mr Beale admitted he had not);
 - (4) Whilst it is accepted that Ms Ivory-Empegliazzo is keen and enthusiastic, which is a positive, there was a question mark about whether she was able to manage the Property, particularly because she had not progressed the full section 20 consultation process (something they were entitled to assist upon, in the interests of avoiding further arguments);
 - (5) It had taken 1 year to get a fire safety certificate and fire extinguishers.
49. Ms Ivory-Empegliazzo was asked about the grounds maintenance. She informed the Tribunal that Mr Beale and Ms Burwood would not agree to the hours the others proposed, or to any increase in the summer months. The Applicant and Mrs Buck considered that 6 hours per week in the summer period, and 4 hours in the winter, was justifiable. Mr Beale and Ms Burwood said 3 hours was sufficient in the summer and 1 hour in the winter, because the Property does not get much leaf fall, and there is very little ongoing maintenance required, they said.

Determination

50. At the end of the hearing the Tribunal members retired to consider all matters, and informed the parties orally that it would be appointing Ms Ivory-Empegliazzo as manager of the Property for 3 years from 1 February 2024 to 31 January 2027, with reasons to follow in writing.
51. Those reasons are:
52. The Tribunal is satisfied that the section 22 Notice is valid.
53. It was not in dispute that the grounds for making an order were made out.
54. It is just and convenient to make an order, because, firstly, the Property urgently requires co-ordinated management of works, in particular to the garages and roof. We agree that an impasse has been reached which must be overcome.
55. Secondly, the Tribunal was impressed by Ms Ivory-Empegliazzo's attitude and commitment to management of this Property. It might not be an easy task, admittedly, but the main reason for that has been the lack of co-operation of, and friction created by, Mr Beale and Ms Burwood. The preponderance of evidence (the Applicant, Mrs Donovan Buck and Ms Ivory-Empegliazzo) testifies as to that, we find. An example of this is what the Tribunal considers to be unrealistically low hours for grounds maintenance advanced by Mr Beale and Ms Burwood.
56. Thirdly, the lack of experience as a court manager cannot be an impediment; otherwise no proposed manager could ever be appointed for the very first time.
57. Fourth, we are satisfied that, with suitable co-operation from all leaseholders, the section 20 process can be progressed reasonably effectively. Stage 1 was undertaken without difficulty; we have no reason to consider stages 2 and 3 would not go as equally smoothly.
58. Fifth, whilst Ms Ivory-Empegliazzo is (rightly) reluctant to go to law to enforce leaseholders' obligations or progress the works, the Tribunal has faith, given its findings find in paragraph 55 above, that Ms Ivory-Empegliazzo will resort to all available remedies in the Tribunal or Court, albeit if (and only if) necessary.
59. As to duration, we consider that 3 years should be the initial appointment, given that works are intended to be phased over at least 2 years after full consultation is completed. A 3 year appointment allows for a suitable buffer.
60. The application being successful, we determine that Mr Beale and Ms Burwood shall reimburse the Applicant the application fee of £100 and the hearing fee of £200, within 28 days.

Judge:

S J Evans

Date:

24/1/24

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to 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.
4. 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.