



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

**Case reference** : **LON/00AZ/LAM/2022/0022**

**Property** : **James Court, Lampmead Road,  
London, SE12 8QJ, also known as  
382-386 (even numbers) Lee High  
Road, Lee Green, London SE12  
8RW**

**Applicants** : **(1) Laurent Robin & Kathrin Robin  
(Flat A)  
(2) Eleanor Collins (Flat B)  
(3) Helen Rowley (Flat C)  
(4) Sascha Pristrom (Flat D)**

**Representative** : **Lyons Davidson Solicitors**

**Respondents** : **(1) Mr Andrew John Robert Stark**

**Representative** : **(2) G & S Sharpe Limited (Company  
No. 02986276)**

**Representative** : **(1) Mr Stark in person  
(2) Feltons, solicitors for G & S  
Sharpe Ltd**

**Type of application** : **Appointment of a manager**

**Tribunal members** : **Judge Vance  
Ms S Coughlin**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **14 November 2023**

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**DECISION**

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**NB:** Numbers in bold and in square brackets below refer to pages in the original hearing bundle provided by the Applicants (584 pages). Where a reference is preceded by the letter “S” it is to pages in the supplementary bundle provided by the Applicants (113 pages).

## **Decision**

1. We determine that it is just and convenient to appoint Mr Paul Cleaver of Urang Property Management Ltd as the tribunal-appointed manager of James Court, Lampmead Road, London, SE12 8QJ, for a three-year term commencing on 30 November 2023, expiring on 29 November 2026. We make an order in the terms of the Management Order accompanying this decision.

## **Background**

2. The Applicants are the residential long-lessees of the four flats (Flats A to D) at James Court, Lampmead Road, London, SE12 8QJ also known as 382-386 (even numbers) Lee High Road, Lee Green, London SE12 8RW (“the Building”).
3. By this application and following service of a preliminary notice under section 22 of the Landlord and Tenant Act 1987 (the “Act”) dated 11 February 2022, **[153]** the Applicants seek an order under section 24 appointing Mr Paul Cleaver of Urang Property Management Ltd as the tribunal-appointed manager of the Building. They proposed that the Management Order should be for a four-year term commencing on 30 October 2023.
4. Flat A is let under a lease dated 15 November 2013 and made between (1) both Respondents and (2) Kathrin Anna Madl and Laurent Mickael Robin, for a term of 99 years commencing on 25 March 2013 **[40]**. Flat A is a first floor flat, which extends over 382 and 384-386;
5. Flat B is let under a lease dated 12 November 2013 and made between (1) Mr Stark and (2) Eleanor Leah Collins for a term of 99 years commencing on 25 March 2013 **[69]**. Flat B is a first floor flat, which extends over 384-386 only.
6. Flat C is let under a lease dated 22 August 2013 and made between (1) both Respondents and (2) Helen Jane Rowley for a term of 99 years commencing on 25 March 2013 **[99]**. Flat C is a second floor flat, which extends over 382 and 384-386.
7. Flat D is let under a lease dated 27 August 2013 and made between (1) both Respondents and (2) Sascha Pristrom for a term of 99 years commencing on 25 March 2013 **[128]**. Flat D is a second floor flat, which is directly above Flat B, and therefore extends over 384-386.
8. Freehold ownership of the Building lies with the two Respondents, but is divided across two titles:

- (a) G&S Sharpe Ltd owns the freehold of James House, 382 Lee High Road, Lee Green, London SE12 8RW under Title No 406740 **[S42]**; and
  - (b) Andrew Stark owns the freehold of 384-386 Lee High Road, London SE12 8RW under Title No SGL178059 **[36]**.
- 9. For reasons unknown, only Flats A and C are registered against G&S Sharpe Ltd.'s freehold title **[S41]**, whereas all four Flats are registered against Mr Stark's title **[36]**.
- 10. In addition to the four residential flats, there are several commercial units situated at the Building. There is a quite frequent turnover in occupancy of the units let by Mr Stark, who lets them on short term licenses or lets. The current position appears to be as follows:
  - (a) the ground floor of No 382 is let by G&S Sharpe Ltd to a firm of solicitors, AS Solicitors, under a short lease commencing on 1 October 2019, and expiring on 30 September 2025 **[571]** Although not demised to the solicitors, it appears that they have the use of an office and kitchenette located beyond the original rear elevation wall of No 382. This area is coloured dark green on the plan provided by the Applicants for consideration at the hearing of this application ("the Plan"). A copy of this Plan, amended to take into account the contents of this decision is attached at Appendix A of the Management Order which accompanies this decision.
  - (b) the ground floor and basement of No 384 is occupied by Grant Gleadle picture framers. Also let to them by Mr Stark is a small store at the rear of 386 **[S57]**;
  - (c) the ground floor of 386 is currently unoccupied;
  - (d) to the rear of 386, there is a building with its own separate entrance, which is accessed from the yard to the rear of the Property ("the Annex"). The ground floor of that building is part occupied by a massage business, and the first floor is occupied by the School of Frock, a clothing design business. The Annex is coloured purple on the Plan;
  - (e) also coloured purple on the Plan is a ground floor studio flat ("the Studio Flat") located to the rear of 386 and in front of the Annex, currently let by Mr Stark to Ms Holly Coyle under an Assured Shorthold Tenancy dated 31 December 2018 **[66]**.
- 11. After the leases were entered into in 2013, the Respondents engaged a manager, Mr Kemp, who Mr Stark says was a former director of the Second Respondent, to manage the Building. Mr Kemp ceased to do so in 2015, and it is the Applicants' case that this is when significant management problems start to arise. Mr Sharpe, who is a current director of the Second Respondent company lives in Thailand and all

parties agree that he has played no active part in managing the Building. Following Mr Kemp's departure, Mr Stark has attempted to deal with the management of the entire Building, not just the area within his freehold title. It is the Applicants' position that his efforts have been largely unsuccessful. Mr Stark's position is that he has done his best under difficult circumstances.

12. Both Respondents agree to the tribunal appointing Mr Cleaver as a tribunal-appointed Manager. There is, however, disagreement between them and the Applicants as to: the length of his appointment; the areas of the Building he is to manage; his remuneration under the Management Order; and the respective contributions to be paid by the Applicants and the Respondents to sums payable to Mr Cleaver by way of service charge, and under the tribunal-imposed Management Order.

### **Procedural History**

13. After this application was issued, the tribunal gave notice of it to these commercial occupants whose names were provided to it by the Applicants' solicitors. None have made any representations to the tribunal or engaged in these proceedings.
14. The tribunal issued directions on 7 March 2023 **[580]**, following a video case management hearing ("CMH"), attended by: (a) Mr Carr, counsel for the Applicants; (b) Mr Andrew Stark; and (c) Mr Felton, solicitor for the Second Respondent. The application was originally listed for hearing to take place on 11 July 2023 but due to Judge Vance's unavailability was re-listed for 1 September 2023.
15. At the hearing on 1 September, all parties confirmed that they wished Mr Cleaver to be appointed by the tribunal, and our preliminary view was that we would agree to that request, as: (a) there appeared to clear failings in management by the Respondents; and (b) Mr Cleaver appeared to us to be a suitable appointee. At that hearing we heard oral evidence from Ms Robin and Ms Collins, who had previously provided witness statements **[196]** and **[355]**, as well as from Mr Cleaver, who had also provided a witness statement **[424]**. All those statements were dated 13 April 2023. No witness statements had been provided by either Respondent. Of the two Respondents, only Mr Stark had provided a statement of case **[588]**.
16. The 1 September hearing was adjourned, part heard, until 23 October 2023, because we considered, and the parties agreed, that discussions needed to take place between the parties and Mr Cleaver as to the terms on which Mr Cleaver should be appointed by the tribunal to manage the Building, and as to the wording of a Management Order. Further, we were of the view that an updated Management Plan and Management Order needed to be provided. Further directions were given **[S38]**.
17. The same parties that attended the adjourned hearing were present at the 23 October hearing, which also took place by video conferencing (CVP). In advance of that hearing the Applicants provided a

supplemental bundle, an updated Management Plan and amended draft Management Order. Mr Carr provided a further skeleton argument (having previously provided one for the initial hearing). In addition, Mr Stark provided a second statement of case dated 20 October 2023, and Mr Felton provided a skeleton argument. Mr Felton had also written to the tribunal on 19 October 2023 [S54] with representations as to the content of the proposed Management Order.

### **The Applicants' Case**

18. The Applicants assert that it is just and convenient for the tribunal to appoint Mr Cleaver as Manager for multiple reasons, which include that:
  - (a) the Respondents have failed properly to manage and repair the Building;
  - (b) the Respondents appear to be unable to keep and maintain proper service charge accounts, manifested by multiple iterations of the accounts being produced for the service charge years 2016 (2 iterations), 2017 (3 iterations), 2018 (3 iterations) and 2019 (2 iterations). They have still not produced service charge accounts for 2021 or 2022;
  - (c) The Respondents appear to be unwilling or unable to comply with any of the service charge machinery of the leases, as demonstrated by their failure to make any proper demands for service charges and/or to manage the service charge funds they have received in accordance with the terms of the leases;
19. The Applicants original position was that as well as wanting the Management Order to extend to the commercial areas of the Property, they also wanted the tribunal to order that the commercial rents were to be paid to the Manager and not the Respondents. The proposal regarding payment of the commercial rents was, however, abandoned prior to the 23 October hearing. Their position as at the date of that hearing was that the Management Order should apply to the whole of the Building comprised in the freeholds save for two areas, namely:
  - (a) the Annex; and
  - (b) the yard area at the rear of 382 coloured light green on the Plan ("the Light Green Land"). At the hearing, Mr Carr stated that the Applicants had no access to that area and were unclear what it was used for. Mr Stark confirmed that it was used for car parking by AS solicitors.
20. The Applicants seek to exclude the Annex from the scope of the Management Order on grounds that it is more easily severable from the rest of the Property for insuring, repairing and maintenance purposes. They contend that as the Studio Flat is less easily severable from the remainder of the Building it should be included within the area managed by Mr Cleaver.

21. Also identified in the Plan is a rear access road and yard area to the rear of 384 [150]. This road (“the Access Road”) coloured brown on the lease plans provides the Applicants with their only access route to their flats. They must first traverse the road, which runs parallel to Lampmead Road, and which then allows access to a yard (“the Yard”), coloured blue on the lease plans, and which is located between the Light Green Land and the Studio Flat/Annex on the Plan, to the south of 382 and 384. At the northern end of the Yard, to the rear of 384, is a stairwell (“the Stairwell”) that leads up to the four flats. By the side of the Stairwell, below 384 is a room that contains gas and electricity meters, including the meters for 384, the residential flats, the Studio Flat, the Annex and the communal areas.
22. Mr Carr contended that as the Access Road and Yard provided the only access to the Stairwell, it was essential that these areas be managed by the Manager. The problem with that submission, which we address below, is that the Access Road is not within the freehold title of either Respondent. At the hearing on 23 October, Mr Carr said that the Applicants did not know who owned that land, and Mr Felton informed us that he believed that the Access Road is unregistered land, and that the road serves six separate registered titles.
23. The Applicants’ leases (“the Leases”) are drafted in similar terms, with one significant difference, namely that the definition of the expression “the Property” in the lease of Flat B differs from the other Leases. In the Leases of Flats A, C and D, the expression is defined as follows:
- “All that property including buildings erected thereon or some part thereof and known as 382, 384 and 386 Lee High Road Lee Green London SE12 8RW as the same are registered at HM Land Registry under Title Numbers SGL178059 and 406740”.
24. However, in the lease for flat B, it is defined as:
- “All that property including buildings erected thereon or some part thereof and known 384 and 386 Lee High Road Lee Green London SE12 8RW as the same are registered at HM Land Registry under Title Number SGL178059.”
25. The definition of the Property in the Leases of Flats A, C and D therefore includes the buildings and land within the titles of 382, 384 and 386, whereas the Lease of Flat B includes those within the title of 384 and 386 only, and not 382.
26. As each of the Leases provides for the Applicants to contribute, by way of service charge, towards the costs of services provided by the Respondents in respect of “the Property”, as defined in the Leases, it means that the lessee of Flat B, Ms Collins, unlike the other Applicants, is not liable to contribute towards any costs incurred by the Respondents in respect of 382.

27. The Leases impose the following payment obligations on the lessees:
- (a) Clauses 1(3) and 1(2), and paragraph 2 of the Second Schedule, oblige them to pay a contribution of 12.5% of the Respondents' costs of insuring the Property. It is not disputed that the anomaly with Flat B, means that the Respondents are entitled to recover 50% of the insurance premium incurred in relation to 384 and 386, but only 37.5% of the insurance premium incurred in relation to 382;
  - (b) Clause 1(2), clause 1(3) and paragraph 1 of the Third Schedule oblige them to pay a service charge contribution of 12.5% of the Respondents' costs of complying with their covenants set out in the Fourth Schedule, which include the maintenance and repair etc. of the Property. As with the costs of insurance, it was not disputed that the anomaly regarding Flat B meant that the Respondents were entitled to recover 50% of their costs incurred in complying with their covenants in the Fourth Schedule in relation to 384 and 386, but only 37.5% in relation to 382;
  - (c) Clause 1(5) obliges them to pay "a fair and reasonable proportion" of all sums expended by the Respondents in the upkeep and maintenance of the Access Road;
  - (d) Clause 1(6) obliges them to pay "a fair and reasonable proportion" of all sums expended by the Respondents in lighting, repairing and maintaining the Courtyard; and
  - (e) Clause 1(7), obliges them to pay 25% each of the sums expended by the Respondents for cleaning, repairing, maintaining and lighting the entrance, staircase, and landings providing access to the Flats.
28. The Leases are silent as to who is liable to pay any shortfall between the expenses incurred by the Respondents and the sums payable by the lessees. The Respondents agreed that the absence of any specific provision in the Leases meant that they are liable to meet any such shortfall from their own resources. Leading up to the final hearing of this application on 23 October, there was a dispute between the Respondents as to their respective contributions towards such shortfall. By the date of that hearing, the dispute had been resolved, with both Mr Stark and Mr Felton confirming that it was agreed that any shortfall should be split equally between the Respondents.
29. At the 1 September hearing, Mr Cleaver had proposed that the Management Order contain a set of Schedules ("the Schedules") setting out the Applicants and Respondents respective percentage contributions towards service charges and sums payable to him if he were appointed Manager. The tribunal's directions of 1 September 2023 required the Applicants to provide an updated draft Management Order and an amended Management Plan from Mr Cleaver, both of which were to reflect the contents of the most recent iteration of the President's

Practice Statement on the Appointment of Managers under the Act, originally issued in December 2021 and updated in July 2023. The directions also required the Applicants to explain how the Schedules proposed by Mr Cleaver reflected the Applicants' obligations to pay service charges under their leases.

30. An amended version of the draft Management Order proposed by the Applicants was included in the supplementary hearing bundle **[S34]**. This contained five Schedules. However, questions raised by the tribunal at the hearing on 23 October, addressed to Mr Carr, resulted in the Applicants proposing further amendments to the Management Order. They now propose that the Management Order provides that the Manager is empowered to demand service charges from the lessees, and sums from the Respondents, towards costs described in the following seven schedules ("the Seven Schedules"):

Schedule 1:	The repair, maintenance and insurance of 382 Lee High Road (excluding the area coloured light green on the plan at 'Appendix A' and the matters in relation to the areas mentioned in any other Schedule which otherwise form part of 382 Lee High Road), payable as to 12.5% by Flat A, 12.5% by Flat C, 12.5% by Flat D and 62.5% by the freeholder, G&S Sharpe Ltd (and successors in title).
Schedule 2:	The insurance and any health and safety work at 384-386 Lee High Road payable as to 12.5% by Flat A, 12.5% by Flat B, 12.5% by Flat C, 12.5% by Flat D and 50% by the freeholder, Mr Andrew Stark (and successors in title).
Schedule 3:	The repair and maintenance of 384-386 Lee High Road (excluding the Studio Flat and the Annex and the matters in relation to the areas mentioned in any other Schedule which otherwise form part of 384-386 Lee High Road) payable as to 12.5% by Flat A, 12.5% by Flat B, 12.5% by Flat C, 12.5% by Flat D and 50% by the freeholder, Mr Andrew Stark (and successors in title) and any part or parts of the Property not specifically mentioned in any other Schedule which is used in common by the Tenants and/or the Landlord and/or any other tenant or occupier of any part of the Property and/or the Annex, their servants, agents, visitors and invitees.



Schedule 4:	The repair and maintenance of the Annex and the Studio Flat (excluding any works mentioned in Schedule 2 above), payable as to 100% by Mr Andrew Stark (and successors in title).
Schedule 5:	The cleaning repairing, maintaining and lighting of the entrance, staircase and landings providing access to flats A, B, C and D coloured yellow on the plans attached to the Leases: payable as to 25% by Flat A, 25% by Flat B, 25% by Flat C, 25% by Flat D (and successors in title).
Schedule 6:	A fair and reasonable proportion to each of the freeholders, G&S Sharpe Ltd and Mr Andrew Stark and the Tenants (and their successors in title) of all sums demanded of the Manager in the upkeep and maintenance of the access road coloured brown on the plans attached to the Leases.
Schedule 7:	A fair and reasonable proportion to each of the freeholders, G&S Sharpe Ltd and Mr Andrew Stark and the Tenants (and their successors in title) of all sums expended by the Manager in lighting, repairing and maintaining the courtyard coloured blue on the plans attached to the Leases.

31. If the tribunal were to include these schedules in the Management Order the Applicants liability to make payments under the Order to the Manager would differ from their obligations under the Leases. This is because under the Leases they are each obliged to pay 12.5% of Mr Stark's costs of repairing, insuring and maintaining the whole of the 384 and 386, whereas under the proposed Schedules they would pay:

- (a) 12.5% towards the costs of insurance and any health and safety work at 384 and 386 (Schedule 2); and
- (b) 12.5% towards the costs of repair and maintenance of 384 and 386, *excluding the Studio Flat and the Annex* (Schedule 3). This would leave Mr Stark responsible for 100% of the costs of repair

and maintenance of the Annex and the Studio Flat, except for any health and safety works (Schedule 4).

32. Mr Carr's skeleton argument is silent as to why the Management Order should make different provision than the Leases. He states that the Annex is more easily severable from the rest of the Building for insuring, repairing and maintenance purposes, but no explanation is given as to why it should be so severed. Nor is the question addressed in the Applicants statement of case or the witness statements of Ms Robin, Ms Collins, and Mr Cleaver. When asked by the tribunal at the hearing why Mr Stark should be liable for 100% of the costs of repair and maintenance of the Annex and the Studio Flat, Mr Carr's referred us to the definition of "the Property" in the lease for Flat D [129] which, unlike the other leases, referred to a plan with red edging identifying the area falling within the definition. However, as the lease plan [150] had showed no area edged in red it is difficult for the lessee of Flat D to identify the extent of her liability.
33. As the Applicants' position concerning the Schedules and the wording of the Management Order had evolved during the hearing, the tribunal asked Mr Stark and Mr Felton whether the Respondents wished to submit written representations to the tribunal on the new proposals before the tribunal made its final decision on this application. Both declined that invitation, indicating that they would rather avoid further delay.
34. As to the remuneration payable to the Manager, the Applicants' proposal was that Mr Cleaver receive a "per unit" management fee of £400 + VAT per unit per annum. This would amount to:
  - (a) £1,600 for the residential flats;
  - (b) £400 for the area of 382 occupied by AS solicitors;
  - (c) £400 for the commercial area at 384
  - (d) £400 for the commercial area at 386; and
  - (e) £400 for the Studio Flat.
35. At the hearing, Mr Cleaver informed us that he had not visited the Annex and did not know how many commercial units were present. Mr Stark informed us that the Annex contained three units and a cupboard space on the ground floor, and three units and a cupboard space on the first floor. These were all separated by temporary walls. Mr Cleaver agreed that if the tribunal took the view that the Management Order should extend to the Annex that it would be disproportionate for him to charge of £400 for each of the seven commercial areas present. However, he said that the Building Safety Act 2022 would impose obligations on him to be aware of who is occupying the units and to engage with them to ensure they are aware of the relevant fire and safety provisions concerning the building. This, he said, involves

significant work and if is to be responsible for managing the Annex, he seeks a fee of £1,200 per annum for doing so.

### **The Respondents' Position**

36. In his skeleton argument, Mr Felton stated that:

- (a) obvious conveyancing errors had occurred when the two freeholders agreed to develop the upper parts of each building by converting them into four residential flats. He said that the intention had been for the residential lessees to pay a 50% service charge contribution for costs associated with the buildings at 382, and 384-386, leaving the freeholders responsible for paying the remaining 50%. The intention was not, however for the lessees to have to pay a service charge in respect of costs associated with the remainder of the freehold estates;
- (b) although there had previously been a dispute between the freeholders as how their 50% contribution towards the service charge shortfall should be split (it had been suggested that Mr Stark should bear 2/3), that dispute had been resolved and they had agreed to a 50/50 split, so they will each be responsible for 25% of the service charge shortfall;
- (c) the Second Respondent readily accepted that the management of the Building had been lacking, but that was a result of "ineptitude" rather than "dishonesty";
- (d) his client was willing for Mr Cleaver to be appointed as Manager for a period of three years but not longer, as this would unreasonably interfere with the Respondents ability to deal with their freehold estate;
- (e) the four residential lessees should each pay 12.5% of the service charge for the buildings and 25% of the service charge for the Stairwell area. It would, he submitted be inequitable for the lessee of Flat B to have an advantage of a windfall, to the detriment of his client, because of the defective drafting of her lease;
- (f) the access road coloured brown on the lease plans does not form part of the freehold title and cannot therefore be the subject of any management order;

37. In his oral submissions at the hearing, Mr Felton submitted that the residential lessees should not have to contribute towards the freeholders' costs incurred in respect of either the Annex or the Studio Flat, because this was not what was originally envisaged before the Leases were entered into. As such, his client's position is that those two areas should not be managed by Mr Cleaver. He also suggested that whilst the Manager should maintain a narrow strip of the Courtyard, running from the Stairwell to the Access Road (which includes a tree and the bin stores), he should not have any responsibility for the remainder of the

Courtyard. His position on the leaseholder's liability to pay costs incurred by the freeholders in connection with the Courtyard was not entirely clear. He initially said that they should pay a fair and reasonable contribution (as is provided for in the Leases), but when the tribunal asked why the Courtyard should not then be included in the Management Plan, his answer was that the lessees should not have to contribute towards costs associated with the Courtyard.

38. Mr Stark's position was that:

- (a) he was also willing to agree to Mr Cleaver's appointment as a tribunal-appointed Manager;
- (b) he agreed with Mr Felton that there had been a conveyancing error when the Leases were entered into as the lessee of Flat B, like the other lessees, should have been made liable to contribute towards costs incurred by the freeholders in respect of 382;
- (c) there was no justifiable reason to exclude the Studio Flat and the Annex from the Management Order. To do so would improperly benefit the lessees at his expense;
- (d) he had attempted to manage the Building in a fair way but acknowledged that there had been failings. That, he said, is why he had previously agreed to a management company taking over management. He considered these proceedings could have been avoided if the Applicants had proposed a management company acceptable to them at an earlier date (see his original undated statement of case, point 49);

### **The Legal Framework**

39. Section 24 of the 1987 Act enables this tribunal to appoint a manager to carry out such functions in connection with the management of premises to which Part II of the Act applies as it thinks fit. By s.24(2) the tribunal can only make an order under the section in specified circumstances. In summary, these it must be satisfied that it is "just and convenient" to appoint a manager and that one or more of the following has occurred:

- (a) breach by a "relevant person" of an obligation owed by him to a tenant under his tenancy, and relating to management of the premises, or any part of them;
- (b) the making of unreasonable service administration charges;
- (c) a failure by a "relevant person" to comply with a code of management practice;

40. Section 24(2)(b) also permits the tribunal to appoint a manager in "other circumstances" where it is just and convenient to do so.

41. A relevant person is defined in s.24(2ZA) as a person on whom a s.22 preliminary notice has been served, or where service on them has been dispensed with by the tribunal.
42. A manager appointed under s.24 is a tribunal-appointed official who is not necessarily confined to carrying out the duties of the landlord under the lease. The manager's powers and authority derive from the order which appoints them, underpinned by the Landlord and Tenant Act 1987, and not from the leases. The manager may therefore be given powers or duties that are not present in the leases (see *Maunder Taylor v Blaquiere* [2002] EWCA Civ 1633. As such, an order appointing a manager may empower them to collect service charges, or recover fees, for which defective leases make no, or inadequate provision, or where areas of a building remain within the landlord's freehold title (see *Queensbridge Investments Ltd v Lodge* [2015] UKUT 635 (LC).
43. Where, as in this case, a building contains flats and commercial premises, the tribunal's management order can extend to the commercial areas so long as it is just and convenient to appoint the manager over the whole building. A management order can even extend management functions to land outside the building containing the flats and their physical curtilage, provided there is a causal link or nexus between the functions to be carried out by the manager and the premises that is the subject of the application for a management order (see *Cawsand Fort Management Co v Stafford* [2007] EWCA Civ 1187).

### **Reasons for Decision**

44. Given that both Respondents consent to the appointment of a tribunal appointed manager we do not consider it necessary or proportionate to make findings of fact on every one of the multiple management failures alleged by the Applicants in their Statement of Case [21]. Instead, we focus on those failures highlighted in para. 20 of Mr Carr's first skeleton argument. We find that the following has occurred:
  - (a) following Mr Kemp's departure in 2015, the Second Respondent has played no active role in the management of the Building, including that part within his freehold title. Nor did he engage anybody else to fulfil these functions. This was the Applicants' evidence, and there was no evidence to the contrary. The Second Respondent, as the landlord of Flats A, C and D is a "relevant person" for the purposes of s.24(2ZA) of the 1987 Act, and he has clearly breached the management obligations owed by him to the lessees of those Flats;
  - (b) Mr Stark is also "a relevant person". His attempts to manage not just that part of the Building within his freehold title, but also 382, have, by his own admission, resulted in management failings on his part over a lengthy period from 2015. This is evidenced by letters from Estate Agents to the lessees of Flat A, dated 15 October 2019 [345], and Flat D, dated 18 May 2020 [346] in

which it was said that attempts to sell their Flats in the Property had fallen through due to the Respondents failure properly to manage the Property. In respect of Flat A, the Estate Agents said that: responses to legal queries were “incomplete and at times appeared confused”; “non-compliance with recommendations regarding fire risk assessment” had invalidated building insurance; and that accounts were indecipherable, with money paid in over the years appearing to be missing. As to Flat D, the Estate Agents said that the sale had fallen through due to “lack of maintenance on service charge payments” and “incompetence from the freeholder”;

- (c) Mr Stark has breached the obligation he owes his lessees under the Leases by failing to keep and maintain proper service charge accounts. These also amounted to a breach of his responsibilities under para. 7 of the RICS service charge residential management code (3rd edition) ("the Code"), including para 7.7 which require the Respondents to provide service charge demands which are clear, easily understandable, relate to available budget estimates or actual accounts and served in accordance with the Leases. This has clearly not been the case given what Mr Carr described as “the multiple iterations of the accounts being produced for the service charge years 2016 (2 iterations), 2017 (3 iterations), 2018 (3 iterations) and 2019 (2 iterations).” These iterations were exhibited to Ms Robin’s witness statement and appear at **[274-335]**.
- (d) we also find, as submitted by Mr Carr that the Respondents have still not produced service charge accounts for 2021 (21 months after the end of the service charge year) or 2022 (9 months after the end of the service charge year). Mr Stark did not disagree, and accounts for these do not appear in the hearing bundle.
- (e) in addition, the communications to and from Mr Stark exhibited to Ms Robin’s witness statement **[236 – 335]** evidence a considerable state of confusion regarding the way in which Mr Stark has attempted to demand service charges from the lessees. For example, in an email dated 31 January 2017 **[249]**, Ms Robin told Mr Stark that he had calculated the lessees’ service charge contributions incorrectly, and not at a rate of 12.5%. Mr Stark’s acknowledgement in an email dated 3 February 2017 that he had been attempting to manage the Building without having a full copy of the leases for Flat A **[252]** clearly have contributed to that confused state of affairs.
- (f) Mr Stark appears to us to be unfamiliar with his contractual and statutory obligations concerning the demanding of service charges from the Applicants. By way of example, in the Applicants’ Statement of Case, para. 30(a) **[25]** they say that despite Mr Stark producing a second iteration of the 2019 accounts, the later version still had inaccuracies including that the sum of £600 per

annum had been included in the accounts in respect of accountancy fees for the years 2016 – 2019 without a demand being made of the Applicants. Mr Stark’s response, in his first Statement of Case [590] is that as the Leases (Fourth Schedule, para. 6(a)) permitted the Landlords to employ accountants, there was no need for a demand to be made. This is simply wrong and demonstrates a concerning lack of awareness not only of the provisions of the Leases which provide that service charges are payable by way of rent, but also of his responsibilities under para. 7 of the Code, and the relevant statutory obligations imposed by:

- (i) s.47 A Landlord and Tenant Act 1987 whereby any demand for rent which consists of a service charge, or an administration charge, is treated as not being due from the tenant to the landlord at any time before the landlord provides the tenant with a written demand specifying a name and address for the landlord and, in addition if that address is not in England or Wales, an address in England or Wales where the tenant can serve any notices (including notices in proceedings); and
- (ii) Section 153 of the Commonhold and Leasehold Reform Act 2002 which provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. We note that none of the service charge demands issued by Mr Stark exhibited to Ms Robin’s witness statement [236-240] are accompanied by, or make reference to, the statutory summary of the rights and obligations.
- (g) We accept Ms Collins’ evidence that intermittent water ingress has occurred into her flat from the roof since 2016. Mr Stark agreed that this was the case, and in his Statement of Case asserted that in 2016, he had instructed a reputable roofing company, to remedy the issue, and when the roof leaked again, he engaged them again, following which they informed him that they had remedied the problem. Mr Stark said that when the leak reoccurred in 2018, he organised a roofer to renew the front part of the roof of 384-386 which had remedied the issue. Ms Collins accepted in her oral evidence that Mr Stark had made efforts to address the situation but said that communications with him had been difficult. It was obvious that the water penetration remained an ongoing problem for Ms Collins because we observed and heard water dripping through the roof of her flat during the first day of the video hearing. On balance, we do not consider we have sufficient evidence to establish that there has been a failure by the Respondents to maintain/repair the roof and guttering in accordance with his lease obligations, as alleged by the Applicants. There is no evidence before us from a surveyor or builder to explain the source of the problem, and as Ms Collins’ acknowledged, Mr Stark has made efforts to resolve the problem.

Whilst there certainly appears to be an ongoing problem, we are unclear on the evidence as to the cause of the current problem, and whether it is a new issue or a repeat of the earlier issue.

45. We are satisfied that the management failings we have found above make it just and convenient to appoint a manager to manage the Building. We are also satisfied that the area to be managed by the Manager should extend to the non-residential areas of the Building, including both the Annex and the Studio Flat. We recognise that it would normally only be appropriate for a management order to intervene in the contractual relationships between a landlord and third parties in exceptional circumstances, but we consider that this to be such an exceptional case. This is for the following reasons:

- (a) we agree with Mr Carr's submission that the Second Respondent is effectively an absentee landlord. Mr Sharpe lives in Thailand and has played no part in the management of the Building since about 2015. Whilst Mr Felton opposed the extension of the Management Order to commercial areas, including the area of 382 occupied by AS Solicitors, the Second Respondent has tendered no evidence at all as to how it proposes to manage those in future if a Manager is not appointed. In the absence of any such proposals, we have no confidence that it will do so;
- (b) Mr Stark, who has attempted to manage the Building, with limited success, agrees that the Management Order should extend to the Studio Flat and the Annex;
- (c) both Respondents acknowledge that there was a breakdown in their relationship resulting in disagreement over their percentage liability to contribute to the expenses of maintaining etc the Building after the lessees' service charge contributions are taken into account. Although we were informed that this disagreement has now been resolved, we are concerned that there remains potential for future disagreement, especially given the Second Respondent's historic failure to manage the Building;
- (d) although fairly small, this is a complex development, with multiple small-sized commercial occupiers present, and where the Leases impose differing service charge liabilities on the residential lessees. In order for the Manager to be able to be able to effectively fulfil his functions, and to facilitate a coherent management regime, his responsibilities should extend to the commercial areas. We therefore determine that it is just and convenient to appoint the Manager to manage the whole Building to the extent shown in the Plan at Appendix A. This is to include: the commercial and residential areas at 382 and 384/6; the Stairwell; the entirety of the Studio Flat and Annex; the kitchen and store area coloured dark green; the meter room; the courtyard area coloured lilac; and the bin store area and tree, coloured pink. The only areas shown on the Plan that are not to be included



within scope of the Management Order are therefore: (a) the car parking area used by the solicitors, coloured light green; and (b) the access road coloured brown on the lease plans. It appears to us that part of the access road, below the car parking area, was incorrectly shown as being within the curtilage of the freehold titles on the Plan provided by the Applicants. For the avoidance of doubt, that area is not to be managed by Mr Cleaver as it is not within either freehold title.

46. We are not persuaded by Mr Carr's submission that the Manager should not manage the Annex. Whilst it might be possible to sever it from the remainder of the Building for insuring, repairing and maintenance purposes, we are not convinced by his suggestion that it should be so severed. This would result in an unjustifiable windfall to the Applicants who, under the provisions of the Leases, have contractually agreed to contribute towards the costs of insuring and repairing etc the Annex. We comment further on this below. In addition, the Applicants have not made any enquiries into the possibility of obtaining separate insurance for the Annex, and Mr Stark's oral evidence was that there is a first-floor walkway that leads from the Annex to toilets located above the meter room. We agree with him that this is likely to make it harder to sever the Annex from the remainder of the Building for insurance purposes, and therefore merits its inclusion within the scope of the Management Order.
47. We also determine that Mr Cleaver is a suitable person to be appointed Manager. Both Respondents were content with his appointment, and we are satisfied that his previous experience as a tribunal-appointed manager as set out in his witness statement [424] evidences his competence, as did his oral evidence to the tribunal.
48. As to his remuneration, we agree that his proposed fee of £400 + VAT per unit per annum (apart from the Annex) is reasonable given the amount of work that he is likely to have to undertake in managing this development with quite complicated arrangements involving two freeholders four residential leaseholders and multiple commercial occupants.
49. His proposed fee for managing the Annex is £1,200 per annum. We are unclear as to whether the Building Safety Act 2022 imposes obligations on him regarding management of the Annex, because we do not know the height of the Building, and therefore do not know if it meets the statutory definition of a high-risk building. However, the Fire Safety Act 2021 and the Fire Safety (England) Regulations 2022 are likely to impose important fire safety obligations that will require him to liaise with all occupants of the Building. Although, at present, Mr Stark said that there are only two occupants of the Annex, he also said that the occupants change frequently, coming and going all the time. Some only occupy a small area and temporary walls present on both floors of the Annex, are adjusted as required. On balance, we consider the proposed fee of £1,200 to be reasonable given the likelihood of multiple changes in occupancy of

units in the Annex during the course of a year, and the need for the Manager to liaise with all of them.

50. We therefore determine that his annual remuneration should be as follows:

- (a) £1,600 for the residential flats (£400 each);
- (b) £400 for the area of 382 occupied by AS solicitors;
- (c) £400 for the commercial area at 384
- (d) £400 for the commercial area at 386; and
- (e) £400 for the Studio Flat; and
- (f) £1,200 for the Annex.

51. Turning to the contents of the Management Order, we do not consider the imposition of the order should, in the circumstances of this case, be used as an opportunity to adjust the Applicants contractual service charge liability as set out in the Leases, including their obligation to pay 12.5% of Mr Stark's costs of repairing, insuring and maintaining the whole of 384 and 386. We reject their proposal to make Mr Stark responsible for 100% of the costs of repair and maintenance of the Annex and the Studio Flat, except for health and safety works. That was not the contractual bargain the parties entered into, and there is nothing inherently defective about the provisions of the Leases.

52. For the same reason, we reject Mr Felton's proposal that Management Order should adjust the lessees' service charge liabilities under the Leases. Nor do we agree with him that it is inequitable for the lessee of Flat B to have no obligation to contribute towards the Second Respondent's costs incurred in respect of 382. It may be that there was a drafting error concerning the definition of "the Property" when the lease for Flat B was entered into. However, it may also be that this was the parties' intention. There is no evidence before us from Mr Sharpe addressing the Second Respondent's intention at the time and Mr Felton did not cross-examine Ms Collins as to her intention. It cannot be simply inferred from the documentary evidence before us that Mr Felton's submission is correct. It might just as equally be questioned as to why the lessee of Flat D, Ms Pristrom, is obliged to contribute towards costs incurred in respect of 382, when the demise of her flat does not extend over 382.

53. The imposition of a management order does not displace lease covenants, and the lessees remain bound by them unless the Management Order provides otherwise. In our view, there needs to be a compelling reason for a management order to make different provision from the contractual position set out in the leases, for example to address an issue that is likely to inhibit the Manager being able to effectively manage the premises that is the subject to the management order. In

our determination, no such compelling reason arises on the facts of this case. The parties service charge obligations under the Leases are perfectly workable and there is no reason for the Management Order to make different provision. If the parties consider the Leases have been inadequately drafted then it is, of course, open to them to seek to vary them, but that cannot be done within this application.

54. We conclude that the Schedules in the Management Order should provide for the Manager to be empowered to demand service charges from the lessees and the Respondents as follows:

Schedule 1:	The repair, maintenance and insurance of 382 Lee High Road (excluding the area coloured light green on the plan at 'Appendix A' and the matters in relation to areas mentioned in any other Schedule which otherwise form part of 382 Lee High Road), payable as to 12.5% by Flat A, 12.5% by Flat C, 12.5% by Flat D and 62.5% by the freeholder, G&S Sharpe Ltd (and successors in title).
Schedule 2:	The repair, maintenance and insurance of 384-386 Lee High including any areas used in common by the Tenants and/or the Landlord and/or any other tenant or occupier of any part of the 384-386 (including the Studio Flat and Annex), or their servants, agents, visitors and invitees.  BUT excluding the matters in relation to areas mentioned in any other Schedule which otherwise forms part of 384-386 Lee High Road).  PAYABLE as to 12.5% by Flat A, 12.5% by Flat B, 12.5% by Flat C, 12.5% by Flat D and 50% by the freeholder, Mr Andrew Stark (and his successors in title
Schedule 3:	The cleaning repairing, maintaining and lighting of the entrance, staircase and landings providing access to flats A, B, C and D coloured yellow on the plans attached to the Leases: payable as to 25% by Flat A, 25% by Flat B, 25% by Flat C, 25% by Flat D (and successors in title).
Schedule 4:	A fair and reasonable proportion to each of the freeholders, G&S Sharpe Ltd and Mr Andrew

	Stark and the Tenants (and their successors in title) of all sums demanded of the Manager in the upkeep and maintenance of the access road coloured brown on the plans attached to the Leases.
Schedule 5:	A fair and reasonable proportion to each of the freeholders, G&S Sharpe Ltd and Mr Andrew Stark and the Tenants (and their successors in title) of all sums expended by the Manager in lighting, repairing and maintaining the courtyard coloured blue on the plans attached to the Leases.

55. Mr Stark did not make any observations in respect of the remainder of the proposed draft Management Order and nor did Mr Felton except for suggesting that the proposals included an attempt to avoid payment of ground rent and the landlord's costs of pursuing breaches of lease covenants. We approve the Order as drafted, but with the following amendments:

- (a) the definition of "The Leases" is amended to refer to leases of residential flats only;
- (b) we consider the term of Mr Cleaver's appointment should be for three years rather than four years, to commence on 30 November 2023. That should be enough time for him to address the current management failings, and for the Respondents to put in place mechanisms regarding how they will manage the Building once his appointment expires;
- (c) paragraph 5 (purpose of this Management Order) now refers to relevant paragraphs in this decision;
- (d) the Schedules have been amended as set out above;
- (e) we do not consider the Manager should be responsible for carrying out functions in the residential Leases concerning approvals and permissions, including those for sublettings, assignments, alterations and improvements. These are proprietary rights enjoyed by the landlords and no explanation has been provided by the Applicants as to why such a substantial interference with those rights is warranted. If, in practice, they encounter difficulties in obtaining such approvals or permissions from the landlords, they can apply, on evidence, to vary the terms of the Management Order to vest those functions in the Manager;
- (f) we have amended the date for the Manager to draw up a planned maintenance programme given the upcoming Christmas and New Year holiday period;

- (g) we consider the fee remuneration payable to the Manager by the Respondents should reflect the distribution of the units falling within their respective freehold titles. The Applicants draft Management Order split the sum equally. That appears to us to be unfair to the Second Respondent who has only one commercial unit in its title. In addition, the agreement that we were told had been reached between the Respondents for a 50/50 split appears to us to only relate to payment of the service charge shortfall (see para. 11 of Mr Skelton's skeleton argument). The remuneration payable to the Manager by the Respondents is payable under the Management Order and not because of the service charge shortfall. As such, the 50/50 agreement does not apply;
  - (h) we have removed reference to the Manager's remuneration being to carry out functions as per the RICS Code, as the code has no relevance to the commercial units. The Management Order provides elsewhere for the Manager to manage the Building in accordance with the Code.
  - (i) we have removed irrelevant charges from the Schedule of Additional Fees including fees for company secretarial services, and fees for approvals of alterations and sublettings which are not functions we have given to the Manager. If, at any point during the term of his appointment Mr Cleaver seeks an increase in these Additional Fees he must seek to agree these with the Applicants and the Respondents, and then, whether or not agreement is reached, apply to the tribunal seeking a variation of the sums stated in the Management Order.
56. As to whether the Manager should collect ground rents, we note that in his letter to the Applicants' solicitors dated 19 October 2023 **[S54]**, Mr Felton asserted that his clients were in arrears of ground rent and that ground rent is payable whether or not demanded. That is wrong as a matter of law (see Section 166 Commonhold and Leasehold Reform Act 2002). Given the Second Respondent's evident misunderstanding of the correct position we consider it appropriate for the Manager to collect the ground rents if asked to do so by the Respondents. Sums collected should then be paid to the Respondents subject to any right of set-off in respect of sums payable by the Respondents to the Manager under the terms of the Management Order.
57. As to Mr Felton's other submission, nothing in the Management Order prevents the landlords from pursuing legal proceedings against the lessees for breach of lease covenants regarding matters that are not the responsibility of the Manager under the Order. However, from the date the Order comes into effect, the landlords are not entitled to exercise management functions in respect of the Building where the same is the responsibility of the Manager under the Order.

Amran Vance

14 November 2023

## **Appendix - 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).



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

<b>Case Reference</b>	LON/00AZ/LAM/2022/0022
<b>Property</b>	James Court, Lampmead Road, London, SE12 8QJ, also known as 382-386 (even numbers) Lee High Road, Lee Green, London SE12 8RW
<b>Applicants</b>	(1) Laurent Robin & Kathrin Robin (Flat A) (2) Eleanor Collins (Flat B) (3) Helen Rowley (Flat C) (4) Sascha Pristrom (Flat D)
<b>Representative</b>	Mr Adrian Carr instructed by Lyons Davidson Solicitors
<b>Respondent</b>	(1) Mr Andrew John Robert Stark (2) G & S Sharpe Limited (Company No.02986276)
<b>Representative</b>	(1) Mr Stark in person (2) Feltons Law, solicitors for G & S Sharpe Ltd
<b>The Manager</b>	Paul Cleaver Urang Property Management Limited <a href="mailto:paul.cleaver@urang.co.uk">paul.cleaver@urang.co.uk</a>
<b>Tribunal members</b>	Judge Vance & Mrs S Coughlin
<b>Date of Order</b>	14 November 2023

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**MANAGEMENT ORDER**

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## Interpretation

### 1. In this Order:

**“The Property”** means the flats and other premises known as known as James Court, Lampmead Road, London, SE12 8QJ, also known as 382-386 (even numbers) Lee High Road, Lee Green, London SE12 8RW and registered at HM Land Registry under title numbers SGL178059 & 406740 and shall include the buildings, outhouses, gardens, amenity space, drives, access roads, pathways, landscaped areas, flower beds, passages, bin-stores, common parts, storage rooms basements, electricity and power rooms; and all other parts of the property edged red on the plan at ‘Appendix A’.

**“The Annex”** means the building to the rear of 386 Lee High Road, Lee Green, London SE12 8RW outlined for identification purposes only in yellow on the plan at ‘Appendix A’, together with the metal steps providing access to its first floor, any entrance door, landing and/or corridors at first floor level above the Studio Flat and the toilets on the first floor serving the Annex.

**“The Studio Flat”** means the ground floor studio flat at the rear of 385 Lee High Road, Lee Green, London SE12 8RW outlined for identification purposes only in green on the plan at ‘Appendix A’.

**“The Landlord”** shall mean Andrew John Robert Stark and G&S Sharpe Limited or their successors in title to the reversion immediately expectant upon the Leases.

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

**“The Leases”** shall mean all residential leases and/or underleases of flats in the Property except the lease of the Studio Flat.

**“The Manager”** means Paul Cleaver of Urang Property Management Limited.

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

**“The RICS Code”** means the Service charge residential management Code and additional advice to landlords, leaseholders and agents published by the Royal Institution of Chartered Surveyors (“**RICS**”), 3<sup>rd</sup> edition or such other replacement code published by the RICS and approved by the Secretary of State pursuant to section 87 Leasehold Reform, Housing and Urban Development Act 1993

## ORDER

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) Paul Cleaver of Urang Property Management Limited is appointed as Manager of the Property.
3. The Manager’s appointment shall start on **30 November 2023** (“the start date”) and shall end on **29 November 2026** (“the end date”).
4. For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the 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.
5. The purpose of this Management Order is to provide for the management of the Property which includes taking steps to resolve the problems of inadequate management identified by the tribunal at paragraphs 44-45 of its decision dated 14 November 2023:
6. To address the steps identified in the previous paragraph the Manager is empowered to:
  - (a) Manage, repair and maintain the residential and commercial parts of the Property in accordance with this Order and the Leases.
  - (b) Insure the residential and commercial parts of the Property in accordance with the terms of this Order and the Leases.
  - (c) Demand service charges from the Tenants and the Landlord in accordance with the following schedules:

Schedule 1:	The repair, maintenance and insurance of 382 Lee High Road (excluding the area coloured light green on the plan at ‘Appendix A’ and the matters in relation to areas mentioned in any other Schedule which otherwise form part of 382 Lee High Road), payable as to 12.5% by Flat A, 12.5% by Flat C, 12.5% by Flat D and 62.5% by the freeholder, G&S Sharpe Ltd (and successors in title).
Schedule 2:	The repair, maintenance and insurance of 384-386 Lee High including any areas used in

	<p>common by the Tenants and/or the Landlord and/or any other tenant or occupier of any part of the 384-386 (including the Studio Flat and Annex), or their servants, agents, visitors and invitees.</p> <p>BUT excluding the matters in relation to areas mentioned in any other Schedule which otherwise forms part of 384 - 386 Lee High Road).</p> <p>PAYABLE as to 12.5% by Flat A, 12.5% by Flat B, 12.5% by Flat C, 12.5% by Flat D and 50% by the freeholder, Mr Andrew Stark (and his successors in title</p>
Schedule 3:	The cleaning repairing, maintaining and lighting of the entrance, staircase and landings providing access to flats A, B, C and D coloured yellow on the plans attached to the Leases: payable as to 25% by Flat A, 25% by Flat B, 25% by Flat C, 25% by Flat D (and successors in title).
Schedule 4:	A fair and reasonable proportion to each of the freeholders, G&S Sharpe Ltd and Mr Andrew Stark and the Tenants (and their successors in title) of all sums demanded of the Manager in the upkeep and maintenance of the access road coloured brown on the plans attached to the Leases.
Schedule 5:	A fair and reasonable proportion to each of the freeholders, G&S Sharpe Ltd and Mr Andrew Stark and the Tenants (and their successors in title) of all sums expended by the Manager in lighting, repairing and maintaining the courtyard coloured blue on the plans attached to the Leases.

7. The Manager shall manage the Property in accordance with:

- (a) the terms of this Order and the Directions set out below;
- (b) the respective obligations of the Landlord and the Tenants under the Leases whereby the Property is demised by the Landlord (save where modified by this Order);

- (c) the duties of a Manager set out in the RICS Code (whether the Manager is a Member of the RICS or not); and
  - (d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.
- 8. From the 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 Manager under this Order.
- 9. The tribunal requires the Manager to act fairly and impartially in the performance of their functions under this Order and with the skill, care and diligence to be reasonably expected of a Manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions.
- 10. The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
- 11. The Tribunal may, upon receipt of information or notification of change of circumstances, issue directions to the parties, or any other interested person, concerning the operation of this Order, both during its term, and after its expiry.
- 12. Any application to extend or renew this Order **must** be made before the 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 Manager's appointment will continue until that application has been finally determined.
- 13. The Manager is appointed to take all decisions about the management of the Property necessary to achieve the purposes of this Order. If the Manager is unable to decide what course to take, the Manager may apply to the Tribunal for further directions, in accordance with section 24(4), 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 Manager to discharge their obligations under this Order and/or for the parties to pay the Manager's remuneration; and

- (c) where the Manager is in doubt as to the proper construction and meaning of this Order.

### Contracts

- 14. Rights and liabilities arising under contracts, including any contract of insurance and/or any contract for the provision of any services to the Property, to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:
  - (a) the Landlord shall indemnify the Manager for any liabilities arising before commencement of this Order; and
  - (b) the Manager has the right to decide, in their absolute discretion, the contracts in respect of which they will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date this order.
  
- 15. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.

### Pre-contract enquiries

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

### Legal Proceedings

- 18. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and, subject to the approval of the Tribunal, may continue to bring or defend proceedings relating to the appointment, after the end of their appointment.
  
- 19. Such entitlement includes bringing proceedings in respect of arrears of service charge [and rent] attributable to any of the Flats in the Property, including, where appropriate, proceedings before this tribunal under section 27A of the Landlord and Tenant Act 1985 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.
  
- 20. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so during, or after,

this appointment. If costs paid from the service charge are subsequently recovered from another party, those costs must be refunded to the service charge account.

### Remuneration

21. The Tenants and the Landlord are responsible for payment of the Managers' fees as set out below, which, in the case of the Tenants, are payable under the provisions of this Order but which may be collected under the service charge mechanisms of their Leases.

22. The sums payable are:

- (a) an annual fee of £400 for each of the four flats;
- (b) an annual fee of £400 for G&S Sharpe Ltd (and its successors in title)
- (c) an annual fee of £2,400 Mr Andrew Stark (and his successors in title)
- (d) any additional fees contained in a schedule to this Order (cable); and
- (e) VAT on the above fees.

### Ground Rent and Service charge

24. The Manager shall collect the ground rents payable under the Leases, from the date of the order, should the Landlord want it to be collected.

25. The Manager shall collect all service charges and insurance premium contributions payable under the Leases and from the Landlord in accordance with paragraph 6 of this Order and the terms and mechanisms in the Leases (as varied by this Order).

26. Whether or not the terms of any Lease so provides, the Manager shall have the authority to:

- (a) Demand service charge payments from the Tenants and the Landlord in advance and balancing payments at the end of the accounting year;
- (b) Establish a sinking fund to meet the Landlord's obligations under the Leases;

- (c) Allocate any surplus of service charges otherwise due to Tenants and/or the Landlord at the end of the accounting year to the sinking fund;
  - (d) Alter the service charge accounting year and to collect arrears of service charge and insurance that have accrued before their appointment; and
  - (e) Collect the service charges from the Landlord and the Tenants and apportion these (as appropriate) in accordance with the schedules set out in paragraph 6 of this Order.
27. The 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.
28. The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, engineers, solicitors, counsel, and other professional persons or firms, incurred by them whilst carrying out their functions under the Order.

#### Administration Charges

30. The Manager may recover administration charges from individual Tenants for their costs incurred in collecting ground rent, service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges will be subject to legal requirements as set out in Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Details of the fees charged are set out in the Appendix of additional fees.

#### Disputes

31. 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 Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, may apply to the tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.
32. 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 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.

33. In the event of dispute regarding the conduct of the management of the Property by the Manager, any person interested may apply to the Tribunal to vary or discharge the order in accordance with section 24(9) of the Landlord and Tenant Act 1987.
34. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Tenant, or the Landlord may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

### **DIRECTIONS TO LANDLORD**

35. The Landlord must comply with the terms of this Order and in particular must pay any service charges demanded by the Manager under the provisions of this Order.
36. 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 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.
37. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of their functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.
38. The Landlord is to allow the Manager and their employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform their functions and duties and exercise their powers under this Order.
39. Within **30 days** from the date of this Order the Landlord must provide all necessary information to the Manager to provide for an orderly transfer of responsibilities, to include the transfer of:
  - (a) all accounts, books and records relating to the Property, including a complete record of all unpaid service charges; and



- (b) all funds relating to the Property including uncommitted service charges and any monies standing to the credit of a reserve or sinking fund.

### **DIRECTIONS TO MANAGER**

40. The 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

41. To protect the direction in paragraph 36 for procurement by the Landlord, of a direct covenant with the Manager, the Manager must apply for the entry of the following restriction in the register of the Landlord's estate under title no(s) SGL178059 & 406740.

“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 36 of an Order of the Tribunal dated 14 November 2023 have been complied with”

#### Registration

42. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 41, within 14 days of the date of this Order. The restriction is to have overriding priority against any search with priority or pending application for a disposition of the registered estate (other than a charge) that has been lodged after the 24 October 2022.
43. 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

44. The 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 Manager should apply to the Tribunal for directions.

### Complaints

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

### Insurance

45. The Manager must maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.
46. From the date of appointment, and throughout the appointment, the Manager must ensure that he has appropriate professional indemnity insurance cover in the sum of at least **£5 million** and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Tenant or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

### Accounts

47. The Manager must:
  - (a) prepare and submit to the Landlord and the Tenants an annual statement of account detailing all monies receivable, received and expended. The accounts are to be certified by the external auditor, if required under the Leases;
  - (b) maintain efficient records and books of account and to produce for these for inspection, to include receipts or other evidence of expenditure, upon request by the Landlord or a Tenant under section 22 Landlord and Tenant Act 1985;
  - (c) maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into

which ground rent, service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and

- (d) hold all monies collected in accordance with the provisions of the Code.

### Repairs and maintenance

48. The Manager must:

- (a) by **31 January 2024** draw up a planned maintenance programme for the period of the appointment, allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property, as well as any roads, accessways, mechanical, electrical and other installations serving the Property, and shall send a copy to every Tenant and to the Landlord; (b) subject to receiving sufficient prior funds:

- (i) carry out all required repair and maintenance required at the Property, in accordance with the Landlord's 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.

- (b) liaise with all relevant statutory bodies in the carrying out of their management functions under the Order; and

- (c) ensure that the Landlord, and the Tenants, are consulted on any planned and major works to the Property and to give proper regard to their views.

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

### Reporting

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

51. No later than 56 days before the end date, the Manager must:
  - (a) apply to the tribunal for directions as to the disposal of any unexpended monies;
  - (b) include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a “Final Report”); and
  - (c) seek a direction from the tribunal as to the mechanism for determining any unresolved disputes arising from the Manager’s term of appointment (whether through court or tribunal proceedings or otherwise).
  
52. Unless the tribunal directs otherwise the Manager must within two months 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 14 days; and
  - (b) answer any such queries within a further 14 days.
  
53. The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed Manager within three months of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.

## Schedule of Additional Fees

### a.) Legal Fees

<b>Legal Administration Services</b>		
Re-mortgage Enquiries (non-standard)	£150.00	+VAT
LPE1 Management Pack	£400.00	+VAT
*LPE1 Management Pack (expedited 2 days)	£500.00	+VAT
Additional enquiries per question (after issue of Pack)	£15.00	+VAT
Order Land Registry Lease	£24.00	+VAT
<b>Hourly Rate</b>		
Director/Associate Director	£ 250.00	+VAT
Surveyor	£170.00	+VAT
Senior Property Manager/Accounts Manager / Legal Administrator	£175.00	+VAT
Property Manager/Accounts Manager	£150.00	+VAT
<b>Arrears &amp; Disputes</b>		
First Reminder	-	+VAT
Second Reminder	£100.00	+VAT
Instruction of solicitor (Urang)	£300.00	+VAT
FTT application and case management	<i>Based on hourly rate</i>	+VAT
<b>Banking</b>		
Returned cheque	£20.00	+VAT

### b.) Major Works Fees

#### Management Fee

Urang charge a management fee on the Major Works which is based on the total contract value of the project. It is standard practice to charge 6% for all the preparation before works start and 6% management fee once works are onsite/complete. The payments are split into 4 stages:

1. Notice of Intent – 2%/ (Estimated if value is unknown)
2. Statement of Estimates (Inc. Tender Analysis) – 4%
3. Managing on site works – 2%
4. Final management instalment upon completion of works – 4%

*[All above total 12% Management Fee. There is a minimum fee of £500]*

**APPENDIX A**

