



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

Case reference : **LON/00BK/LVM/2023/0017
LON/00BK/LAM/2024/0002**

Property : **58 Queensway and 7 Inverness Place,
London, W2 3JF**

**Applicants in
LVM/2023/0017** : **1. Toni Borders (Flat 5)
2. Cindy Ma (Flat 4)**

Representative : **Toni Borders**

**Applicants in
LVM/2024/0002** : **3. Felicito Viray (Flats 1 and 3)
4. Waffle Factory Limited (Commercial
Premises)**

Representative : **3. Felicito Viray
4. Sohail Taghavi (Director)**

Respondent : **Garvery Limited**

Representative : **No appearance**

**Tribunal Appointed
Manager** : **Jim Thornton**

Representative : **In person**

Interested Party : **In Style (London) Limited**

Type of application : **Variation of Order for appointment of
manager**

Tribunal members : **Judge Robert Latham
Oliver Dowty MRICS**

**Date and Venue of
Hearing** : **15 July and 20 September 2024 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **25 October 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal extends the current Management Order which was made on 2 December 2021 until 31 December 2028 on the terms of the order annexed hereto.
- (2) The Tribunal makes no order in respect of the tribunal fees paid by the parties.

The Application

1. Since 1 January 2022, the property at 58 Queensway and 7 Inverness Place, London, W2 3JF ("the Property") has been managed by Mr Jim Thornton, a Manager appointed by this Tribunal pursuant to section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act"). The appointment would have expired on 31 December 2023, but has been extended pending the determination of two applications:

(i) On 8 December 2023, Ms Borders, who is the tenant of Flat 5, applied to extend the appointment of Mr Thornton. She is supported in her application by Mrs Cindy Ma, the tenant of Flat 4. Ms Borders has also made an application under section 20C Landlord and Tenant Act 1985 ("the 1985 Act") seeking an order that the freeholder be prevented from recovering any of its costs of her application through the service charge.

(ii) On 18 January 2024, Mr Felicito Viray, the tenant of Flats 1 and 3, and Mr Sohail Taghavi applied to have Ms Danish Ahmad appointed a Manager. Waffle Factory Limited ("Waffle"), of which Mr Taghavi is a director, is the tenant of the commercial premises on the ground floor. It is agreed that Waffle is the appropriate applicant, and the Tribunal substitutes Waffle as the applicant pursuant to rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules").

2. On 11 March 2024, Judge Vance held a Case Management Hearing ("CMH") and gave Directions pursuant to which both parties have served their respective statements of case and documents upon which they seek to rely. Ms Borders has filed a Bundle of Documents totalling 490 pages. This is not paginated, so the Tribunal uses electronic numbering. References to this will be prefixed by "p.____".
3. On 25 March 2024, the tribunal notified In style (London) Limited ("In Style"), a commercial tenant on the ground floor, of the applications. It has chosen to play no part in these proceedings.

The Hearing

4. The following attended the hearing on 15 July: Ms Borders, Mr Viray, Mr Taghavi, Mr Thornton and Ms Ahmad.
5. There was no appearance from the landlord, Garvery Limited (“Garvery”). Garvery acquired the freehold interest in 2013. The company is incorporated in Cyprus. In 2017, it appointed Robert Irving Burns Ltd (“IRB”) to manage the property. IRB remains responsible for collecting the ground rents. Mr Towner, from IRB, had attended the CMH. He stated that Garvery were neutral about both applications. The landlord has stepped in to assist Mr Thornton with a loan when he had insufficient funds to place the buildings insurance because of the shortfall in the service charge account.
6. At the CMH, Judge Vance had directed the parties to note the contents of the Appointment of Manager Practice Statement, issued in December 2021 and amended in July 2023, annexed to which is a draft Management Order. He noted that if the Tribunal agreed to extend Mr Thornton’s appointment, or to replace him as Manager, it would make an order in the form of the draft Management Order annexed to the Practice Statement, with such amendments and variations required in the circumstances of this case.
7. Neither Mr Thornton nor Ms Ahmad had provided a draft Management Order in accordance with the Practice Statement. Each provided a proposed draft after the lunch adjournment.
8. On 15 July, the Tribunal heard evidence from the parties and the two managers. However, we were concerned that there was insufficient time for Mr Taghavi to fully put forward the case on behalf of Waffle. He complained that Ms Borders, who had prepared the hearing bundle, had not included all the documents which he had provided. The Tribunal therefore adjourned the hearing to 20 September 2024.
9. The Tribunal gave Further Directions pursuant to which:
 - (i) Mr Taghavi has filed a Bundle extending to 206. Despite the express wording of the Directions, it is neither paginated nor indexed. Most of the documents are irrelevant to the issues which we are required to determine.
 - (ii) Ms Borders has filed a brief Statement in Response.
 - (iii) Mr Thornton has filed a brief Statement in Response

10. It was apparent at the hearing that none of the residential tenants wanted the management of the Property to return to Garvery, a company incorporated in Cyprus. The prospect of the management of the Property returning to RIB was not attractive to any of the tenants. Neither Mr Thornton nor Ms Ahmad was acceptable to all the tenants. The Tribunal therefore suggested that it was open to the tenants to seek to identify a manager who would be acceptable to all the tenants, who could either be appointed by the Tribunal or by the landlord. Ms Borders identified two candidates. Mrs Ma responded that she would prefer for Mr Thornton to continue as it would take time for a new manager to get up to speed and get traction on the ongoing issues with the Property. She was also concerned that their fees were higher. Mr Taghavi did not engage with this proposal. Mr Viray indicated that he would be happy with either of the suggested candidates.
11. On 12 August 2024, there was a hearing before a Deputy District Judge of a claim brought by the Manager against Waffle for arrears of insurance rent in the sum of £8,871.37. The judge reserved judgment. It was to be delivered on 13 September but has now been adjourned to an unspecified date.
12. At the adjourned hearing, the following attended: Ms Borders, Mr Viray, Mr Taghavi and Mr Thornton. The Tribunal heard evidence from Mr Taghavi.

Issues to be Determined

13. The Tribunal is satisfied that we need to determine the following issues:
 - (i) whether to continue with a Tribunal appointed manager.
 - (ii) if so, whether to continue with the appointment of Mr Thornton or appoint Ms Ahmad in his place.
 - (iii) whether to consider an alternative candidate as a Tribunal appointed manager. We rule out this option as the parties have had more than ample opportunity to identify any manager whom they would wish to propose to the tribunal.
14. The position of Ms Borders and Mrs Ma is that they are satisfied with the manner in which Mr Thornton and wish his appointment to be continued for a further five years. They considered that Ms Ahmad lacks the experience to manage the Property. If Mr Thornton's appointment was not to be extended, they would wish an alternative Tribunal appointed manager to be considered.
15. Mr Taghavi who appeared on behalf of Waffle, was antagonistic towards Mr Thornton. He did not consider that Mr Thornton had been acting

impartially. If Ms Ahmad was not acceptable, he would not want Mr Thornton's appointment extended. If the option of another manager was not open to him, he would want the management of the Property to revert to Garvery. He accepted that Garvery had not put forward any alternative proposals for the management of the Property.

16. Mr Viray took a less entrenched position. His main concern is the manner in which Mr Thornton has apportioned the service charges. He considers that he pays too high a contribution for his two flats. We consider this below.

The Property and the Leases

17. 58 Queensway and 7 Inverness Place, London, W2 3JF ("the Property") is a Victorian terrace property on the corner of Queensway and Inverness Place. It initially had four storeys. However, in about 2005 an additional mansard floor was added to create Flats 5. Alterations needed to be made to Flat 4 (on the third floor) to facilitate these works.

18. The layout of the Property is complex:

(i) On the ground floor and basement, there are two commercial units, the tenants of which are Waffle (the larger unit) and In Style. Each have their own entrance. The lease for the commercial unit held by Waffle is dated 4 October 2012 and is at p.180-238. There is a lease plan at p.236-237. The commercial unit currently pays a rent of £58,000 pa (enc VAT) and a service charge. By the Sixth Schedule, the tenant's contribution is to be "a fair and reasonable proportion which primarily shall be calculated by the proportion which the square footage of the Premises bears to the square footage of all the areas let or capable of being let within the Building".

(ii) In Inverness Place, there is a door leading to the upper floors.

(iii) Flat 1 is a one bedroom flat on the first floor. The tenant is Mr Viray who lets out the flat. The lease for this flat, dated 1 October 2003 is at p.451-465. Mr Viray was the original tenant. The service charge provisions are set out in the Sixth and Seventh Schedules. The tenant is required to pay 15% of the expenditure relating to the building ("the building service charge") and 30% of the expenditure relating to the decoration and maintenance of the upper floors ("the common parts service charge").

(iv) There is another unit on the first floor which is retained by the landlord. The lease plan (at p.452) records that there are three small rooms and a toilet. The rooms are described as "store". This unit has been used at various times as an office and for sleeping accommodation.

(v) Flat 3 is a one bedroom flat on the first floor. The tenant is Mr Viray who lets out the flat. The Tribunal has not been provided with a copy of his lease. However, we were told that this requires the tenant to pay 15% of the building service charge and 30% of the commons parts service charge.

(vi) There is another unit on the second floor which is retained by the landlord. This has been used at various times as an office and for sleeping accommodation.

(vi) Flat 4 is a two bedroom flat on the third floor. The tenant is Mrs Ma who lets out the flat. The Tribunal has not been provided with a copy of her lease.

(vii) Flat 5 is a one bedroom flat which has been added on the fourth floor. The tenant is Ms Borders who lets out her flat. The lease for this flat, dated 17 February 2006, is at p.164-178. Ms Borders was the original tenant. The service charge provisions are set out in the Seventh Schedule. The tenant is required to pay “a fair proportion to be determined by the Lessor” of the expenditure relating to the building and of the expenditure relating to the common parts. There is a lease plan at p.177.

19. Mr Viray considers that he is required to pay too much towards the “common parts service charge”, paying 30% in respect of each of his two flats. The percentages were fixed when there were only three residential flats. They should have been reduced Flat 5 was added. The difficulty to his argument is that the figures of 30% for the “common parts” and 15% for the “building” service charge are specified in his lease. No one has made any application to vary the terms of the leases.
20. The Tribunal was referred to a Mediation Agreement reached between the residential tenants and Garvery on 14 June 2022 in LON/00BK/LSC/0090 (at p.10). Mr Towner, of RIB, represented the landlord. The application related to service charges claimed for the years 2015-2021 in the sum of £45,830.16, namely the years prior to Mr Thornton’s appointment. The landlord agreed to reduce its claim to £29,000 which were apportioned between the tenants in the following proportions: Flats 1 and 3: 30% and Flats 4 and 5: 20%. It is apparent that this division is premised on the percentages specified in the leases for Flat 1 and 3.
21. Mr Thornton has provided a schedule at p.490 as to how he has apportioned the service charges. He allocates 50% of the building service charge to the four commercial units and 50% to the residential units. This is the division contemplated in the leases for Flats 1 and 3. No one has objected to this.

22. Mr Thornton has allocated the “common parts” expenditure as follows: Flats 1 and 3: 30%; Flat 4: 20%; Flat 5: 15% and 2.5% in respect of each of the “offices” on the first and second floor. The percentages for Flats 1 and 3 are specified in their leases. Neither Flats 4, 5 nor the landlord object to their contributions.
23. The following table illustrates how Mr Thornton has apportioned the service charges:

Allocation of Service Charges		
Unit	Building	Common Parts
Commercial (Waffle)	38.5417%	-
Commercial (In Style)	5.2083%	-
1 st floor office	3.125%	2.5%
2 nd floor office	3.125%	2.5%
Flat 1 (Mr Viray)	15%	30%
Flat 3 (Mr Viray)	15%	30%
Flat 4 (Mrs Ma)	11%	20%
Flat 5 (Ms Borders)	9%	15%

The Background

24. On 18 May 2021, Ms Borders served a preliminary notice on the landlord pursuant to section 22 of the 1987 Act. The Notice asserted that the landlord had failed to maintain the building; failed to provide accounts; failed to provide details of buildings insurance and had failed to respond to the tenants’ reasonable requests. RIB had been managing the Property since 2017.
25. On 29 January 2021 (at p.34-48), Ms Borders had obtained a report from Sue Davis MRICS. The report listed a number of defects. Ms Davis concluded whilst the external areas were approaching the need for redecoration and repair, the priority should focus on the common parts where various improvements were required to protect the occupants from the risk of fire as well as a number of other health and safety issues.
26. On 2 December 2021, a Tribunal (Judge Tagliavini and Stephen Mason FRICS) appointed Mr Thornton to manage the Property for a period of two years. The decision is at p.239. The application was made by Ms Borders and the 7 Inverness Residents Association which was recognised by the Tribunal as representing the interests of the residential lessees. The Applicant was represented by Ms Borders. Ms Whiting (Counsel) appeared for Garvery. Garvery did not oppose the making of the order.
27. The applicants relied upon the report of Ms Davis to demonstrate the landlord’s failure to carry out repairs and maintain the Premises. They also relied on a statement from Mr Thornton which set out his qualifications, experience and his five previous tribunal appointments as

a Manager and Receiver. Mr Thornton was not willing to assume responsibility for collecting the arrears of service charges of some £60k which had accumulated.

28. Garvery adduced evidence from Mr Chris Towner, a director of RIB who set out the sums expended since RIB had taken over the management of the premises in 2017. Arrears of service charges amounted to £29,619.59 together with arrears of reserve funds £13,354.45. In addition, Garvery had contributed £52,000 towards funding for the premises of which £29,619.59 was still owed by the lessees. Mr Towner described how there had been several changes of managing agents and the financial accounting trail had become extremely muddled.
29. The Tribunal found that the property was in some disrepair and accepted that some maintenance works were required. The Tribunal also found that there had historically been a lack of accounting for past payments made to the respondent and former managing agents. The Tribunal accepted the landlord's argument that the collection of the ground rents and the rents from the commercial premises should not form part of the Management Order.
30. Pursuant to the Directions given by this Tribunal, Mr Thornton has provided a management report, dated 18 April 2024 (at p.155-158 with the appendices at p.8-154). He notes that the management of the Property has been made difficult because of Waffle's refusal to pay their service charges. He has only been able to insure the Property because Garvery have been willing to meet the shortfall. He has carried out urgent fire and safety works. He has provided service charge accounts, albeit that he has not been able to verify the balances which have been brought forward. He concludes that the Property is now in a safer state. However, further works are required. Works are in hand to repair a roof leak. The internal common parts will then be decorated. Whilst Waffle has alleged that he has failed to remedy disrepair to the basement, Mr Thornton states that Mr Taghavi has not provided details of this. On 4 April 2024 (at p.127), he offered to meet Mr Taghavi to investigate the disrepair. However, Logan Kingsley, the solicitors who were acting for Mr Taghavi, did not take up the offer.

The Law

31. An application to extend the appointment of a manager takes effect as a variation of the current Order. Section 24(9) of the 1987 Act provides: The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section ...
32. The Court of Appeal considered the Tribunal's discretion afforded by section 24(9) in *Orchard Court Residents' Association v St Anthony's Homes Ltd* [2003] 2 EGLR 28, where the Tribunal had extended a

management order and the landlord had appealed that decision. Keane LJ stated:

"[11] It is to be noted that the legislature has not thought it fit to embody in section 24(9) the various criteria set out in section 24(2). There is a clear contrast between the requirements when an order is made and when an order is varied. It seems to me that the section is drawing a distinction between making an order and varying an order. Although it might perhaps be said that, in some circumstances, the court is always making an order when it varies an existing order, that cannot be the correct interpretation in the context of this statutory provision.

[12] There are no explicit criteria in section 24(9) in contrast to section 24(2). Moreover, if an application is made by a relevant person (such as a landlord) to vary or discharge an existing order, the legislature has expressly required the tribunal to be satisfied of certain matters: see section 24(9A). The inclusion of those express requirements in subsection (9A) and the omission of anything of that sort in subsection (9) itself has to be seen as deliberate, and it confirms the contrast between section 24(2) and section 24(9).

[13] Sections 24(2) and 24(9) deal with quite different situations. Section 24(2) is concerned with making an order where one does not exist, whereas section 24(9) is dealing with an order that is already in existence because the tribunal has already been satisfied that the tests in section 24(2) have been met.

[14] I quite accept that, in exercising its discretion under section 24(9), a tribunal must have regard to relevant considerations: that is trite law But when one looks at paras 20 and 21 of the tribunal's decision, it is quite clear that this tribunal did have such regard. However, section 24(2) did not require it to be satisfied that at least one of those thresholds had been passed. Nor can I see any reason why this particular type of variation, the extension of a manager's term, should have to meet the criteria in section 24(2). Mr Heather has conceded that there is no limit on the length of time for which a manager may be appointed in the first place. In those circumstances, why should one require the section 24(2) tests to be met all over again."

33. We remind ourselves that Part II of the 1987 Act is a "problem solving jurisdiction" (see *Chuan-Hui v K Group Holdings Inc* [2021] EWCA Civ 403; [2021] 1 WLR 5981 per Henderson LJ at [29]). In *Kol v Bowring* [2015] UKUT 530 (LC), HHJ Gerald noted at [22] that the purpose of appointing a manager is to:

“...enable that property to be managed subject to the control of the tribunal in circumstances where the landlords’ management or discharge of its obligations under the provisions of the lease have been found wanting. Looking at matters very broadly, the whole purpose of the jurisdiction is to enable the F-tT to ensure that what has hitherto been done inadequately and perhaps improperly is done adequately and properly”.

The Tribunal’s Determination

34. This Tribunal only appoints a manager as a last resort when it is apparent that this is just and convenient to ensure that a property is properly managed. We are satisfied that in the current case it is necessary to extend the appointment of Mr Thornton as Manager for a further five years. The Right to Manage option is not currently available because of the commercial premises.
35. There are three options open to the Tribunal in the current case:
 - (i) to discharge the Management Order;
 - (ii) to appoint Ms Danish Ahmad as Manager; or
 - (iii) to extend Mr Thornton’s appointment as Manager.

Option 1 – to discharge the Order

36. The landlord has taken no part in this application. No alternative proposals have been put forward for the management of the Property. Were we to discharge the Management Order, it is probable that the that the problems that had led to the appointment of the Manager would again arise. It is not a realistic option to discharge the Order.

Option 2 – to appoint Ms Ahmad as Manager

37. On 11 March 2024, Judge Vance directed Mr Taghavi to give full details of all Ms Ahmad’s previous appointments as a tribunal manager, specifying in each case: the property address, tribunal case reference, date and duration of the appointment, if appropriate the date the appointment ended or was discharged, and copies of all tribunal decisions in the past 5 years that relate to any such appointments. She had not acted as a Tribunal appointed Manager.
38. Mr Taghavi was also directed to confirm that Ms Ahmad has inspected the property, read the leases, met the parties and that she would accept appointment. Ms Ahmad had not met all the parties nor read the leases. She had only met Mr Viray and Mr Taghavi. Neither had she provided a

management plan. The Tribunal asked her what she would do if the tenants did not pay their service charges. Her response was that she would look to the landlord to meet the shortfall. She suggested that she would seek to address any problem by getting all the parties to sit round a table to identify a solution. She would resort to mediation if no agreement could be reached.

39. She saw the significant management problem as being the apportionment of the service charges. She stated that she would seek to agree a deed of variation to apportion the service charges more fairly. She would do this by obtaining professional drawings of the square footage of each unit. This was not a matter for a Tribunal appointed Manager.
40. She stated that she would be unable to manage the Property if tenants did not pay their service charges. She would have to go back to the freeholder.
41. We are satisfied that Ms Ahmad does not have the necessary experience to manage the Property on behalf of the Tribunal. This is a difficult task. A Manager needs to consult the relevant residential and commercial tenants and then decide on the best course of action. In the current case, this is unlikely to win the support of all the relevant parties. The role of a Tribunal appointed Manager can be a thankless task. We are satisfied that Ms Ahmad has not recognised the problems that she would face and would be ill equipped to address the conflict which Mr Thornton has faced.

Option 3 – to extend the appointment of Mr Thornton

42. The Tribunal is satisfied that the only option before us to ensure that the Property is properly managed is to extend the appointment of Mr Thornton. Mr Thornton has considerable experience in managing properties on behalf of this Tribunal. We are satisfied that the management of the Property has improved since Mr Thornton was appointed. He has not been able to achieve all that he intended when he was appointed because of the arrears of service charges.
43. We are satisfied that Mr Thornton's appointment as Manager should be extended to address the following problems of inadequate management identified by the tribunal:
 - (i) to ensure that the Property is properly managed and that service charge accounts are properly maintained; and
 - (ii) to put the Property in a proper state of repair and decorative condition.
44. To address these problems, Mr Thornton agreed to provide a budget prior to 1 January, namely the start of a service charge year; and to

provide draft accounts by 28 February in respect of the service charges for the previous financial year.

45. Mr Viray's complaint is that he considers that he is paying an unfair contribution towards the service charge expenditure. The problem that he faces is that he has been charged the percentage that is specified in his lease. In the absence of an application to vary all the leases, he is bound by the terms of his lease. To reduce the uncertainty as to how the service charges should be apportioned between (i) the tenants; and (ii) the "building" and the "common parts", we have made provision for this in the Management Order. Our starting point is the percentages specified in the leases. We have sought to provide guidance where the Manager would have a discretion. We discussed this apportionment with the parties.
46. We are concerned about the state of relations between Mr Thornton and Mr Taghavi. It is essential that any Tribunal appointed Manager should work with all the tenants. Mr Taghavi complains that Mr Thornton has failed to address the disrepair that affects his commercial unit on the ground and basement floors. Mr Thornton responded that Mr Taghavi had failed to take up his offer of a meeting.
47. In response to a question from the Tribunal, Mr Taghavi stated that if Mr Thornton's appointment was extended, he would be unable to work with him. However, at the end of the hearing, at the suggestion of the Tribunal, both Mr Thornton and Mr Taghavi undertook to meet at the Property within 28 days of the hearing on 20 September to discuss what works are required. We hope that this meeting has occurred. Mr Taghavi must recognise that he must engage with the Manager if he has any concerns about the management of his commercial unit.
48. The Tribunal hopes that the County Court will have determined Waffle's liability in respect of the outstanding insurance rent. Mr Taghavi accepted that Waffle had not paid service charges and that there were arrears of £15,480.07. However, he argued that Waffle had paid for repairs and should be entitled to set this off against the arrears of service charges. To ensure that Mr Thornton has adequate funds to manage the Property, we have made provision for the collection of the arrears in the Management Order.
49. Mr Thornton agreed to accept an extension of his appointment for a further four years until 31 December 2008. We sensed that he was doing this more from an act of public duty, rather than from any desire for his appointment to be extended. If the parties are able to agree on a firm of managing agents to manage the Property on behalf of the landlord, it would be open to any party to apply for the Management Order to be discharged. Mr Thornton would not oppose this; we suspect that he would rather welcome it.

The Terms of the Management Order

50. The Tribunal discussed the terms of the Management Order with the parties. This has been drafted having regard to the template attached to the Practice Statement (Revised Version 2023). We highlight the following:
- (i) The purpose of Management Order is set out at [5].
 - (ii) The specific problems that Mr Thornton is required to address are set out at [6]. We direct Mr Thornton to draw up a planned maintenance programme (at [49]).
 - (iii) In order to address these problems, we are satisfied that the appointment should extend to 31 December 2028.
 - (iv) We provide guidance to the Manager on how the service charges should be apportioned between (a) the tenants; and (b) the building and common parts service charges at [23] and [24]. This is based on the terms of the lease as currently drafted. Mr Viray should take legal advice if he wishes to vary the term of his lease.
 - (v) Mr Thornton’s management fees are specified at [22]. These reflect the practical challenges faced by any Tribunal appointed Manager. The appointment of a Manager is a remedy of last resort.
 - (vi) To ensure that the Manager has adequate funds to manage the Property, the Manager may immediately collect £15,480.07 from Waffle in respect of arrears of service charges (see [30]). We direct Mr Thornton to deduct from this sum such sums as the he considers appropriate in respect of any sums that the tenant has expended on repairs. Any sum demanded by the Manager shall be payable within 28 days.
 - (vii) The mechanism for resolving any disputes is specified at [33] – [36].
51. Ms Borders has sought an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) preventing the freeholder from recovering any of its costs of her application through the service charge. The Tribunal does not consider that it would be open to the landlord to make such a demand. However, for the avoidance of doubt, the Tribunal makes such an order.
52. The Tribunal makes no order for the refund on any tribunal fees paid by the parties. It will be open to the Manager to pass on his costs through the service charge.

Judge Robert Latham,

25 October 2024

Rights of appeal

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

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

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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



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

Case reference	:	LON/00BK/LVM/2023/0017 LON/00BK/LAM/2024/0002
Property	:	58 Queensway and 7 Inverness Place, London, W2 3JF
Applicants in LVM/2023/0017	:	1. Toni Borders (Flat 5) 2. Cindy Ma (Flat 4)
Applicants in LVM/2024/0002	:	3. Felicito Viray (Flats 1 and 3) 4. Waffle Factory Limited (Commercial Premises)
Respondent	:	Garvery Limited
Tribunal Appointed Manager	:	J.D.Thornton BSc (Hons) MA CEng MICE MCIQB MPTI
Interested Party	:	In Style (London) Limited
Tribunal members	:	Judge Robert Latham Oliver Dowty MRICS
Date of Order	:	25 October 2024

MANAGEMENT ORDER

Interpretation

1. In this Order:

“**The Property**” means the flats and other premises known as known as 7 Inverness Place 58 Queensway London W2 3JF and registered at HM Land Registry under title number **NGL686391** and shall include the building, outhouses, amenity space, passages, bin-stores, common parts, storage rooms basements, electricity and power rooms; and all other parts of the property.

“**The Landlord**” shall mean Garvery 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 leases and/or underleases of flats and Commercial Premises in the Property.

“The Manager” means J D Thornton BSc(Hons) MA CEng MICE MCIQB MTPI

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

ORDER

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) **J D Thornton** of Hurford Salvi Carr Property Management Ltd is appointed as Manager of the Property.
3. The Manager’s appointment shall be extended until 31 December 2028 (“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 following problems of inadequate management identified by the tribunal:
 - (a) to ensure that the Property is properly managed and that service charge accounts are properly maintained;
 - (b) to put the Property in a proper state of repair and decorative condition.
6. To address the steps identified in the previous paragraph the Manager undertakes to use his best endeavours:
 - (a) to provide a budget prior to 1 January, namely the start of a service charge year;
 - (b) to provide draft accounts by 28 February in respect of the service charges for the previous financial year.
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 Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors (“RICS”) and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993(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.

Licences to assign, approvals and pre-contract enquiries

- 16. The Manager shall be responsible for carrying out those functions in the residential Leases concerning approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the Leases provide should be carried out by the Landlord.
- 17. 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 and Commercial Premises 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 for breaches of covenants and forfeiture 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 Landlord are responsible for payment of 100 % of the Managers' fees, which 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 management fee of £3,500 + VAT for 2024 for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable) and will rise with inflation (CPI) on 1 January each year. This shall be apportioned as set out in paragraph 24 below;
 - (b) any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code (so far as applicable);
 - (c) and VAT on the above fees.
23. The service charges should be apportioned as follows:

Appotionment of Service Charges		
Unit	Building	Common Parts
Commercial (Waffle)	38.5417%	-
Commercial (In Style)	5.2083%	-
1 st floor office	3.125%	2.5%
2 nd floor office	3.125%	2.5%

Flat 1 (Mr Viray)	15%	30%
Flat 3 (Mr Viray)	15%	30%
Flat 4 (Mrs Ma)	11%	20%
Flat 5 (Ms Borders)	9%	15%

24. The management fee payable by each flat for 2024 for each unit shall be:

Management Fee Payable for 2024 (net of VAT)	
Unit	
Commercial (Waffle)	£750
Commercial (In Style)	£250
1 st floor office	£250
2 nd floor office	£250
Flat 1 (Mr Viray)	£500
Flat 3 (Mr Viray)	£500
Flat 4 (Mrs Ma)	£500
Flat 5 (Ms Borders)	£500
Total:	£3,500

25. The above apportionments are based on the percentages which are specified in the leases for Flat 1 and 3 and the offices on the 1st and 2nd being used as offices. If the tenants for flats 1 and 3 consider that they are paying too much, they must apply to vary the terms of their leases. If the offices on the 1st and 2nd floors are used for residential accommodation, it is open to any party to apply to this Tribunal to review their contributions.

Ground Rent and Service Charge

26. The Manager shall not collect the rents and ground rents payable under the residential and Commercial Leases.
27. The Manager shall collect all service charges and insurance premium contributions payable under the Leases, in accordance with the terms and mechanisms in the Leases.
28. Whether or not the terms of any Lease so provides, the Manager shall have the authority to:
- (a) demand payments 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 credits of service charge due to Tenants at the end of the

accounting year to the sinking fund;

(d) alter the accounting year and to collect arrears of service charge and insurance that have accrued before their appointment; and

(e) collect insurance premiums on the renewal date.

29. 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.

30. To ensure that the Manager has adequate funds to manage the Property, the Manager may immediately collect £15,480.07 from the Waffle Factory Limited in respect of arrears of service charges. The Manager shall deduct from this sum such sums as the Manager considers appropriate in respect of any sums that the tenant has expended on repairs. Any sum demanded by the Manager shall be payable within 28 days.

31. The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by them whilst carrying out their functions under the Order.

Administration Charges

32. 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 of the Commonhold and Leasehold Reform Act 2002. The Details of the fees charged are set out in the Appendix of additional fees.

Disputes

33. 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.

34. 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.

35. 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.
36. 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

37. The Landlord must comply with the terms of this Order.
38. 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.
39. 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.
40. 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.

DIRECTIONS TO MANAGER

41. 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

42. To protect the direction in paragraph 38 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 NGL686391

“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 38 of an Order of the Tribunal, dated 25 October 2024, complied with”

Registration

The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 42, within 14 days of the date of this Order.

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

46. The Manager must maintain appropriate building insurance for the

Property and ensure that the Manager's interest is noted on the insurance policy.

47. From the date of appointment, and throughout the appointment, the Manager must ensure that he/she has appropriate professional indemnity insurance cover in the sum of £500,000 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

48. 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

49. The Manager must:
- (a) by 29 November 2024, draw up a planned maintenance programme for the next 15 years including 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.

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

(d) 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.

50. 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

51. By no later than six months from the date of this 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

52. 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).

53. 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.
54. 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

Hourly rate for additional services not covered by the TPI/ARMA Standard Form of Management Agreement carried out by Manager £150 per hour plus VAT.

All other additional charges as per current Hurford Salvi Carr Property Management Ltd Schedule of Additional Services (Replies to Enquiries, Debt Collection, Administration Charges etc).