



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

Case Reference : CHI/43UG/LAM/2023/0005

Property : Trotsworth Court, Christchurch Road, Virginia Water, GU25 4AG

Applicant : Sharad Awasthi

Representative : None

Respondent : Trotsworth Court Association Limited

Representative : Property Management Legal Services Limited

Type of Application : Appointment of Manager, Section 24 Landlord and Tenant Act 1987. Application for an Order under S.20C Landlord and tenant Act 1985

Tribunal Members : D Banfield FRICS, Regional Surveyor (Chairman)
Judge J Dobson
E Shaylor MCIEH

Date of Decision : 1 February 2024

DECISION and FURTHER DIRECTIONS

The Tribunal declines to appoint a manager under S.24 of the Landlord and Tenant Act 1987 and the Application is therefore refused.

Background

1. By an Application dated 5 May 2023 the Applicant sought the appointment of a manager pursuant to section 24 of the Landlord and Tenant Act 1987. The initial application did not identify a proposed manager and also sought dispensation from serving a S.22 Notice.
2. Directions were made that unless a manager was identified and reasons for dispensation provided the Application would be struck out and on 5 July 2023 a Manager was proposed and on 7 July 2023 the Applicant served a S.22 Notice.
3. By Directions of 31 July 2023 the Tribunal declined to grant dispensation also acknowledging the Respondent's observation that an application to the Tribunal could not be made until after the notice period in any notice had expired. The Tribunal said however that it did not require this step and would proceed on the basis of the 5 May 2023 application and 7 July 2023 Notice.
4. On 18 August 2023, the Tribunal indicated that the proposed manager could not provide the necessary assurances and directed that any alternative manager must provide certain details and assurances as to their suitability to be appointed.
5. On 8 September 2023, the Applicant provided to the Tribunal details of the proposed candidate for manager; Kimberley Gillingwater MA of IV Property Management Ltd and by Directions of 27 September 2023 and subsequently the required assurances were provided.
6. Following the striking out of the Application for failure to provide a hearing bundle the Application was reinstated and listed for hearing.
7. Both parties had made a number of Case Management Applications the majority of which had been determined by the date of the hearing. Those outstanding will be referred to below.
8. The Tribunal were provided with an "Original" bundle of 363 pages and "Bundle 2" of 300 pages the inclusion of page numbers 257-300 being objected to by the Respondent.
9. References to page numbers will be to the pdf numbers which will be prefaced by "A" for Original or "B" for Bundle 2.
10. The Applicant did not submit a statement of case and the Tribunal has therefore identified the issues from the following;
11. The Application – Grounds for Application [11]

The affected parties are all other leaseholders who are victims of opaque financial management, misinformation, Wilful breach of Article of Association, Deliberate breaking lease, Lease

Variance to grab power, falsifying facts & records and intimidation.

In holistic view - things are not normal and needs attention from the Hon. Tribunal by removal of current management council and managing agent.

Law Bending, Breaches, Violation are as followings -

- Running Financial transaction (including operating reserve funds) with broken lease for last 19 years.
- Not auditing books of account for last 20 years. The Article of Association clearly defines a time frame of one year. (Also, it is required as stated by gazette.uk)
- There was a managing agent for about 15 years with same chairman - raises doubt about conflict-of-interest, considering there is no audit of the books of account.
- Not maintaining the members list correctly and / or sharing with members when asked (Breach of Companies Act 116,117). There is discrepancy.
- Not making Tenants "associate members' as required by Article of Association
- Not sharing 'interest register' as requested by me.
- Not Allowing 'inspection of books of account.'
- Attempting to change the status of member by giving false declaration.
- Wrongly citing GDPR in order to prevent sharing of member's list
- Inciting fear to member in AGM 2022, that all the data of members will be shared.
- Willingly keeping the number small for members in the TROTSWORTH COURT management company. The member's list is still not shared with anyone. Only after lengthy persuasion, we are told, there are only 15 members only, out of 78 eligible ones.
- Not disclosing the details of financial transactions documents, when requested

Deliberately keeping the management and affairs (especially financial) limited to few members only, by unethically ignoring rules.

- Running the estate with rule bending and with unapproved spending like violating Sec 20
- Falsifying TPO records and demonstrating no accountability in handling financial transaction and managerial responsibility on that matter. Raises serious doubt about the conflict-of-interest.
- (officially stating in AGM 2022, that - following laws "stalls" the work)

- Working with suspected conflict-of-interest, as there is lot of misinformation, misrepresentation, tempering with records (minutes of AGM) and other claims
- Changing / altering the minutes of meeting to mislead the members / leaseholders
- Attempting to subvert the democratic rights of the members and leaseholders by limiting the nature of interaction of members and leaseholders in AGM 2023.
- Giving false declarations in AGM and records like on matters of importance like Fire Assessment, tree felling, management of estate etc.
- Using discrimination by openly declaring in the AGM 2022, that management will not respond to my emails.
- When asked questions about the financial transactions - directors resort to intimidation, discrimination and inciting hate against me. Last time they called police in the AGM, only to find nothing wrong was done by me or my wife.
- Using harassment, discrimination methods and spreading hatred to discredit me and intimidate. (sic) (The matter is taken up separately with Surrey Police.)
- **LAST NOT LEAST - NOW ATTEMPTING TO CHANGE LEASE - RETROSPECTIVELY FOR LAST 60 YEARS (date of inception)**. Application for lease variation will be given after 24th March 2023.
- Extraordinary Changes to the Lease is being attempted, to consolidate the financial and regulatory powers of the managers, making the decision making unchallengeable and making the lease go against the democratic rights of the leaseholders.
- The new lease variance proposal is also an attempt to provide “indemnity” to the office bearers. This clause was not proposed in the original plan of the lease variance. It was inserted later, after the discrepancies and probable financial management were discovered.

12. The S.22 Notice; [32]

1. Not auditing books of account for last 20 years. The Article of Association clearly defines a time frame of one year. (Also, it is required as stated by gazette.uk). When it was the duty to do so, please explain why unaudited financial records were declared by past and present management? Also, please provide detailed remediation plan.

2. In the AGM 2022, when asked about this failing as in point (1), your explanation (as recorded in minutes of meeting), not be considered as wilful act of misleading leaseholders/ members and providing financial misinformation. Also, please provide detailed remediation plan.
3. Running Financial transaction (including operating reserve funds) with broken lease for last 19 years. Please explain why the financial management of the estate was operated with false accounting method (like use of reserve funds operation as account head), by past and present management, also, there exists no procedure defined to operate this fund and its purpose thereof, for last 19 years. Why this action of the management not considered as financial misrepresentation and breach of law. Also, please provide detailed remediation plan.
4. Not maintaining the members list correctly and / or sharing with members when asked (Breach of Companies Act 116,117). There is discrepancy between those attending the AGM by members (as recorded) and the numbers disclosed in the minutes of meeting for lease variance (year 2023). Please explain why the management's action of wilful breach not considered as an act of concealing material information from the members, even you had a collective duty to do so. Also, please provide detailed remediation plan.
5. Not sharing 'interest register' as requested by a leaseholder. It is required by law and the 'management' has failed to comply. Please explain why this wilful act should not be considered as an act of negligence to disclose information, when it was your collective duty to do so. Also, please provide detailed remediation plan.
6. Not Allowing 'inspection of books of account', as it is required by Article of Association and the law, but the management has failed to comply. Please explain why this wilful act should not be considered as an abuse of your position to protect the financial interests of the leaseholders and members. Also, please provide detailed remediation plan.
7. Attempting to change the status of member (of Trotsworth Court Company) by giving false declaration and also citing GDPR to mislead the member. Please explain why this wilful action of the management should not be considered as an attempt to dishonestly represent the member and abuse of position. Also, please provide detailed remediation plan.
8. Inciting fear to members of Trotsworth Court Association Company, in the AGM 2022, that all the data of members will be shared if Section 116 is honoured. Please explain why this wilful statement by the management should not be considered

as an (sic) misrepresentation and misleading information. Also, please provide detailed remediation plan.

9. Running the estate with unapproved spending like violating Sec 20. The installation and service charge collection of electric charging station(s) was not approved by the members, still spending was done, despite the challenge. When challenged in the AGM of 2022, the members were falsely cited the Section 20 conditions to seek a retrospective vote of approval for spending. Please explain why this wilful action by the management should not be considered as an (sic) misrepresentation of facts, abuse of position and causing loss to members and leaseholders. Also, please provide detailed remediation plan.

10. Falsifying TPO records and demonstrating no accountability in handling financial transaction and managerial responsibility on that matter. Please share the documentation regarding the spending like invoices, validation of tree survey and other transactions (Management & Financial). This request was disregarded then, when communicated in email. Hence, in this notice, please explain why this action of management should not raise serious doubt about the conflict-of-interest, abuse of position and financial misconduct. Also, please provide detailed remediation plan.

11. Tempering (sic) with (minutes of AGM) by changing / altering the minutes of meeting to mislead the members / leaseholders. I have sent many corrections to the minutes of meeting released by the management but none of the corrections were made. Please explain why this action of the management should not be considered as misleading information, misinformation causing loss to the members and leaseholders. Also, please provide detailed remediation plan.

12. Using discrimination by openly declaring in the AGM 2022, that management will not respond to my emails. Also, the management has used harassment, discrimination methods to intimidate. Please explain why this stance and action of the management should not be considered as abuse of power to intimidate from raising pertinent questions related to financial losses caused to the members / leaseholders. Also, please provide detailed remediation plan.

13. Giving false declarations about “veto” power of the leaseholders in process of budget making, during the consultation meeting for Variation of Lease (year 2023). The request for more details about this misleading statement is not responded. Hence, please explain why this action of the management should not be considered as misleading, misrepresenting and pursuing the leaseholders / members to approve the lease variance. Also, please provide detailed remediation plan.

The Law

S.22 Preliminary notice by tenant,

“Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on-

(i) the landlord,

(2) A notice under this section must-

(a).....

(b).....

(c).....

(d) where those matters are capable of being remedied by any person on whom the notice is served, require him within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified.....”

S.24 Appointment of manager by the court.

(1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver,

or both, as the tribunal thinks fit.

(2) the tribunal may only make an order under this section in the following circumstances, namely—

(a) where the tribunal is satisfied—

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii).....

(iii) that it is just and convenient to make the order in all the circumstances of the case;

(ab) where the tribunal is satisfied –

(i) that unreasonable service charges have been made

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(aba) where the tribunal is satisfied –

(i)that unreasonable variable administration charges have been made.....)

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(i)

(ac) where the tribunal is satisfied-

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State.....

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22 the tribunal may, if it thinks fit, make such an order notwithstanding-

that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

that the notice failed in any other respect to comply with any requirement

contained in subsection (2) of that section or in any regulations applying to

the notice under section 54(3)”

Lease Extracts [103]

13. *This Lease is made.....BETWEEN TROTSWORTH COURT ASSOCIATION LIMITED whose registered officeof the first part WENTWORTH ESTATES LIMITED of the second part and*

4.(vii) That the Lessors will maintain the forecourt gardens shrubberies entrance drives and ways of Trotsworth Court and the boundary walls and fences belonging thereto and land occupied therewith in good order and condition with the gardens properly planted with shrubs in due season and free from weeds and clean and tidy and free from all obstructions and will carefully preserve the timber trees and all ornamental trees and replace such of the shrubs or trees as may die or require replacing

THE FIRST SCHEDULE

8. No Owner shall without the previous consent of the Lessors at any time fix or place any aerial wires poles or projections or any other articles notices signs pictures legend or advertisement or any other things outside the demised premises or any part thereof.

THE SECOND SCHEDULE

1. Full and free right and liberty of ingress to and egress from the demised premises by the Lessee and others authorised by him at all times over and along that part of the roadway known as Gorse Hill Lane upon which Trotsworth Court abuts and also over and along the entrance drivesin common with all other persons having the like right and where appropriate with attendant motor cars and other vehicles.

Inspection

14. The Tribunal inspected the site immediately before the hearing. The inspection was attended by Mr & Mrs Awasthi, Ms Zanelli the Respondent's representative together with Mr Gallagher Chairman of Trotsworth Court Association Limited, Angie Tomkins and Xerxes Mehta of Charters Property Management and the proposed manager Ms Kimberley Gillingwater. Other lessees were also present.

15. The development comprises 78 flats situated in 9 three storey blocks set amongst grass areas and extensive tree planting. There was open air parking in marked bays throughout together with a block of garages set around two courtyards. Virginia Water station is nearby together with local shopping parades.

16. The Applicant helpfully provided a list of locations that he wished the Tribunal to inspect;

- The gates leading on to Gorse Hill Lane which we noted were secured with a chain and padlock
- The external doors to the blocks which we noted opened inwards
- The electric charging station with control box and one charging point next to a marked bay

- The “Notice Gate” which is a pedestrian gate from the rear road
 - The “road in garages” the surface of which we saw was relatively recent and in good condition
 - The “TPO tree” where we saw a stump with the remains of three trunks
 - Small Gate II, a wrought iron pedestrian gate leading on to Christchurch Road
 - T24, which we noted was a mature tree with extensive ivy growth
17. A “projection” outside block 19-30 which we noted was a plastic storage box set on paving slabs and not apparently touching the external wall of the block.
18. We noted some recent tree planting, access scaffolding to the rear of one block and some small sections of tarmac where cables had apparently been laid and an area where resurfacing had not yet taken place.

The Hearing

19. The hearing took place later the same morning at Staines Law Courts and was attended by those who were at the earlier inspection and some other lessees.
20. The Tribunal explained that despite a large number of issues having been raised, the Tribunal’s jurisdiction was that provided by Section 24 of the Landlord and Tenant Act 1987. The Tribunal would not therefore determine those areas of dispute relating to company law but would restrict itself to issues concerning the relationship between the Applicant and Respondent as set out in the Applicant’s lease.
21. The Tribunal said that it was aware that the Respondent had made an application to vary the existing lease and was awaiting Directions from the Tribunal. This was not however before the Tribunal at this hearing.
22. The Tribunal referred to its Directions of 31 July 2023 regarding whether the application was valid given that it preceded the expiry of the notice period contained in the S.22 Notice. The Chairman suggested and Ms Zanelli agreed that the proper course was to determine the substantive issues and then consider jurisdiction should that prove to be relevant.
23. The Tribunal had three case management applications remaining to be determined:

Applicant

- 8/1/2024 To include “MyReply-Part 2” in case it is not included in the Bundle – 2
- 8/1/2024 To remove Mr Gallagher and Ms Tomkins from providing services and appoint a New Manager
- 3/1/2024 Remove Mr Gallagher because he has demonstrated acts of racial stereotyping

Respondent

21/12/2023 To admit the completed report on the roof not available at the time Mr Gallagher's statement was prepared

24. With regard to the applications to remove Mr Gallagher and Ms Tomkins from their respective positions in Trotsworth Court Association Limited and its managing agent the Tribunal referred the Applicant to paragraph 7 of the directions of 13 December 2023 which was in respect of a similar application. In his Directions Judge Lumby referred to the Tribunal's case management powers set out in Rule 6 of the Tribunal's Procedure Rules. A case management order for the immediate removal of the incumbents being clearly outside the regulation of its procedure being the power given by Rule 6. As such the applications are refused.
25. Regarding the applications to admit additional pages to the Applicant's bundle and a roof report, the Tribunal said that it would consider those applications if and when they became relevant to the proceedings.
26. The Tribunal said that whilst it had examined the submitted bundles it had found most useful the grounds for the Application set out in the application form [A1], the S.22 Notice [A32], the letter in response [A63], the lease [A103], the "falsified TPO" [A201] the proposed manager's proposals [A282] and the Respondent's response [B36].

The Applicant's submissions

27. Mr Awasthi said that he was taking a holistic approach and considered that there were breaches of the RICS Residential Management Code, that terms of the lease had been violated and that his "entire application rests on the lack of audit" as required under the Memorandum of Association of Trotsworth Court Association Limited.
28. Mr Awasthi said that as the Respondent was a limited company, matters of corporate governance were relevant to whether a manager should be appointed.
29. Referring to lease violations, Clause 1 of the Second Schedule [A109] gives him the right to use the gate opening on to Gorse Hill Lane which are now kept locked. This caused difficulties when ambulance access was required.
30. The second schedule Clause 8 referred to not placing any projection outside the premises whereas there was a storage box to the rear of block 19 to 30 and no action had been taken.
31. Clause 4 (vii) required the Lessor to replace trees which he considered meant one replacement for any tree removed but this had not happened as fewer trees had been planted than had been removed.

32. An electric charging station had been installed which was not needed and which was a Qualifying Long Term Agreement (QLTA) for which consultation had not occurred.
33. Regarding fire safety, the external fire doors opened inwards against the direction of escape and which was dangerous. The issue had not been raised in the Fire Safety report and was contrary to the 2005 Act (which the Tribunal understood to mean the Regulatory Reform (Fire Safety) Order of that year).
34. Referring to the RICS Management Code 2016 edition Mr Awasthi referred to Part 2, a section in respect of Ethics section 2.1 of which referred in the last line to “The duty of care and skill applies to every aspect of your services”. The locked rear gates preventing ambulance access did not comply with such a standard.
35. Section 2.2.1 required the business to be carried out in a “fair, transparent and professional” manner which was not apparent due to the lack of any audit of the landlord company. Regarding 2.2.10 there was no clear demarcation between the agent and client such that when he had raised matters it could be either the Respondent or the managing agent who then responded.
36. Section 2.2.12 was in respect of the conduct of meetings at which he had been prevented from speaking and other irregular issues.
37. Regarding the requirements of 4.7 in respect of inspections he disputed that the agents had visited 33 times as stated and referred to an abandoned car being on site for 6 months, lights in communal areas and staircases and in the grounds not working and door latches not being maintained thereby creating a fire risk.
38. Mr Awasthi said that he had been discriminated against contrary to section 2.4 as he had been told that his emails would no longer be replied to.
39. Looking at the tasks referred to as part of the annual fee as set out in Section 3.4 Mr Awasthi said that no estimates had been produced for works to the roadway and that his requests for a policy about pram storage had not been actioned. Dealing with breaches such as the “projection” was listed as a duty in Section 3.5. He considered that the managing agents were “partners in maintaining the lease”
40. Section 3.7 was in respect of the provision of company secretarial services and as such the administration of the company must be a matter that the Tribunal should find relevant. Section 4.3 related to Data protection and GDPR had been breached by releasing information about leaseholders to Keens Accountancy.

The Respondent’s reply

41. Ms Zanelli said that corporate governance was not relevant and as such Mr Awasthi’s reference to the “Mother of all Breaches” when referring to the lack of a company audit was not an issue. There was no requirement in the lease

for audited accounts and the company was exempt despite the terms of the Articles of Association which were now some 60 years old.

42. The management of the company and the management of the development under the terms of the lease were two separate roles.
43. With regard to access onto Gorse Hill Lane, Ms Zanelli said that as the road fell outside the company's ownership they could not grant rights over it and no breach had therefore occurred. She said the entrance for emergency vehicles was the main entrance on Christchurch Road.
44. A Fire Risk assessment had been conducted in March 2022 and the next one was scheduled for March 2024. The entrance doors complained of are not fire doors as there is a "Stay Put" fire strategy with the doors to the flats providing the required fire protection. The fire assessor had not been concerned. A "zero tolerance" approach is not taken with regard to items left in the common parts but personal items such as shoes are discouraged. In answer to the Tribunal's question Ms Zanelli said that a copy of the assessment had not been included in the bundle.
45. In respect of the allegations regarding tree works, the Respondent relies on the advice of the tree surgeon who, when approved by the Local Authority following TPO consent will take out dead wood and fell where necessary. Replacement trees have been planted, but the lease does not require one-for-one replacement.
46. The EV charge point was installed following discussions at AGMs in 2020 and 2021. Ground works were carried out and one point installed with the ability to provide others from the same supply. The cost amounted to £128 per lessee and as such did not require consultation under S. 20 of the Landlord and Tenant Act 1985. There was an annual contract for the supply of electricity from Octopus which did not meet the description of a QLTA.
47. The RICS management code is for Managing Agents rather than owners and until yesterday the Applicant had no complaints about Charters' service. The requirements regarding "Ethics" refers to the agent's obligations and the duty of care is to the client i.e. Trotsworth Court Association Limited.
48. The locking of the rear gates and references to audit, which being a company matter, are irrelevant to whether the requirements of the code are met.
49. The abandoned car had been promptly reported to Runnymede Council but they would not take action whilst there was current road tax in place.
50. Regarding lights, there was an element of reliance on lessees to report such matters and when so reported they were acted upon. The stairwell lights had been converted to LED and it was acknowledged that there were outstanding issues with some of the fittings that needed to be addressed.
51. Reference to defects in the door locks was in fact where the locks had been modified to prevent them being locked open.

52. The allegation of discrimination was rejected whilst accepting that that Mr Awasthi's email were not responded to but this was due to a period when multiple emails of 20 per month were being received. This was considered to be unreasonable behaviour as referred to in IRPM guidance.
53. Estimates and budgets are prepared and discussed at the relevant AGM and are therefore transparent. As the reference to the works to the roadway had not been previously raised it is not possible to confirm whether £18,000 is the appropriate amount as indicated by the Applicant. However, if this is correct, S.20 consultations would not have been required £19,500 being the S.20 limit.
54. The services provided by way of day to day management was a matter between the company and the agent. Reference to the duties under Section 3.4 was simply a menu of services that could be provided if required by the client.
55. There was no GDPR breach as Keenes are Charters' bookkeepers and as such have a legitimate interest.
56. Contrary to the Applicant's allegations the register of company members is kept up to date.
57. In answer to the Tribunal's questions Ms Zanelli said that copies of the costings of the road repairs referred to had not been included in the bundle.

Witness Evidence

58. Miss Tara Martin was called who confirmed the truth of her witness statement [B30] and said that whilst she had been a Director of the Respondent since 14th January 2022 she had attended AGMs for many years as proxy for her parents who owned the flat before her.
59. Her statement referred to her being "shocked and appalled" at the Applicant's behaviour to Trotsworth Court Association Limited and its Chairman, Kevin Gallagher.
60. Miss Martin referred to incidents involving the Applicant at AGMs and his "campaign" against the Respondent company. She considered that the existing management was doing a good job and there was no need for appointment of a manager.
61. Mr Gallagher was called and confirmed his witness statement [B61]. Regarding the removal of the "snibs" to some of the latches, this was only done after complaints had been made that doors were being left open.
62. Regarding the abandoned vehicle, this usually occurs when a resident moves and leaves a car behind. It is not however always obvious and action isn't taken by the parking company until the permit has expired. He confirmed that a record of residents' registration numbers is kept.

63. Regarding the cost of road repairs he doesn't disagree with the Applicant's recollection that they were in the region of £18,000. No S.20 consultation was conducted as the cost was below the limit.
64. With regard to the alleged failure to have the "projection" removed Mr Gallagher said that whilst he did not consider the plastic storage box complained of to fall within such a definition, in any case consent, as required by the lease, had been given.
65. In cross examination Mr Awasthi said that the parking permit had expired in 2021 and despite the managing agent visiting the site on 33 occasions since then the car had not been removed. Mr Gallagher said that Charters were contracted to conduct four full site inspection per year, so many of the 33 site visits were not full inspections, rather they were site meetings of various kinds, and that only one quarterly inspection had taken place before Runnymede Council were informed.
66. In answer to the Tribunal's questions Mr Gallagher said that the gate leading on to Gorse Hill Lane was kept locked for security reasons and that he and the managing agent had keys for when access was needed. Regarding the complaint regarding the storage box Mr Gallagher said that the Company had given its consent although he was unsure whether this was verbal or in writing.
67. Miss Susan Bruce confirmed her witness statement [B219] in which she said that she was a director of Trotsworth Court Association Limited and opposed the application. She had been a resident since 1962, a lessee since 2004 and became a director in 2005 following a term as a County Councillor.
68. Miss Bruce referred to various incidents involving the Applicant and confirmed that she was happy with the existing managing agents and the management of the estate in general.
69. Miss Angela Tomkins referred to the abandoned car and said that Runnymede would only take action after the tax had expired.
70. Mr Awasthi suggested that there was a conflict of interest by having the tree surveyor conducting the work that he had recommended. An independent survey should have been obtained. Miss Tomkins disagreed and said that it was usual practice to proceed as they had done.

Closing Submissions

71. Ms Zanelli said she had no need to make closing submissions.
72. Mr Awasthi made the following points;
 - Whilst his concerns over audit were core to his objections, they were not relied upon as there were other issues

- The Wentworth Estate, which included Gorse Hill Lane, was a party to the lease and as such were in a position to grant access over it through the currently locked rear gate
- The company Memorandum and Articles required an audit which had not been provided
- The arrangement by the company to receive payment for electricity supplied through the car charge point was a qualifying long term agreement
- The conflict of interest occasioned by the tree surgeon conducting both the inspection and the work
- No separation between the company and the managing agents
- The number of emails he had sent were not sufficient to be considered as “unreasonable behaviour”
- He should have been asked to consent in writing to his data being shared with Keens and was contrary to GDPR
- He had not raised S.20 issues
- There are “truck loads” of failings by both the company and managing agents for which he holds all to be responsible
- A request for a new manager is confirmed.

Evidence of the Proposed Manager

73. Ms Kimberley Gillingwater MA of IV Property Management Ltd had provided a statement of her proposals [281] and was then called to answer the Tribunal’s questions:
- Two Tribunal appointments were already held, one for 160 units and another of 32. Both had problems to be dealt with.
 - She was used to dealing with fractious relationships which was considered to be a problem here
 - Current issues include looking at the need to alter the exit doors and to ensure that trees were preserved wherever possible
 - Her management included large and small blocks of flats together with some houses
74. In answering how she would carry out her responsibilities, Ms Gillingwater said she would hold weekly surgeries and that the software her firm used was transparent and open to all. Clarification as to the terms of membership of the company would need to be clarified as in her experience membership of most lessee owned companies was open to all lessees.
75. Her fee of £180 +VAT [282] was her standard amount additions to which would be the cost of engaging outside consultants when required. An appointment for 2 years was needed to get the issues resolved.

Determination

76. Section 24 of the Landlord and Tenant Act sets out the test that the Tribunal must apply when considering any application for the appointment of a Manager. In summary these comprise a determination that the existing

management has failed in an obligation owed to the tenant under his tenancy, has failed in complying with any code of practice and approved by the Secretary of State and finally whether it is just and convenient to make the appointment.

77. Any failure of management must be in respect of duties owed as between landlord and tenant and does not concern the internal operation of the landlord company.
78. The first area that the Tribunal must consider are any failures to abide by the Respondent's obligations under the lease and to abide by the RICS Code. These are:
- A failure to provide access on to Gorse Hill Lane
 - A conflict of interest regarding placing contracts for tree works
 - Failure to replace trees as required
 - Failure to enforce lessees' covenants
 - A potential QLTA required in respect of the electric charge point
 - Confusion between responsibilities of landlord and managing agent
79. Regarding the RICS code the issues were;
- To abide by the requirements of Part 2 Ethics in respect of
 - 2.1 A failure of "The duty of care and skill" in respect to the locked gates and lack of access.
 - 2.2.1 A lack of the required transparency in respect of the failure to conduct an audit and no clear demarcation between the landlord and its managing agent
 - 2.2.12 & 4.17 Disputes that the managing agent has visited the site for the alleged 33 times.
 - 2.4 Discriminated against by not responding to his emails
 - 3.4 (e) No estimates provided for roadway
 - 3.4 (o) Failed to provide advice on day to day management policy otherwise his requests for a fire inspection would not have been ignored
 - 3.5 Failure to deal with breaches of lease
 - 3.7 By provision of Company Secretary service must make any failure in company management relevant
 - 4.3 Failure to abide by GDPR requirements in respect of releasing information to Keenes
80. With regard to the provision of access on to Gorse Hill Lane the Tribunal does not accept such access was not contemplated when drawing up the leases. The Wentworth Estate, which it is understood to control Gorse Hill Lane, was a party to the lease and as such was perfectly able to grant rights over it. By keeping the gates locked, lessees have been prevented from exercising a right of "ingress to and egress from the demised premises at all times over and along that part of the roadway known as Gorse Hill Lane."

81. The Tribunal does not accept that the use of the same company to both survey trees and conduct any subsequent work is a conflict of interest. This is fairly standard practice and no prejudice has been identified.
82. The draftsman of Clause 4 (vii) in respect of the replacement of trees cannot have intended that each and every tree that germinated on the site from the date of the lease that died or otherwise felled should have to be replaced by the same number. If that were to be the case every seed that grew would have to be preserved and over time the estate would become completely overgrown. The Tribunal finds that the requirement is to maintain the current environment of extensive tree and shrub planting felling, pruning and replacing where necessary. As such the Respondent is complying with its obligations.
83. The example of the “projection” cited as failure to enforce lessees’ covenants is rejected by the Tribunal. The freestanding plastic box does not come within such a category and in any event we heard that landlord’s consent had been given.
84. A QLTA is a contract placed with a third party that extend beyond a twelve month period. Failure to consult lessees would result in a maximum of £100 per annum being recovered through the service charge. The only contract referred to here is that with the electricity supply company which does not exceed the 12 month period. No breach has been proved.
85. In any lessee owned company there will be a crossover between duties conducted by the company and those by the managing agent. This is usually to ensure a prompt response to issues raised by lessees. The Tribunal does not find the circumstances described as breaching the terms of the lease in any way.
86. Regarding compliance with the RICS code the Tribunal notes that on page 7 it states that “Although members are not required to follow the recommendations contained in the guidance note, they should take into account” that “a court or tribunal may take account of the contents “
87. Section 1.2 states “...all requirements are for the managing agent, acting on behalf of a client,....”
88. Section 2 sets out the requirements to be observed in dealings between agent and client i.e. between Charters and Trotsworth Court Association Limited.
89. Section 3 as the heading suggests refers to the terms to be agreed between agent and client.
90. The reference at 3.7 indicates that Managing Agents may in addition to its core duties provide company secretarial services should the client wish.
91. Section 4 covers general standards and guidance at 4.3 advising that agents should be aware of GDR requirements.

92. As such the Tribunal finds that on the evidence presented neither the existing managing agent or the Respondent has failed to abide by the RICS code in respect of its management of the estate.
93. **Given that the Tribunal, with the exception of access to Gorse Hill Lane, has not found that either the landlord's obligations under the lease or the RICS management code have been breached it does not find it "just and convenient" to appoint a manager under S.24 of the Landlord and Tenant Act 1987 and the Application is therefore refused.**
94. **The Tribunal adds that even if some breaches had been found, some 65 objections to the application/support for the Respondent Company have been received and given this level of satisfaction any incoming tribunal appointed manager would be most unlikely to succeed.**
95. The Tribunal thanks Ms Gillingwater for her attendance and the open and straightforward manner in which she put forward her proposals.

Costs applications and reimbursement of Tribunal fees

96. The Tribunal's directions of 31 July 2023 indicated that cost applications would be heard at the end of the hearing. This did not however take place and further directions are now made seeking the parties representations.
97. The Applicant set out his reasons in his application dated 3 July 2023, however, given that time has passed the Tribunal wishes to give the Applicant the opportunity of expanding on these reasons should he so wish and for the Respondent to reply.

Directions

98. **The Applicant will send any further submissions in respect of the cost application only to the Respondent and electronically to the Tribunal within 14 days of the date of this determination.**
99. **The Respondent will send a reply to the Applicant and electronically to the Tribunal withing 28 days of the date of this determination.**
100. **The Tribunal will determine any costs applications on the papers and provide a supplemental decision in writing as soon as practicable thereafter.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by

email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

NOTE

The time limits referred to above are from the date the decision on costs is sent to the Tribunal.