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

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| **Case reference** | : | **BIR/47UC/LAM/2023/0001** |
| **Property** | : | **Leamington Court, 233-237 Wells Road, Malvern Wells, Worcestershire, WR14 4HF** |
| **Applicant** | : | **Ms Daphne Evadne Portia Baker** |
| **Representative** | : | **In person** |
| **Respondent** | : | **Leamington Court Management Company Limited** |
| **Representatives** | : | **Mr Hugh Rowan, Counsel** |
| **Type of application** | : | **Appointment of a Manager** |
| **Tribunal members** | : | **Judge C Payne**<br>**Mr D Satchwell FRICS** |
| **Date of Inspection** | : | **13 March 2024** |
| **Date of Hearing** | : | **18 March 2024** |
| **Date of Decision** | : | **20 August 2024** |

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**DECISION**

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## Decisions of the Tribunal

The Application to appoint Mr Phil Bird as the Manager of Leamington Court, 233-237 Wells Road, Malvern Wells, Worcestershire, WR14 4HF under section 24 of the Landlord and Tenant Act 1987 is dismissed.

## The Application

1. On the 3 March 2023, the Applicant applied to the Tribunal seeks an order appointing Mr Mark Bruckshaw as the Manager of Leamington Court, 233-237 Wells Road, Malvern Wells, Worcestershire, WR14 4HF ("the Property") under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act").

2. Mr Bruckshaw of Inspire Property Management Ltd was appointed by the Respondent to manage the Property on 8 October 2022. He was managing the Property at the date the application was made and continues to do so. The Applicant wanted Mr Bruckshaw to manage the Property but under the direction of the Tribunal, rather than the Respondent management company.

3. Upon receipt of the Application, Mr Bruckshaw wrote to the Tribunal to advise that he did not consent to being appointed as a manager of the Property under section 24 of the 1987 Act as he did not feel that would benefit the leaseholders of the Property.

4. The Applicant amended her application to propose Mr Phil Bird of Colmore Gaskell Estate Management be appointed as Manager of the Property under section 24 of the 1987 Act.

5. The Property consists of two Victorian houses, known as Senior House and Leamington House, which have been converted into residential flats. The Applicant owns the leasehold of flats 15, 16 & 17. While these are listed as three separate titles, they make up a single apartment on the first and second floors of Senior House with only one access door. There are 17 units in the Property, with 14 other leaseholders. The Respondent is the management company of which all leaseholders are members. The Respondent's directors are all leaseholders.

## The Inspection

6. The Tribunal undertook an inspection of the Property on 13 March 2024. The Applicant attended with Mr Bird. Mr Gregory attended on behalf of the Respondent, along with the current managing agent, Mr Bruckshaw.

7. The Tribunal was able to inspect the common parts of the Property with all parties and the inside of the Applicant's apartment without Mr Bird, Mr Gregory or Mr Bruckshaw being granted access. Details of what had been observed in the apartment were conveyed to Mr Bird, Mr Gregory or Mr Bruckshaw.

## The Hearing

8. The hearing took place on 18 March 2024. The Applicant appeared at the hearing in person, asking the Tribunal to note that she is a barrister of 24 years call. Mr Kevin Gregory and Mr Christopher Griffin attended on behalf of the Respondent. The Respondent was represented by Mr Hugh Rowan of Counsel.

9. The Applicant objected to Mr Gregory and Mr Griffin representing the Respondent in the proceedings, submitting that they had no right or authority to deal with this matter on behalf of the Respondent as there had been no specific resolution under s281 Companies Act 2006 conferring on the directors the power to deal with legal proceedings on behalf of the Respondent company. The Applicant, when asked, was unable to elaborate on her legal argument for why a resolution would be required on this occasion for the Respondent company's directors to be permitted to respond to and engage with these proceedings.

10. Mr Gregory and Mr Griffin are both appointed directors of the Respondent company. It was common ground between the parties that the objects of the company include the management and administration of the Property. Responding to applications made to the Tribunal concerning the management of the Property is in accordance with the interests and constitution of the company. As such, the Applicant's objection to the company directors addressing the claim and appointing Counsel to represent the company in these proceedings was dismissed.

11. The Tribunal had regard to the Hearing Bundle. Skeleton Arguments and Supplemental Bundles were also received from both parties on the morning of the hearing.

12. The Tribunal heard oral evidence from the current manager, Mr Bruckshaw, and the prospective manager, Mr Bird.

13. The Tribunal identified that the issues to be determined in this appointment of manager application as follows:

    i. Whether a preliminary notice under section 22 of the 1987 Act has been served and, if not, whether service should be dispensed with;
    ii. Whether there are grounds for appointing a manager;
    iii. Whether it is just and convenient to appoint a manager;
    iv. Whether the proposed manager is a suitable appointee; and
    v. The terms of any management order.

## Determination

### *Service of the preliminary notice*

14. It is not in dispute that a notice under Section 22 of the 1987 Act was served by the Applicant on the Respondent.

### *Whether there are grounds for appointing a manager*

15. Section 21(1) of the 1987 Act provides:

> *21.— Tenant's right to apply to court for appointment of manager.*
>
> (1) *The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.*

16. Section 24(2) of the 1987 Act includes provision that:

> *24.— Appointment of manager by a tribunal.*
> ...
> (2) *The appropriate tribunal may only make an order under this section in the following circumstances, namely—*
> *(a) where the tribunal is satisfied—*
> *(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and*
> *(iii) that it is just and convenient to make the order in all the circumstances of the case;*

17. In the Section 22 Notice dated 10 February 2022, the Applicant made a number of allegations including that the Respondent is in breach of obligations owed under the terms of her lease. Further allegations were raised in subsequent evidence submitted to the Tribunal.

*Water Ingress*

18. It is common ground that there had been a history of water ingress through the roof of the property. The most recent works to the roof above the Applicant's apartment took place in June 2023. Mr Bruckshaw and the Respondent believed that work had addressed the issue as no further reports of leaks had been made.

19. During the inspection the Applicant advised the Tribunal that the roof had started leaking again in January 2024. She said that she did not report these leaks to Mr Bruckshaw or the Respondent, who were not aware of this until the day of the Tribunal's inspection that there might be any ongoing issue.

20. During the Tribunal's inspection, the Applicant indicated where historical leaks had been. No evidence of recent or ongoing water ingress was visible and there was no evidence of any damp in areas where repairs had been carried out previously. There had been recent heavy rainfall at the time of the inspection, and it was notable that many fields in the surrounding area were still flooded. As such, if the roof was still leaking the Tribunal would have expected this to be evident during the inspection. The Applicant provided no independent evidence to suggest the roof repairs were insufficient.

21. Mr Bruckshaw confirmed that, now that he was aware there was an issue again, he would take prompt steps to investigate and arrange for further work, if necessary. This is in accordance with the lease and good management practice.

22. The Applicant advised the Tribunal that there had been a leak from Flat 18, which had caused some damage to her apartment. This is an issue between individual leaseholders and is not related to the management of the Property.

*Communal Hallway*

23. The Applicant submitted that, historically, the former managing agent had not regularly cleaned the hallway. During the inspection, the parties agreed that the hallway had been professionally cleaned just after Christmas and that there was now an annual budget for the hall to be cleaned. There is no current issue with the cleaning of the hall.

24. Photographic evidence was provided by the Applicant of another leaseholder leaving items in the hallway. They were not there at the time of the inspection having been removed following a request from Mr Bruckshaw. He said that assurances had been given that items would not be left in the hallway going forwards. Mr Bruckshaw confirmed that, if he is made aware of this type of issue, it is his practice to speak to the tenant concerned to arrange for items to be removed. During the inspection the hallway was noted as being clean and in good order in accordance with the terms of the lease.

*Washing Line*

25. In 2018 a rotary washing line was set up on a common area to the side of the Property. This area is adjacent to the car park and near a path that residents walk along to access the main gardens to the rear. The Applicant believes that this was placed there by the leaseholders who reside in the flat adjacent to that area. The Applicant submitted that this is prohibited under the lease and should be removed.

26. The Respondent submitted that the line was there for common use. Emails from 10 other leaseholders who reside in the Property were provided confirming that they also understand the rotary washing line is for communal use. None of them object to it being there.

27. During the inspection the Tribunal noted that the line was in good condition and had a cover that could be placed over it when it was not in use. It was situated to the side of the Property in an area of garden adjacent to the parking area and did not impede or interfere with access to the main gardens at the rear. It could not be seen from the Applicant's apartment or from the landscaped gardens at the rear of the Property. There was nothing preventing any resident from making use of the line and no indication of personal ownership.

28. The Tribunal preferred the Respondent's submission that the line is for communal use. The erection of a rotary washing line is not expressly prohibited and it something that may be allowed at the discretion of the management company. The provision of an external area designated for hanging washing, which is away from the main gardens and causes no interference with the leaseholder's enjoyment of the garden area is consistent with good management practice and is not a breach.

*Parking*

29. The lease entitles each leaseholder to park one "car" in a designated parking space. The Applicant noted that one leaseholder had parked a campervan in their space and another a commercial van. These were not present at the time of the inspection and the Tribunal were advised that they were no longer being parked at the Property. The Applicant confirmed that when the vehicles were there, they were not causing any obstruction in the car park.

30. The Respondent submitted that the vans referred to are small domestic vehicles with the same footprint as a car, which are consistent with the residential occupation of the Property. As such, they would fall within the intention behind the provision in the lease and were not causing any nuisance.

31. While the lease does permit the use of a space for the parking of a "car", it is reasonable for this to be interpreted to extend to encompass domestic vehicles generally and, if the parking of such vehicles were to be considered a breach, it would be considered to be minor, particularly as they were not causing any nuisance. In this case, the vans were no longer being parked at the Property.

*Fire Detection System*

32. A new fire detection system was installed at the Property following a Fire Risk Assessment in 2019 and a major works consultation between February to May 2019. Both Mr Bruckshaw and Mr Bird agreed that it the Respondent was obliged to take steps to comply with the recommendations of the report to fit a new system.

33. The Respondent provided copies of letters from the consultation and confirmed that heat detection devices were installed in all the flats. This is supported by the Fire Risk Assessment reports provided for February 2022

and December 2023.

34. The Applicant has removed the heat detector inside her flat, believing she was the only leaseholder who was required to have an alarm in their apartment. She was concerned that there was a risk it could go off at any time and disturb her when she was working. There was no evidence of any issue with the system installed or any suggestion that it would go off at any time other than in an occasional short test or in an emergency.

35. In the Fire Risk Assessment undertaken in December 2023 a recommendation was made that:

*The device should be reinstalled back into the entrance of flat 15.*
*Due to the age and that the building is a converted block of flats there is a requirement for the communal fire alarm detection system to be installed, which extends into the flat entrances. From the flats inspected this is the case. All flats inspected had a suitable detector within the entrance of the flat which is interlinked to the communal system. However, there are ongoing issues with flat 15, its believed the device has been pulled from the ceiling within the flat. This is not suitable and poses a risk to all other residents as this will delay the time from the fire being detected which essentially delays the residents evacuation time.*

36. The Respondent is obliged to take action in response to the recommendations in the Fire Risk Assessment and install an appropriate fire safety system. By removing the heat detection unit from her apartment, the Applicant is in breach of her lease and is putting her household and other occupiers at unnecessary risk. Her actions may also lead to insurance over the Property being invalidated. The Tribunal finds it is not a breach for the Respondent to require the heat detection unit to be reinstated in the Applicant's apartment.

*Stairway Lighting*

37. The Applicant's apartment is accessed by a staircase, which is outside the demise of her 3 flats' titles, forming part of the common parts of the Property. Practically, it only leads to the Applicant's apartment and the Applicant has installed some lighting and decoration immediately outside the door to her home. The door to the Applicant's apartment has a glass panel surround. There is a bedroom coming off the hallway, adjacent to the entry door.

38. In the Fire Risk Assessment in February 2019 it was noted that the staircase has no external windows and, therefore, required emergency lighting. This is required to assist those seeking to escape the Property and emergency services needing to access the Property in an emergency.

39. A light was installed with a motion sensor. The Applicant stated that the sensor picked up movement outside her bedroom door through the glass panel adjacent to the door. The Applicant removed the lighting in April 2021. Alternative emergency lighting options have been proposed but have

not been able to be installed as the Applicant has threatened to remove any new installations. This has left the Respondent unable to comply with the Fire Risk Assessment recommendations.

40. The Applicant has no right to undertake work to the common parts of the Property, which includes the staircase leading to the door of her apartment. By removing the lighting, she has caused damage to the common parts and is also putting her household and others at unnecessary risk. Her actions may also lead to insurance over the Property being invalidated. Any issues with the lights' sensor could have been addressed by changing the window panelling around her door or cooperating with the proposals for an alternative model of light to be installed. The Tribunal finds it is not a breach for the Respondent to install emergency lighting in response to an FRA recommendation.

*Harassment and Racism*

41. The Applicant in her submissions made allegations that she had suffered harassment from previous managing agents who resigned in July 2022 and one of the other Respondent's directors, who is also a leaseholder. These matters did not relate to the current management of the Property.

42. The Applicant stated that she believed that she was being treated differently to other leaseholders because of her ethnicity.

43. The Tribunal could find no evidence to support the Applicant's assertion that the Respondent company had treated the Applicant in a different manner to other leaseholders on the basis of her race or otherwise. Had any other leaseholder removed the fire safety equipment in or adjacent to their flat then action would be taken against them. It was also noted that the Applicant was over £16,000 in arrears of service charge payments at the time of the hearing and confirmed that, if any other leaseholder was in arrears, they would also be pursued. The non-payment of service charges, particularly where it concerned payment from 3 of the 17 units, has a significant and detrimental impact on the ability to manage and maintain the Property.

44. The Applicant made reference to tension in her relationship with other tenants, which did not appear to be racially motivated. That is a matter between her and the other individual leaseholders, not a management issue.

*Support for the Application*

45. Correspondence was provided from 10 of the other 14 leaseholders stating that they did not support the application to appoint a manager and were happy with the current management arrangements. No other leaseholders have supported this application, despite all being made aware of it.

46. The Applicant stated at the hearing that she felt Mr Bruckshaw was doing a good job of managing the Property now and found no fault with his approach. The Applicant failed to establish any breaches of the terms of the

lease or grounds that would justify the need for the Tribunal to step in and appoint a manager.

***Whether it is just and convenient to appoint a manager***

47. When questioned, Mr Bird stated that he did not disagree with anything that Mr Bruckshaw was doing in respect of the management of the Property at present but would hope to move the work to his firm. He confirmed that he would require the Fire Risk Assessment works to be carried out and take action to recover the service charge arrears from the Applicant. He gave no indication that he would do anything differently or in an improved manner if he was appointed by the Tribunal.

48. A Tribunal appointed manager must act independently and impartially. They have an overriding duty to the Tribunal rather than to either the Applicant or the Respondent. On the evidence available, it does not appear that would be any change in how the Property is being managed at all and, as such, there is no good reason for a manager to be appointed.

49. Taking into account all of the submissions, the Tribunal was not persuaded that circumstances were such that it would be just and convenient to appoint a manager.

***Whether the proposed manager is a suitable appointee***

50. Mr Bird provided a brief statement of his qualifications, which suggested he may be suitable for appointment. However, he did not provide any management plan or proposals. Had the Tribunal been persuaded there were grounds and that it would be just and convenient to appoint a manager, it would not have been possible to consider whether Mr Bird was an appropriate appointee without him providing the full information, as requested in the Tribunal's directions.

***The terms of the Management Order***

51. The Applicant's Draft Management Order contained 38 demands, many of which were outside the scope of this application or requiring variations to the lease that the Tribunal does not have jurisdiction to impose. As the Tribunal has found that no grounds to appoint a manager have been established, there is not need for the Tribunal to make any findings on the detail of the Draft Management Order.

***Costs***

52. The Respondent indicated a wish to seek an order for its costs to be paid by the Applicant. The Tribunal therefore makes the further Directions set out in the Appendix to this decision.

**Judge C Payne**
**Chairman**
**First-tier Tribunal (Property Chamber) (Residential Property**

## Right to Appeal

53. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

54. 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.

55. If the application is not made within the 28-day time limit, such application must include a request for extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

56. 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.

## APPENDIX

### COSTS DIRECTIONS

(1) The Tribunal considers that this application may be determined by summary assessment, pursuant to rule 13(7)(a).

(2) The application is to be determined without a hearing, unless either party makes a written request (copied to the other party) to be heard before the paper determination.

*Respondents case*

(3) The Respondent shall not later than **5 September 2024** send to the Tribunal and to the Applicant's representative, a statement of case setting out:

*(a)* The reasons why it is said that the Applicant has acted unreasonably in bringing or conducting proceedings and why this behaviour is

sufficient to invoke the rule, dealing with the issues identified in the Upper Tribunal decision in ***Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander*** *[2016] UKUT (LC)*, with particular reference to the three stages that the Tribunal will need to go through, before making an order under Rule 13;

*(b)* Any further legal submissions;

*(c)* Full details of the costs being sought, including:

- A schedule of the work undertaken;
- The time spent;
- The grade of fee earner and his/her hourly rate;
- A copy of the terms of engagement with Respondent;
- Supporting invoices for solicitor's fees and disbursements;
- Counsel's fee notes with counsel's year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate.

*Applicant's case*

(4) The Applicant shall not later than **19 September 2024** send to the Tribunal and to the Respondent's representative a statement in response setting out:

*(a)* The reasons for opposing the application, with any legal submissions;

*(b)* Any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs;

*(c)* Details of any relevant documentation relied on with copies attached.

*Reply*

(5) The Respondent may provide a short statement in Reply no later than **27 September 2024**.