FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/21UH/LAM/2024/0002/AW
Property	:	Parklands, Little London, Heathfield, East Sussex TN21 0BA
Applicant	:	Mr Willmott (Flat 1)
Representative	:	
Respondent	:	(1) Hullwell Ltd (2) Ms Carmichael (Flat2/3) (3) Mr and Mrs Jenner (Flat 4) (4) Mr Winn (Flat 5)
Representative	:	
Type of Application	:	Appointment of a manager
Tribunal Member(s)	:	Regional Judge Whitney Mr B Bourne MRICS
Date of Hearing	:	16th April 2024
Date of Decision	:	30 May 2024

DECISION

Background

1. The Applicant seeks the appointment of a manager, and he nominated Mr Gary Pickard.

2. The Property is a large house divided into 4 flats. Originally it appears it was converted into 5 flats but at some point flats 2 and 3 were combined. The freehold belongs to a company in which each of the leaseholders has an interest. The directors are leaseholders and it appears they have endeavoured to manage the Property themselves without engaging professional assistance. The Applicant makes allegations about numerous failings in such management, which in his opinion make it just and convenient for a manager to be appointed.

3. The application attached a copy of the Section 22 Notice served and relied upon together with further incidents of alleged breaches of management.

4. Directions were issued on 18th January and subsequently varied on 1 February 2024. Those directions were substantially complied with and an electronic hearing bundle consisting of 545 pdf pages was produced for use at the hearing. References in [ ] are to pdf pages in that bundle.

Hearing

5. The hearing took place at Brighton Tribunal Centre and was recorded.

6. No inspection took place but the Tribunal had photographs and had viewed the Property using online resources.

7. Mr Willmott was accompanied by his wife who assisted him in presenting his case. Mr Pickard was in attendance throughout the hearing as the nominated manager. Mr Jenner appeared for himself and also to represent Ms Carmichael who was unable to attend but had given written authority for Mr Jenner to represent herself. Mr Winn was also in attendance. Messrs Jenner and Winn are leaseholders and directors of the freehold company.

8. A Mr Tony Roberts also attended the hearing. Messrs Winn and Jenner were proposing that he should be appointed as a manager by the First Respondent freehold company. He had not provided any evidence but was present throughout the hearing.

9. At the commencement the Tribunal dealt with various case management applications made by the parties. Essentially these were requests to allow additional documents to be considered by the Tribunal. We allowed all and read and considered all additional documents.

10. Mr Winn explained he had certain health issues. The Tribunal made clear if he required any breaks or other allowances from the Tribunal he should simply ask and it would endeavour to accommodate the same.

11. Below is a summary only of what took place during the hearing.

12. The Respondents accepted that the Section 22 Notice [14-61] had been received by Hulwell Limited.

13. The parties agreed that further deeds of variation had been entered into fixing the service charge percentages payable by all of the flats. Copies of the variations were not within the bundle but we were told the percentages adopted were:

- Flat 1 25%
- Flat 2 and 3 30%
- Flat 4 25%
- Flat 5 20%

14. All parties present confirmed these were the percentages which had been fixed in the variation and added up to 100%. In all other respects it was agreed the sample lease and variation within the bundle [86-151] included all the relevant terms upon which the Property should be managed.

15. Mr Willmott presented his case for a manager. Essentially he accepted that as a director he had in the past gone along with the members of the company managing the Property themselves, including actually undertaking various maintenance and repair tasks. He had sought to educate himself as how the Property should be properly managed and so became aware that in a number, of what he considered serious ways, the Property was not being properly managed. He had tried to address these with his fellow directors but they took no notice. As a result he felt compelled to make the application. He was particularly concerned over the significant health and safety breaches occurring as a result of the directors and residents looking to undertake tasks themselves including undertaking roof works, gutter cleaning and tree felling.

16. He relied on the various breaches identified within his Section 22 Notice which the Tribunal had read in advance of the hearing.

17. Mr Willmott explained he was concerned that there was a risk of prosecution and the company being sued if anyone suffered any injury. Further he did not consider the way that the service charges were administered complied with either the terms of the lease or the statutory requirements for the same. He suggested both the

service charge and the budget contained errors. Currently everyone effectively made a monthly voluntary contribution.

18. Mr Willmott explained that this year the amount had increased by a percentage. He suggested there was no proper demand or any documents containing the summary of rights and obligations. He suggested he has advised the directors of the need to request funds in a proper manner.

19. In Mr Willmott's submission there were no service charge accounts which complied with the IFAEW Tech 03/11 requirements. He suggested there were no proper records. Further the company had failed to establish a reserve fund which was he suggested was allowed under the lease and would be good practice. Everything as to the management was conducted on an ad hoc basis.

20. Mr Willmott referred to the Building Insurance. He suggested that the building had been significantly underinsured. He had requested the company to obtain a rebuild valuation but they had declined. Instead simply applying a percentage increase suggested by another director of the company. He had obtained a rebuild valuation at his own expense for which he was not reimbursed which showed the Property was under valued by about £1.25 million. Mr Willmott suggested the directors had been keen to not deal with the insurance in a proper manner simply increasing the figures previously used without professional advice which would have left the Property significantly under insured to the detriment of all parties.

21. Mr Willmott referred to various maintenance issues including the drive, the roof, roof of the tractor shed and others. He suggested no proper plans were in place to deal with the same.

22. Mr Willmott referred to an issue with the terrace outside his flat and a wall. He was in dispute with the company as to whether or not the terrace formed part of his flat demise. The Tribunal made clear this was not a matter upon which it could adjudicate and each party must rely upon their own advice.

23. Mr Willmott also believed his quiet enjoyment of his flat was being affected. He referred to an occasion when he stated Mrs Jenner was listening outside a window to his flat. Further he believed that an unreasonable stance was being taken over his pets. Whilst he did not have specific written permission, he believed everyone had agreed. When Mr and Mrs Jenner moved in he gave them written permission. He denied his dog caused any nuisance.

24. He suggested that Mr and Mrs Jenner had breached their lease by not having close carpeting on their floor. He suggested the company should have taken action but did not do so.

25. Mr Willmott confirmed his witness statement [68-78] was true.

26. He was cross examined by Mr Jenner and Mr Winn.

27. Mr Willmott stated he did not believe the directors of Hulwell Limited had the skills to manage the Property. As a result he sought someone independent to manage.

28. Mr Willmott accepted in the past he had signed off risk assessments. He now knew he was wrong to do so as these were inadequate.

29. Mr Willmott denied being ageist. He did not think someone over 70 should not do works but that works should be properly carried out by suitably qualified individuals.

30. On questioning by the Tribunal he accepted that the company would lose its capacity to manage but felt it was in the best interests of all. In his opinion a long term plan is required to deal with the maintenance. In particular, major works to the drive, pointing and roof together with works to the outbuildings and 4.2 acres of parkland.

31. Mrs Willmott then gave evidence and confirmed her statement [79-85] was true.

32. She was cross examined by Mr Jenner and Mr Winn.

33. The Applicant sought to rely on a witness statement of Miss Gibbs [324 and 325]. She was not in attendance. Messrs Winn and Jenner did not agree the statement.

34. The Applicant concluded their case confirming in his opinion it was just and convenient for a manager to be appointed.

35. The Respondents relied upon their joint statement [481 onwards].

36. Mr Jenner explained they feel the company is run efficiently and in a way which saves all leaseholders a lot of money. It was accepted that perhaps things should be done in a different fashion but the Company wishes to retain control and so would like to appoint Mr Tony Roberts who is a local experienced manager.

37. Mr Jenner explained that if so appointed neither he nor Mr Winn would continue to do roof works.

38. On questioning by the Tribunal Mr Jenner explained they would handover the management. The directors would wish to retain control but if works need to be done they would be done. Mr Winn took the view that the appointment should go with the majority view.

39. Upon being cross examined Mr Jenner stated he had done more than Health and Safety Executive advised. He accepted certain things were not done properly and was now trying to compromise. He was adamant the works they had undertaken were appropriate as was the way the Property had been managed.

40. The Tribunal then heard from Mr Pickard. We had copies of his statement dated 29th February 2024 and supporting documents although these were not in the bundle.

41. He confirmed he was ready able and willing to be appointed. He felt he should be appointed for 2 to 3 years. This would allow him time to plan and begin works. He confirmed he had not seen copies of all the leases and variations.

42. He confirmed he inspected without accessing any flats at about 7.30pm one evening in February 2024. A lessee had let him in to access the communal areas.

43. He confirmed within his fee would be 4 site visits per annum. He would charge for his mileage on top of his fee. He would charge £350 plus vat per unit and 5% plus vat for all major works.

44. In closing Mr Winn stated that he believed appointing someone based in Hove was ridiculous. He believes a local person should be appointed and if they then did not do the job the company would sack them.

45. Mr Jenner echoed that a local person would be better. He believes Mr Robinson has a good reputation and cannot understand why Mr Willmott is unwilling to compromise.

Decision

46. We thank all parties for their submissions at the hearing.

47. It was apparent there is considerable animosity between the parties. We make clear that we make no findings in respect of the dispute over the terrace and as we explained at the hearing this is not a matter we can or should adjudicate upon and is a separate matter that irrespective of whether or not a manager is appointed must be dealt with by the Company and the Applicant. Each must rely upon their own advice.

48. It was agreed that a Section 22 Notice had been served upon the First Respondent. We record that Messrs. Jenner and Winn appeared to admit and accept a large number of the deficiencies as to management raised within that Notice.

49. It was however apparent from the evidence of Messrs. Winn and Jenner that even at the hearing they did not accept that how the First Respondent company was being run was inappropriate.

50. We record that both Mr Win and Mr Jenner are in excess of 70 years old. Mr Winn explained to us he has various health issues. We do not consider it appropriate for them to be undertaking works as directors of the company involving climbing ladders to undertake roof or gutter works. We understand Mr Willmott's reservations and suspect that the company would not be insured if any accident was to occur.

51. Further we were concerned as to the manner adopted for arranging the insurance. The Respondents seemed to do all they could to avoid a proper revaluation exercise. This was a prime example of the penny pinching adopted by the Respondents' in the management of the Property.

52. Whilst it may be said to be admirable that the directors of the First Respondent wish to keep the costs of the service charge to a minimum they do have obligations to comply with the terms of the lease and their statutory obligations. The Respondents did not appear to have any proper understanding of these obligations. This is despite the Applicant having raised in their initial notice and having spelt out within their application the inadequacies in management Even after being questioned by the Tribunal we were not satisfied that there was any real acceptance that change was required even in respect of points Messrs. Jenner and Winn conceded were not been properly dealt with by the company.

53. We were satisfied that the Respondent was failing to manage in accordance with the lease terms and the statutory requirements. No proper or valid service charge demands were being issued and no proper service charge accounts were being maintained. Further it did not appear that there were appropriate controls as to the use of the monies paid to the company by leaseholders.

54. Whilst Messrs Jenner and Winn referred to wishing to appoint Mr Robinson it was clear from the evidence that the company would wish to exercise a high degree of control over what he did and how funds were spent including retaining control of all funds. It seemed to this Tribunal the expectations were wholly unrealistic.

55. As a result we were satisfied that it was just and convenient on all the evidence we heard and read for a manager to be appointed. Such appointment should be for a limited term and to assist the First Respondent in understanding what steps should be undertaken.

56. We are satisfied that Mr Pickard is appropriate. He has a number of existing Tribunal appointments and in our judgment is able to

manage this Property. We note his proposed fee is not dissimilar to that we were told Mr Robinson had suggested.

57. As for the term of such appointment we think this should be limited. If the appointment needs to be extended an application may be made. Equally if all is going well it would be open to the parties to agree to appoint Mr Pickard. We determine that Mr Pickard should be appointed from the date of this decision until 30th June 2026.

58. All parties must co-operate with Mr Pickard. He is appointed to act as a manager by this Tribunal.

59. The purpose of his appointment will be to prepare a maintenance plan and to undertake works as are required to re-surface the drive. We believe this will focus all parties. It is apparent the driveway is in an appalling state of repair but we accept that this will be expensive to repair. We were told of various quotes which would involve each leaseholder paying significant sums. It is wholly apparent that a plan is required to phase works to ensure leaseholders can fund the same.

60. We direct that initially the parties will in accordance with their respective percentages as set out in paragraph 13 above upon receipt of a demand from Mr Pickard pay funds to provide an initial total of £5,000. By the end of August 2024 Mr Pickard may make an ad hoc demand for funds totalling £25,000 again to be paid in accordance with the percentages as set out above. The purpose is to ensure that Mr Pickard has the funds he requires to manage the Property and to take steps to move forward with the re-surfacing of the driveway. In calculating such sums we have taken account of Mr Pickard's fees and the quotes we were advised the company had obtained for re-surfacing the driveway. The company should co-operate with Mr Pickard to provide him with copies of the same.

61. Further the order will allow Mr Pickard to issue further ad hoc demands as and when reasonably required by him which must be paid within 28 days of demand.

62. We would hope that with a proper plan and the drive re-surfaced the parties will see how the Property should be managed going forward to the benefit of all.

Conclusion

63. We are satisfied it is just and convenient to appoint Mr G Pickard for a term expiring on 30th June 2026 on the terms of the attached Order.

RIGHTS OF APPEAL

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

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.