



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00HA/LAM/2024/0005

Property : 133 Wells Road, Bath, BA2 3AN

Applicant : Dr Mahinda Deegalle

Representative : None

Respondent : (1) Mrs Ann Margaret Heath
(2) Mr Edward Coleman (Flat 1)
(3) Mr Neil Parry and Mrs Sue Parry (Flat 5)

Representative : Lester Aldridge Solicitors (Respondent 1 only)

Type of Application : (1) Application under Section 24 of the
Landlord and Tenant Act 1987 for the
appointment of a manager.

(2) Application under Section 20C of the
Landlord and Tenant Act 1985 for an Order for
the limitation of costs

Tribunal Members : Regional Surveyor J Coupe FRICS
Mr J Reichel MRICS
Mrs J Playfair

Date & Venue of Hearing : 31 January 2025
Members and Parties joined by the
Common Video Platform

Date of Decision : 31 January 2025

DECISION

Decision of the Tribunal

- (1) The Tribunal dismisses the Applicant's application for an Order appointing Mr David West as manager of the subject property.
- (2) The Tribunal refuses the application for an Order under Section 20C of the Landlord and Tenant Act 1985.

The reasons for the Tribunal's decision are set out below.

REASONS

Background

1. The Applicant holds a long leasehold interest in the property known as Flat 4, 133 Wells Road, Bath, BA2 3AN, such interest having been acquired in August 2001.
2. The Applicant seeks an order from the Tribunal for the appointment of a manager of the property known as 133 Wells Rd, Bath, BA2 3AN ("the subject property") under s.24 of the Landlord and Tenant Act 1987 ("the 1987 Act"). The nominated manager is Mr David West of SPG Property Ltd Ltd ("SPG"). The Applicant further seeks an order, under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") extinguishing the Respondents rights to recover the costs of these proceedings through the service charge.
3. The first Respondent is the freeholder of the subject property. The second and third Respondents hold long leasehold interests in Flat 1 and Flat 5 respectively.
4. The management of the subject property has, historically, been undertaken by Mrs Heath, in her capacity as freeholder, and, on occasion, individually by various lessees. However, in recent years there has been increasing disagreement about the management of the property and failure to pay towards the cost of works which has led to litigation in alternative judicial forums.
5. Against that background, on 4 April 2024, the Applicant initiated the preliminary stage of an application for the appointment of a manager pursuant to section 24 of the Act by serving on the freeholder a notice under section 22 of the Act. The notice indicated that the Applicant intended to apply for an order for the appointment of a manager of the subject premises and specified the grounds on which the Tribunal would be asked to make the order.
6. The specified grounds were –
 - (i) The landlord is in breach of the obligations owed to the tenants under the lease.
 - (ii) That other circumstances exist which make it just and convenient

to appoint a manager.

7. The preliminary notice set out the matters upon which the Applicant relied to establish the above grounds and the steps required to remedy those matters. The Applicant states that the grounds have not been remedied.
8. On the 29 April 2024 the Applicant made an application to the Tribunal, on grounds that, in the main, mirrored those contained in the preliminary notice.
9. On 14 June 2024 the Tribunal issued directions for the conduct of the application, followed by further directions dated 8 July 2024 and 2 September 2024, leading to a hearing on 18 October 2024.
10. The Tribunal inspected the external and internal common parts of the property on the 18 October 2024. Present at the inspection were the Applicant Dr Deegalle and Mr Cleaver of Urang Property Management Ltd, the proposed manager at that time.
11. A hearing, held at Bath Law Courts, followed on the same day as the inspection. Dr Deegalle attended in person and was accompanied by Mr Cleaver. Mrs Heath, did not attend and nor was she represented. Due to an administrative error on the part of the Tribunal, neither Respondent 2 or Respondent 3 were notified of the hearing and, therefore, were not in attendance nor had submitted statements. The hearing was recorded and such stands as a record of proceedings.
12. The Tribunal found that whilst the grounds for the appointment of a manager were made out and that it would be just and convenient to do so, the proposed manager was not suitable. The matter was stayed for six weeks pending proposal, by the Applicant, of an alternative manager. Tribunal Directions provided for witness statements from Respondents 2 and 3, and a reply to the proposed manager from Respondent 1. Respondents 2 and 3 were also invited to nominate an alternative manager. A preliminary decision was handed down on 8 November 2024.
13. On 6 December 2024 the Applicant nominated Ms Alison Mooney of Westbury Residential Ltd as the proposed manager. On 20 December 2024 the Applicant withdrew this nomination and, instead, proposed Mr David West of SPG. Mr West's witness statement, including a copy of the firm's Professional Indemnity insurance certificate and what purported to be a draft Management Order were appended, as too were documents titled 'Proposal for the management of 133 Wells Road, Bath – prepared by SPG Property Ltd' and a separate document 'Managing Agent Proposal'.
14. By way of a witness statement dated 20 December 2024, Mr Coleman also nominated Mr David West of SPG as proposed manager.
15. A reconvened hearing was set down for 31 January 2025.
16. On the morning of the hearing a further document, titled 'Tribunal Management Order Preparation Document' was emailed to the Tribunal by Mr West. However, due to its late submission, this document was not provided to the Tribunal prior to the hearing commencing.

17. At the hearing, the Tribunal had before them the original hearing bundle extending to 246 electronic pages, the witness statement from Mr Coleman, a witness statement from Mr Parry and two email statements from Lester Aldridge Solicitors.
18. This decision does not seek to rehearse the relevant legislation as set out in the Tribunal's decision of 8 November 2024, nor to repeat our preliminary findings of fact.

The Hearing

19. The reconvened hearing commenced at 1000 hours on Friday 31 January 2025, by cloud video platform. Present were the Applicant Dr Deegalle; the first Respondent Mr Coleman; the second Respondent Mr Parry, and, on behalf of the first Respondent, Mr Brueton of Lester Aldridge Solicitors. The proposed manager, Mr West, was also in attendance. All parties, including the Tribunal members, joined the hearing remotely.
20. The Chairman set out the history of the application and summarised the crux of the Respondent's statements, such being that whilst all three Respondents now supported the appointment of a manager, questions remained as to the mechanics of the Management Order and consideration was yet to be given as to whether Mr West was a suitable manager. Each Respondent confirmed agreement with such summary.
21. Mr West stated that he was willing to accept appointment as a Tribunal Manager and confirmed that he had inspected the property and had read and understood both the Tribunal's Practice Statement on the Appointment of a Manager and the draft Management Order. Mr West initially appeared to seek an open-ended term of appointment but later revised such to a two-year term.
22. Mr West explained that he is an employee of SPG, a firm of Chartered Surveyors regulated by the RICS and that its Principal and founder, Mr Spencer Gower, is a member of the RICS. Mr West is degree-educated and working towards RICS accreditation. Mr West has been engaged in residential block management, alongside Mr Gower, for three years, prior to which he worked in recruitment.
23. Mr West stated that whilst willing to accept the role of property manager, the Tribunal appointment should be in the name of SPG. Mr West appeared to be unaware of paragraph 5 of the Practice Statement which states that the Tribunal will usually appoint a named person as a Manager rather than a company/firm. Mr West suggested, in hindsight, that Mr Gower should have been nominated.
24. Mr West stated that SPG manages 60 blocks of flats predominantly ranging in size from 3-7 flats, the largest block comprising 48 flats. The buildings under management are all within the Bath area and include period properties and Listed Buildings. Mr West considered himself suitably qualified to manage the Property. He also explained that he would be assisted in managing the Property by a team of six staff including Mr Gower, an Operations Manager, Facilities Manager and Accounts Manager.

25. Mr West confirmed that client funds would be held in designated, ring-fenced, client accounts held with a High Street bank. Mr West was unable to provide information concerning membership of a client money protection scheme.
26. Mr West stated that he had no conflicts of interest in accepting this appointment and provided an example of his awareness of such situations.
27. Mr West set out his priorities for the building to include commissioning a Planned Preventative Maintenance schedule ("PPM"), addressing fire safety deficiencies and instructing works of repair and maintenance, particularly in regards to roof water ingress.
28. Mr West confirmed that he was in receipt of the lease of Flat 4 but said that he had not had an opportunity to read it prior to the hearing. He thought he may also be in possession of other leases in the building but was unsure, save to say that none had been read. Mr West explained that Mr Gower would primarily assume responsibility for interpreting and applying lease covenants.
29. Mr West was asked how he would seek to fund the works outlined at paragraph 27 above and replied that, typically, this would be through proactive discussion with the lessees and freeholders. When pressed on the point, and in particular having regard to the breakdown in communication between the parties and the remaining lessee, plus the challenges of the lease provisions and the lack of reference to such in his draft Tribunal Management Order Preparation Document paper, Mr West was unable to respond, suggesting instead that Mr Gower would take responsibility for such matters.
30. When asked by the Tribunal how he would invite the Tribunal to address these matters in the Management Order, Mr West again suggested that Mr Gower would be best placed to respond.
31. Mr West admitted when questioned by the Tribunal that he did not fully understand the role of the Tribunal appointed Manager. Mr West did not appreciate that the appointment allowed him to act independently of the landlord, nor that an appointed Manager's authority came from the Order which can override the provisions of the lease.
32. Turning to the draft Management Order appended to Mr West's witness statement – Exhibit DW3 – Mr West acknowledged that such did not meet the Tribunal's requirements and, instead, referred the Tribunal to the revised document sent to the Tribunal that morning, comprising four pages titled 'Tribunal Management Order Preparation Order'.
33. At 1050 hours the hearing was adjourned for twenty minutes to provide the Tribunal and the parties with an opportunity to consider the revised document.
34. Upon recommencing the hearing, Mr West advised the Tribunal that he was no longer willing to accept an appointment to be a Tribunal appointed Manager. Mr West explained that, in hindsight, he lacked the expertise required in this matter and that Mr Gower would be a more suitable

appointment.

35. The Tribunal thanked Mr West for his participation.
36. There now being no nominated Manager before the Tribunal, the Tribunal indicated its intention to dismiss the application.
37. Dr Deegalle made an application to stay matters whilst an alternative manager was sought. The application was refused on the grounds that Mr West was the fourth manager proposed by Dr Deegalle and that, having regard to the overriding objective of the Tribunal to deal with matters fairly and justly, taking into account the resources of the parties and of the Tribunal, it would not be proportionate to stay the matter for a second time.
38. The parties are at liberty to submit a fresh application for an appointment of manager. The parties are advised of the need to refer to the requirements of the Practice Statement (dated July 2023) for the appointment of a manager when preparing any future application.

DECISION

39. There being no proposed Manager before the Tribunal, the application is dismissed.
40. Having dismissed the substantive application, the Applicant's application for an Order under section 20c of the Landlord and Tenant Act 1985 is refused.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.