In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Tribunal case reference	**:**	**CAM/44UF/LAM/2024/0003**
Property	**:**	**33 Clarendon Square, Leamington Spa, CV32 5QY**
Applicant	**:**	**Pablo Beker and Luciana Nicollier**
Represented by	**:**	**Mr N Isaac KC**
Respondent	**:**	**Maureen Macready**
Represented by	**:**	**Mr A Meanley**
Type of application	**:**	**Application for the appointment of a Manager pursuant to s.24 Landlord and Tenant Act 1987**
Tribunal	**:**	**Tribunal Judge S Evans** **Mrs M Hardman FRICS IRRV (Hons)** **Mr A Arul**
Date of hearing	**:**	**11 November 2024**
Date of decision	**:**	**21 November 2024**

DECISION

The Tribunal determines that:

1. **The Application for an appointment of a manager is granted.**

2. **Mr Christopher Browne is appointed manager of the Property for from the date of this decision to 31 December 2027, on the terms of the Management Order attached to this decision.**

3. **Upon the Respondent confirming that she will not seek to recover the costs incurred or to be incurred in relation to these proceedings from the leaseholders of the Property through the service charges, no section 20C order is required to be made.**

Background

1. In 1987 the Property was converted into five flats. It is a grade 2 listed townhouse dating from about 1830, in Leamington Spa.

2. On 26 September 2003 the Respondent purchased the building.

3. A sample lease has been provided, in relation to flat B in the Property. This is a lease for 125 years from 1 January 2003, and dated 21 August 2008.

4. On 13 November 2017 the Applicants purchased the leasehold interest in flat B.

5. On 26 May 2022 the Applicants served a notice under section 22 of the Landlord and Tenant Act 1987 seeking an appointment of a manager on fault based grounds.

6. The Applicants then made an application to this Tribunal in case CAM/44UF/LAM/2022/0007 for the appointment of a manager, pursuant to section 24 of the said Act.

7. On 25 April 2023 this Tribunal made a decision in the above proceedings. It found as a fact that there had been breaches of covenant, but declined to make an order for appointment of a manager, given that the Respondent had recently appointed a person who appeared to be ready to do the works of which the Applicants complained.

8. It is appropriate at this point to record that, in the said decision, this Tribunal had determined at paragraphs 34, 35 and 43 to 45 that (amongst other things) the Respondent had failed to maintain and repair the entrance stair handrails and the 1st floor balcony rails to the Applicants' flat, posing a hazard to both the occupiers and to passers by, as the balcony overlooks the street below.

9. There followed communications between the managing agents (Marstons) and the Applicants, but repairs did not follow. Indeed it took until 3 September 2023 for a tender in the sum of over £14,000 to be obtained in relation to repairs to the entrance portico columns, hand rails, and balcony to flat B.

10. On 5 September 2023 the Applicants gave a further notice to the Respondent pursuant to section 22 of the Act, alleging a breach of Schedule 1 paragraph 1 of the Lease, which reads:

    "The Services

    1. to maintain and keep in good and substantial repair and condition and renew or replace when required the main structure the common parts and any pipes used in common by the leaseholder and other leaseholders of the building and which are not expressly made the responsibility of the leaseholder or any other leaseholder in the building and the boundary walls and fences included in the lease of any flat in the building."

11. It is convenient to note 3 other paragraphs of the same Schedule:

    "2. As and when the landlord shall deem necessary but not more often than every three years to decorate in a good and workmanlike manner the external parts of the building and the common parts"
    ...
    "6. To do or cause to be done all works installations acts matters and things as in the reasonable discretion of the landlord may be considered necessary or desirable for the proper maintenance safety amenity and administration of the building"
    ...
    "8. To set aside such sums as the landlord reasonably requires to meet such future costs as the landlord reasonably expects to incur in replacing maintaining and renewing those items that the landlord has covenanted to replace maintain or renew."

12. The breaches alleged in the section 22 notice were essentially 3 fold:

    (1) the first floor balcony rails to flat B were missing several screws and iron segments, leading to a danger to members of the public and the Applicants' 16 month old and eight-year old children;

    (2) the first floor balcony floor requires relevelling, as it currently accumulates water and creates a slipping hazard;

    (3) the entrance stair handrails have a loss of paint and cracked wood.

13. The said notice requested that repairs be begun by 15 October 2023.

14. While Marstons sent the quotation dated 3 September 2023 to the Applicants on 11 September 2023, and issued a section 20 stage 2 notice for those works on the following day citing the sum of £23,738, no further substantial action thereafter took place.

15. On 18 January 2024 the Applicants made this application for an appointment of a manager. The application cites the breaches at (1) (2) and (3) in paragraph 12 above.

16. On 22 January 2024 the Applicants made an application pursuant to section 20C of the Landlord And Tenant Act 1985 for an order that any costs incurred or to be incurred in relation to these proceedings should not be passed through their service charges.

17. On 5 February 2024 the Respondent made a demand of all leaseholders for a contribution towards the s.20 works. The Applicants' share was £3547.60, based on a 25% share of relevant costs (other flats contribute either 15% or 20%).

18. On 28 February 2024 Marstons gave notice to the Respondent of termination of its agency in respect of the Property, as from 30 September 2024.

19. The Tribunal gave procedural directions on 12 June 2024, but the parties required an extension of time on 10 July 2024.

20. The Applicants have provided a statement of case and a witness statement from its proposed manager, Mr Christopher Browne, plus 3 witness statements, including one each from themselves approving their Statement of Case.

21. The Respondents have not provided any formal response to this Application. Instead, by email, Mr Meanley on behalf of the Respondent, has written to the FTT as follows:

    (1) On 12 September 2024, complaining that not one lessee has paid the demand made on 5 February 2024;

    (2) On 6 November 2024, indicating that she has no desire to make this matter contentious, but the Applicants' actions lead them to suggest the Applicants do wish to make the matter contentious (given the recent instruction of Mr Isaac KC). The Respondent also queried the scope of the hearing to come.

22. The Tribunal therefore responded to both parties to confirm that the issues which had been set down in the directions remained, noting that the Tribunal had a discretion to exercise before appointing any manager.

Issues

23. The issues are:

• Is the preliminary notice compliant with section 22 of the Act and/or, if the preliminary notice is wanting, should the Tribunal still make an order in exercise of its powers under section 24(7) of the Act?

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

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

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

• If application is made, should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the landlord's costs that may be recoverable through the service charge and/or an order for the reimbursement of any fees paid by the applicant?"

The hearing

24. The hearing was held remotely. The Tribunal had the benefit of a 234 page bundle. The Tribunal heard from Mr Isaac KC for the Applicants and Mr Meanley for the Respondent.

25. The Tribunal raised some concerns in relation to discrepancies between Mr Browne's management plan and the draft management order in the bundle, as well as lacunae/lack of clarity in the evidence, such as the liquidity of the Respondent, the state of the reserve fund, and the expected cost and priority of works needed at this Property.

26. The Tribunal therefore afforded Mr Isaac some time to take further instructions. On return to the remote hearing, Mr Isaac indicated that he and Mr Browne could address the Tribunal's concerns.

27. Mr Isaac called Mr Browne, the proposed manager, and both the Tribunal and Mr Meanley had the opportunity to ask questions of him. The parties were thereafter able to make representations on all issues.

Determination

• *Is the preliminary notice compliant with section 22 of the Act and/or, if the preliminary notice is wanting, should the Tribunal still make an order in exercise of its powers under section 24(7) of the Act?*

28. The Tribunal is satisfied that the section 22 Notice was valid in form and validly served on the Respondent. The parties do not contend otherwise.

• *Has the applicant satisfied the Tribunal of any ground(s) for making an order, as specified in section 24(2) of the Act?*

29. The Applicants' case was simple. Mr Isaac KC submitted on their behalf that the Applicants' balcony and the entrance stair handrails were in the same state (and possibly worse) as they had been determined to be by the Tribunal on 25 April 2023, because it was common ground that no works had been carried out. Accordingly, there was a breach of s.24(2)(a)(i) of the 1987 Act (see Appendix 1 to this decision).

30. Mr Meanley, on behalf of the Respondent, admitted that no works had been carried out since the determination of April 2023. He said that the Respondent had been unable to do so, because the leaseholders had not paid the additional demand. When it was pointed out to him that that demand was not made until February 2024, and there had been a failure to execute necessary works of repair within a reasonable time after the FTT decision in 2023 and before the demand, he said that the Respondent was not saying that she was not in breach.

31. The Tribunal accordingly determines that it is satisfied that section 24(2)(a)(i) is made out on the evidence.

• *Is it just and convenient to make a management order?*

32. The Applicants through Mr Isaac contended that this was a situation where, for an extended period, the landlord had failed to comply with her obligation to maintain the structure and exterior and common parts of the property. In addition, the appointed agent had not been effective. The agent last appointed made unlawful demands and has now terminated its agency. The current position is that there is no active management and no appointed manager. In such circumstances, the Applicants submitted, it is plainly just and convenient to appoint a manager.

33. Mr Isaac accepted there had not been an attempt to seek the agreement of the other leaseholders and the Respondent jointly to the appointment of Mr. Browne contractually, without resort to the Tribunal. However, given that neither Mr Meanley nor the Respondent had shown an impetus over the past

3 or 4 years to move forward with these important matters, it was just and convenient to make the order. He accepted that what had mainly exercised the Applicants was their balcony repairs, but this was just a key to the Tribunal exercising its jurisdiction; once the jurisdictional door was open, the wider matters of poor management could and should be considered.

34. Mr Meanley accepted it was appropriate for a manager to be appointed. Indeed later in his representations he said it was “extremely important”.

35. In the Tribunal's determination, it is just and convenient to appoint a manager. We accept this is a situation where for several years the landlord has failed to comply with her obligation to maintain the structure and exterior and common parts of the Property. In addition, we accept the contention (indeed it was a common position) that the appointed agent had not been effective and has now resigned, meaning there is no active management.

36. We note that the other leaseholders have not provided any detailed statements in these proceedings, save for Mr Jones, who holds a power of attorney for the tenant of Flat D, but he sufficiently confirms that the disrepair continues, and explains why the leaseholders have been unwilling to hand over thousands of pounds to Marstons following the February 2024 demand, given the agent’s poor management.

37. We therefore determine that the Applicants are correct to assert that it is unlikely there could be effective management of the Property without resort to the Tribunal. It is just and convenient to make the order.

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

38. Mr Browne confirmed his statement dated 25 July 2024. He confirmed that he was an Associate Member of RICS, an Associate Member Of The Institute Of Residential Property Management, and a Member Of The Association Of Residential Lettings Agents; that he is the sole director of Horizon Block Management, which manages over 70 sites, ranging from a block of 3 units to a block of over 200 units, and employs a number of staff. He confirmed that his company manages both Grade I and Grade 2 listed buildings. His company has a large range of accreditations, which are set out in his statement.

39. He confirmed his knowledge of the RICS Service Charge Residential Management Code, and that he ultimately would be responsible for conducting the manager’s duties. He therefore accepted that this role would be greater than that of a managing agent appointed by a landlord alone.

40. He confirmed that he had been a manager appointed by a Tribunal this year, and gave the case reference number (MAN/00BY/LAM/2022/0006). During the hearing, the Tribunal was able to research that this appointment had been

made. Mr Browne explained that this other appointment concerned a 10 unit Grade 2 listed property called The Hollies. He was asked some further questions about this appointment and gave details of the necessity works he had had to triage and put into effect.

41. Mr Browne confirmed that he had taken instructions from his insurance broker, to ensure that he had the correct insurance for an appointment as a manager; such that his company's insurance would cover his liability as an appointed manager.

42. He said that he had been given 2 leases for the Property and they were in substantially the same terms. He had inspected the Property once formally and other times informally.

43. Mr. Browne confirmed what Mr Isaac had earlier told the Tribunal, namely that the priority of works was in his view:

    (1) Fire Safety following the FRA in 2022 (including fire alarm installation and 6 monthly servicing, emergency lighting, a compartmentation survey and a survey of leaseholders FEDs, and electric meter cupboard doors not being fire-complaint);

    (2) Insurance;

    (3) Flat B's railings;

    (4) Roof survey by drone and repairs (there is a suggestion of a leak into at least one of the flats);

    (5) The portico columns;

    (6) Decoration.

44. Mr Browne explained that the iron railings have been determined to be a safety risk to passers by and should be made safe in the first instance, before moving to a full repair as befits a grade 2 listed building. He said that he did not consider the portico columns to be urgent, but they would only deteriorate if not addressed, leading to a future repair at a greater cost.

45. Mr. Browne said that he had not seen a rebuild cost valuation for insurance purposes, and although he had no particular reason to believe the property was underinsured, he would want to be certain it was not.

46. He confirmed that it would been difficult to accurately cost any repairs, but he would need the Tribunal to approve a £25,000 payment, as a rough

assessment, in order to address the key issues, with another £8250 maximum to come by way of standard service charges in 2025.

47. He confirmed there are £1112 service charge arrears, owed by flats other than the Applicants'.

48. He confirmed his professional opinion that the sums stated in paragraph 46 above would be sufficient for him to be able to address the issues, if ordered by the Tribunal, would obviate the necessity to go through another full section 20 process.

49. He said he would seek funds from the Respondent if necessary, and do whatever he can to raise the necessary funds.

50. Mr. Browne was clearly dedicated to restoring the Property to its former state. When asked why he would wish to take this Property on for a fee of only £1500 p.a., he explained that it was a beautiful building in a wonderful area and he was keen to help. He considered the sum fair remuneration. He judged that the building to be a prestigious one, and that it can be brought back to a fitting state within a reasonable period of time. He did not consider the taking on of management here to be an onerous undertaking, albeit that it was a serious situation currently. He was not fazed by the fact that Marstons had walked away from the building. Without the necessary repairs, he considered that the leaseholders' properties would not be valued or looked on favourably.

51. Mr Meanley ask questions of Mr. Browne concerning the distance between his office and the Property. Mr. Browne stated that he did not think this would be an issue, as his company manages various properties around the Midlands area. He explained he would be very happy to meet the leaseholders in one of their apartments or at a local venue; that he would not just turn up on a random day, but on a quarterly basis. As such, he would propose that a caretaker be engaged fortnightly (for 1-2 hours), to keep their eyes and ears on the Property. The caretaker would come from Stratford upon Avon. This would not be an on-site caretaker, but effectively a contractor who would be the first point of contact for site management. They could even do small jobs privately for leaseholders. The caretaker's cost would be additional to the management fee, so Mr. Browne would want to consult with leaseholders first.

52. Mr Browne confirmed that he would use contractors local to Leamington Spa.

53. Mr Meanley ventured that the roof could be accessed solely from the front and rear of Flat E, rather than use a drone survey, as suggested. Mr. Browne candidly accepted that he did not know if it could be fully surveyed without a drone, but if one was not needed, he would not waste the leaseholders' money on one.

54. The Tribunal determines that it considers Mr Browne to be a suitable appointee. The Tribunal was satisfied by his commitment, knowledge, experience, assurances and insurances, as exemplified in his answers to questions of him, summarised above.

55. The Tribunal considers that a period of a little over 3 years would be the appropriate length of appointment.

56. The draft Management Order provided by the Applicants mirrored the Tribunal standard, minus some paragraphs, and with some adjustment it can be approved. In particular, the Tribunal approves the £25,000 sum which has a sound evidential and legal justification: the previous quotations show that such a sum is necessary, and the terms of the Lease are such that, without such an order, the Manager would be limited to demanding only an additional 10% on the previous service charge year's figure. However, given the sum requested is large, we determine that, from the date of this Order to the end of the service charge year ending 2025, the Manager may not demand more than the standard service charges of £8250 plus £25,000.

57. The Management Order made by the Tribunal accompanies this decision.

• *If application is made, should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the landlord's costs that may be recoverable through the service charge and/or an order for the reimbursement of any fees paid by the applicant?*

58. Upon the Respondent confirming through Mr Meanley that she will not seek to recover the costs incurred or to be incurred in relation to these proceedings from the leaseholders of the Property through the service charges, no section 20C order is required to be made.

Judge:

S J Evans

Date:

21/11/24

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to 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.
4. 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 1: relevant sections of the Landlord and Tenant Act 1987

24 Appointment of manager by a Tribunal

(1) The appropriate Tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—
(a)such functions in connection with the management of the premises, or
(b)such functions of a receiver,
or both, as the Tribunal thinks fit.

(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
(ii). . . . . .
(iii)that it is just and convenient to make the order in all the circumstances of the case.
...

(4)An order under this section may make provision with respect to—
(a)such matters relating to the exercise by the manager of his functions under the order, and
(b)such incidental or ancillary matters,
as the Tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the Tribunal may give him directions with respect to any such matters.

(5)Without prejudice to the generality of subsection (4), an order under this section may provide—
(a)for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
(b)for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
(c)for remuneration to be paid to the manager by any relevant person , or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
(d)for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6)Any such order may be granted subject to such conditions as the Tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the Tribunal.

...

(11)References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises."