FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UB/LAM/2023/0003**
Property	**:**	**69-81 Lincoln Road, Basildon, Essex SS14 3RB**
Applicant	**:**	**Keith Newman**
Respondent	**:**	**69-81 Lincoln Road (Freehold) Limited**
Representative	**:**	**Cooper Lingard, Solicitors**
Type of application	**:**	**Appointment of Manager**
Tribunal members	**:**	**Judge K. Saward** **Mr A. Tomlinson BSC (Hons) MRICS**
Date of hearing	**:**	**12 March 2024**
Date of decision	**:**	**14 March 2024**

DECISION AND REASONS

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Decisions of the Tribunal

1. Under rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal directed that 69-81 Lincoln Road (Freehold) Limited substitute Gary Day as the Respondent.

2. The Tribunal does not make an order for the appointment of a manager. The application is dismissed.

3. No order is be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.

4. The Applicant's application for reimbursement of Tribunal fees is refused.

REASONS

The application and hearing

5. On 4 April 2023 the Applicant made an application to the Tribunal to appoint a manager under section 24 of the Landlord and Tenant Act 1987 ("the Act"). The manager proposed by the Applicant is Martin Ransom of PACE Property Lettings and Management Limited.

6. The Applicant sought the order on the grounds set out in a preliminary notice dated 20 February 2023, which is considered below.

7. Directions (described as "Further Directions") were issued by the Tribunal on 2 October 2023, with a copy of the Practice Statement issued by the Chamber President on the appointment of managers. The following issues were identified for determination:

   - Did the preliminary notice comply with the statutory requirements within section 22 of the Act? If the preliminary notice is wanting, should the Tribunal make an order in exercise of its powers under section 24(7) of the Act?

   - Has the Applicant satisfied the Tribunal of any ground(s) for making an order as specified in section 24(2) of the Act?

   - Is it just and convenient to make a management order?

   - Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should the appointment be made?

   - Should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the Respondent's costs that may be recoverable through the service charge and/or an order for the reimbursement of any fees paid by the Applicant?

8. An indexed and paginated bundle of some 690 pages was produced for the Hearing by the Respondent. The bundle includes the application and grounds, Tribunal Directions, Official Copies of the leases, the Applicant's evidence, witness statements, unaudited financial statements for 2021 and 2022, and copy correspondence.

9. The Applicant produced a separate bundle also containing the preliminary notice, application, and Directions. It additionally included amplification of the Applicant's case, comments on the Respondent's case, copy unaudited accounts for 2020, service charge account for year ended 30 June 2023, correspondence, and the Applicant's Lease.

10. The Tribunal notes the content of all documents within the bundles.

11. A draft management order had not been prepared because the Applicant had not understood it to be a requirement. However, this omission was not critical as the Tribunal was able to question the proposed manager, Mr Ransom, to establish answers to the points to be addressed in any order. Mr Ransom had produced a draft management plan following his inspection of the property in November 2023.

12. No site inspection was undertaken by the Tribunal nor was one requested. The Directions stated that the procedural Judge did not consider an inspection was required. The Applicant was directed to produce good quality colour photographs of the block. Photographs were included within the inspection report of Mr Ransom. The Tribunal is satisfied that the issues can be determined without an inspection.

13. A remote video hearing was conducted as consented to by the parties. The start of the hearing was delayed by around 30 minutes whilst technical difficulties were resolved.

14. The Applicant was unrepresented. He was accompanied by Mr Ransom who joined the Hearing separately. The Respondent, Mr Day, attended with legal representation. Also present from the Respondent's managing agents was Christopher Lushey, who had produced a witness statement. Besides Mr Day, two other directors of the freehold company, William (Bill) Scanlan and Ola Ajayi attended. Mr Ajayi is also a lessee who had written to object to the application.

15. The Hearing largely took the format of submissions in response to questions put by the Tribunal and the opposing party about their case and written evidence.

Background

16. The property comprises a block of 13 maisonettes let on long leases. The freehold was acquired on 24 June 2020 by 69-81 Lincoln Road (Freehold) Limited, a company formed by participating leaseholders who exercised the right to collective enfranchisement. After acquisition, the company appointed Ayers & Cruiks as managing agents to conduct the day-to-day administration and management of the block. The

Applicant is one of the leaseholders who is not involved with the freehold company.

Procedural Matters

17. These proceedings were issued against Gary Day as the named Respondent. Mr Day is a director of 69-81 Lincoln Road (Freehold) Limited. It is undisputed that the company is the landlord of the property. A limited company has a separate legal identity. Mr Phillips of Cooper Lingard, Solicitors appeared at the Hearing for Mr Day and confirmed that he is also instructed to act in this matter for the company. No-one raised any objection to the substitution of Mr Day for 69-81 Lincoln Road (Freehold) Limited. Such direction was given in exercise of the Tribunal's powers under rule 10 of the Tribunal Procedure Rules 2013. The Hearing proceeded on that basis.

18. The application form named two other applicants. One was Bill Scanlan who had advised the Tribunal that he did not agree to being an applicant and wished to be removed from the application. Another was Deborah Fitzpatrick who did not reply to the Tribunal to confirm her wish to be joined as an applicant. For those reasons, the Tribunal did not join Mr Scanlan or Ms Fitzpatrick to the proceedings.

19. The Applicant sought to resurrect this matter at the Hearing insisting that the individuals did want to be included in the application. He asserted that Mr Scanlan had only now changed his position under threat of his removal as a director of the Respondent company.

20. Mr Scanlan was sat at the table with the Respondent's team for the Hearing. He confirmed to the Tribunal that he does not support the application and had not authorised the Applicant to act for him. He could not understand why Mr Newman thought otherwise. Mr Scanlan categorically denied that he had been intimidated in any way.

21. In the circumstances, there is no basis whatsoever for the Tribunal to alter its previous decision to include anyone other than Mr Newman as an applicant. Nor does the Tribunal find any evidence of intimidation, as alleged by the Applicant, that reflects on the Respondent's management of the property.

Preliminary notice

22. Before applying for the appointment of a manager under section 24, preliminary notice must be served upon the landlord under section 22. Amongst other things, the notice must specify the grounds on which the Tribunal would be asked to make an order and give a reasonable period to take steps for matters within the notice capable of being remedied.

23. At the outset, the Respondent sought to argue that the notice was invalid through non-compliance with the provisions of section 22. Whilst the notice was addressed to the landlord company, it was not sent to its registered office address. Instead, the notice was sent by post

to its managing agents and Mr Day. After acknowledging that the managing agents are duly authorised to accept service of notices on the landlord's behalf for the purposes of the management of the property, the Respondent conceded that service was deemed to be effective.

24. The Respondent was unable to identify any requirement for other leaseholders to be served with a copy of the section 22 notice, as originally argued. Following this, the Respondent confirmed that it was no longer pursuing a validity point under section 22.

25. The Tribunal proceeds on the basis that the requirements of section 22 of the Act have been met.

Grounds under the Act

26. Under section 24(2) of the Act, the Tribunal may appoint a manager in various circumstances. In summary, these are where the Tribunal is satisfied:

- that any 'relevant person' (in this case the Respondent) 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 (section 24(2)(a));

- that unreasonable service charges have been made, or are proposed or likely to be made (section 24(2)(ab));

- that unreasonable variable administration charges, or prohibited administration charges, have been made, or are proposed or likely to be made (section 24(2)(aba));

- that the relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice) (section 24(2)(ac));

And,

- in each of the above, it is also just and convenient to make the order in all the circumstances of the case;

Or

- that other circumstances exist which make it just and convenient for the order to be made (section 24(2)(b)).

27. The preliminary notice did not indicate which of the above ground/s the Applicant relies upon. The grounds for appointment of a manager cite the refusal/failure to account for monies demanded by way of service charge or to respond to all/repeated requests for full annual accounts inclusive of income/expenditure statements, balance sheet and notes (and other financial information) since June 2020. A series of complaints are raised connected to the accounts.

28. The Tribunal explained that it does not suffice for an applicant to give examples of their complaints and leave it to the Tribunal to try and work out if any requirements of the lease or code of management practice might have been infringed.

29. Having had opportunity to check the terms of his lease during the lunchtime adjournment, the Applicant expressed surprise that there is no provision requiring the production of accounts. This prompted the Applicant to confirm that he does not seek to rely upon section 24(2)(a). Whilst the Applicant thought there must be a breach of a code of management practice to trigger section 24(2)(ac), he could not say which one. In consequence, the Applicant stated that the sole ground relied upon is 'other circumstances' which make it just and equitable for the order to be made under section 24(2)(b).

30. The Applicant had identified three matters in his preliminary notice that would have remedied his complaints. Firstly, for full annual accounts inclusive of income and expenditure statements, balance sheets and notes thereto, for the years ending June 2021 and June 2022, to be circulated to all leaseholders. Secondly, for sums paid by two leaseholders "against a lapsed S20 demand" to be returned. Thirdly, for "Leaseholders objections to any aspects of a future S20 demand to be respected and not simply ignored."

31. At the Hearing, the Applicant confirmed that the above matters fairly summarised the basis of his application, but stated the third issue is no longer relevant and should be disregarded for the purposes of this application. Thus, the application is now based upon two matters (i) the production of the accounts, and (ii) outstanding payments due to two leaseholders.

The Accounts

32. In summary, the Applicant says that in the past the leaseholders were always provided with full annual accounts inclusive of income and expenditure statements, balance sheet and notes. By way of example, a copy of the unaudited accounts for 30 June 2020 is produced. Since the Respondent's acquisition in June 2020, the Applicant says that no such accounts or financial information has been made available despite numerous requests and without it, there is no accountability.

33. The Applicant accepts that the Respondent's managing agents did "finally" produce income and expenditure statements for the years to June 2021 and June 2022 at a meeting he attended with Mr Scanlan on

26 August 2023. When challenged, the managing agents undertook to circulate the balance sheet and notes to all leaseholders "the following week" but this has not emerged despite his subsequent emails, which went unanswered.

34. After taking 3 years to produce a statement of income and expenditure, the Applicant believes that the figures are wrong by about £9,000, or at least unexplained. The Applicant's own bundle also contains a copy of the service charge account summary for the year ended 30 June 2023. He queried how the balance brought forward for June 2020 could be 'nil' and claims that "£37,000 of cash" is unaccounted for. He says the whole process could have been avoided if a couple of balance sheets had been provided [together with return of monies, as addressed below].

35. The Respondent's position is that there is no statutory requirement for full accounts. A summary of accounts for each year has been provided. The Applicant attended the offices of the managing agents along with Mr Scanlan and they were shown the online bank account. They were invited to view the accounts on the computer screen. In response, Mr Newman said he was not interested in this because he wanted the full accounts that had been promised to be sent to him.

36. According to the Respondent, none of the leaseholders are in arrears with their service charge payments except for the Applicant. The Respondent does not understand where the sum of £37,000 comes from and the amounts given by the Applicant bear no relation to the actual figures. It was stated that the only monies held by the Respondent are (i) section 20 payments, which are ringfenced and held in a specially designated account in accordance with good practice (ii) a small reserve fund, and (iii) a current account for this year's maintenance and repairs.

37. Mr Lushey from the managing agents provided a witness statement and attended the Hearing. He explained that service charge account summaries have been circulated to all leaseholders for the years ending 30 June 2021, 2022, and 2023. After meeting with the Applicant in August 2023, the freeholder had instructed Mr Lushey to provide only the information required by law, which he believes he has done.

38. In answer to the Tribunal's question, the Respondent's Solicitor confirmed that all directors of the freehold company see a full set of the accounts. Six of the leaseholders are directors.

Findings and consideration

39. It is apparent to the Tribunal that there is some history of friction between individuals associated with the property. There were clearly tensions with the previous freeholder/managing agents culminating in proceedings brought by the current Applicant (and others) before this Tribunal in 2017/18 over the reasonableness and payability of service charges. The Applicant is unsupported in his complaints by other leaseholders, and lessees of three maisonettes oppose the application.

40. It occurs to the Tribunal that the Applicant has unrealistic expectations over the level of financial information to be provided to lessees. The Respondent is correct that there is no formal statutory requirement to produce or serve on tenants any full or final accounts of costs incurred by a landlord.

41. A tenant may require the landlord to provide a written summary of the relevant costs incurred in relation to the service charges payable or demanded. This right is provided by section 21 of the Landlord and Tenant Act 1985. There is also provision within section 22 of the 1985 Act for a tenant to require the landlord to afford reasonable facilities to inspect [emphasis added] the accounts, receipts and other documents supporting the summary acquired pursuant to section 21.

42. Service charge summaries have now been provided to leaseholders. There were delays in providing the summaries for 2021 and 2022. The Tribunal is satisfied those delays were symptomatic of a change in freeholder and management arrangements, not helped by the timing coinciding with the impacts of the global pandemic. Outstanding difficulties appear to now be resolved.

43. The summaries are not as detailed as those provided by the previous managing agents. However, they did not need to be. Indeed, the Tribunal notes that personal data was being divulged in the past.

44. When asked by the Tribunal what information Mr Newman felt was missing from the summaries, he said that he wanted balance sheets, but copies of balance sheets do not have to be supplied. It is understandable that the Applicant declined opportunity to inspect the online accounts when he believed paper copies were to be produced. Nevertheless, he was being affording opportunity through that inspection to obtain further information to address his concerns.

45. The email trails do not support the Applicant's accusations that the managing agents have ignored him. The content demonstrates Mr Lushey attempting to answer the Applicant's queries. There may have been some delays, but there is nothing in the exchanges that causes the Tribunal to find that the managing agents need replacing. It strikes the Tribunal that the Applicant has been forthright in his demands without fully appreciating his entitlements to information, having received additional accounts information in the past.

46. Mention was made by the Applicant to the amount of cleaning costs. If there are concerns over the reasonableness of such sums there is a separate mechanism available through section 27A of the 1985 Act to seek a determination from the Tribunal.

47. In conclusion, the Applicant could not satisfy the Tribunal that the Respondent failed to comply with any requirement for the provision of financial information to leaseholders relating to the management of the property.

Payments due to leaseholders

48. The Applicant claims that two of the leaseholders are owed a refund from the accounts totalling £20,975 for a "lapsed S20 demand". It is said that such monies have been due for over 4 years.

49. As the Tribunal pointed out to the Applicant at the Hearing, neither of the leaseholders concerned is a party to these proceedings and there is no form of authority from them authorising Mr Newman to take up this matter on their behalf. Moreover, the Tribunal has no power to order the repayment of any monies.

50. Whilst the Applicant said he understood these points, he nevertheless pursued the same line of argument and claimed that it demonstrated how a manager needed to be appointed to manage the accounts.

51. Any repayments due to the two individuals is a matter specific and personal to them. They have not participated in these proceedings to verify the Applicant's claims.

52. In the circumstances, the Tribunal does not draw any adverse inferences from the Applicant's submissions on how the accounts have been managed. Nor does it reach any conclusions on whether sums are owing. The Applicant has not demonstrated from this matter, either alone or in combination with the preceding matter, that other circumstances exist under section 24(2)(b) which make it just and convenient for an order to be made for the appointment of a manager.

Conclusions

53. The Applicant has not satisfied the Tribunal of any grounds for making an order as specified in section 24(2) of the Act. Accordingly, it would serve no purpose for the Tribunal to proceed to address the suitability of the nominated appointee.

54. It follows that no order for the appointment of a manager shall be made and the application must be dismissed.

Application under section 20C and fees

55. A separate application form was submitted by the Applicant on 27 January 2024 for an order under section 20C of the 1985 Act so that the Respondent may not pass any of its costs incurred in connection with these proceedings before the Tribunal through the service charge.

56. An order was not only sought in favour of the Applicant, but also for the benefit of eight other named lessees. However, these other persons were not a party to the proceedings and there is nothing to indicate they agreed to a section 20C application being made on their behalf. The Upper Tribunal has been clear that it would be wrong to make an order in favour of other lessees in the absence of consent or authority given

by the non-party lessees to the making on an application on their behalf.

57. As it is, the application to appoint a manager has not succeeded with no grounds within section 24(2) demonstrated. In the circumstances, the Tribunal considers that it would not be just and equitable to make an order under section 20C.

58. In any event, the section 20C application may have been unnecessary given that the Respondent's Solicitor was unable to identify any provision within the lease under which the landlord's costs of the proceedings could be passed on through the service charge. If there is no provision within the lease, there would be no basis for an order.

59. As the Applicant has not been successful in his application to appoint a manager, the application for reimbursement of Tribunal fees is refused.

Name: **Judge K. Saward** **Date:** **14 March 2024**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for 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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).