FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference: **CAM/00ME/LVM/2023/0002**

Property: **16 PARK STREET, WINDSOR, BERKSHIRE, SL4 1LU**

Applicants: JONATHAN PAUL RIDLEY-HOLLOWAY AND KATE REBECCA RIDLEY-HOLLOWAY

Representative: BISHOP & SEWELL LLP (Solicitors), William Spence (Counsel)

Respondent: IKOYI DEVELOPMENTS LLP

Representative: None

Type of Application: Appointment of a Manager

The Manager: Christopher James Leete

Tribunal members: Judge Granby, Mr G Smith MRICS

Date of Decision: 14 April 2025

DECISION

Introduction

1. This is an Application for the appointment of a manager pursuant to s.24 of the Landlord and Tenant Act 1987 in respect of the building known as 16 Park Street, Windsor, Windsor Berkshire, SL4 1LU. ("The Building") The Building consists of five floors of which three are flats let on long leases, there are two commercial units, the ground floor is occupied by Strutt and Parker, a well-known estate agent.

2. The Building is Grade II* listed, situated on a corner, and occupies a prominent position in Windsor.

3. The Application is made by Jonathan Paul Ridley- Holloway and Kate Rebecca Ridley-Holloway who are the joint leaseholders of Flat 1 within the Building.

4. The Application is unopposed, the Respondent, the Freeholder, Ikoyi Developments LLP, has not engaged in the litigation.

5. The other leaseholders in the Building have not joined in the litigation although the Tribunal was informed by the proposed manager, Mr Leete, that he had consulted the residential leaseholders who supported at least his initial proposals in the management plan.

6. The grounds for the application and the basis of the Tribunal's decision to accede (as it does) to the Application are set out later in this decision. In broad terms, from the perspective of the residential long leaseholders at least, the Building appeared to have been abandoned by the Respondent in 2017 with no service charges being demanded and (seemingly) no services being provided. This appeared to the Tribunal to be a paradigm case for the appointment of a manager.

7. The draft order included in the bundle provided for the remuneration of the manager and the costs incurred in carrying out his functions to

be met in proportion to certain heads of expenditure in proportion by the residential and commercial tenants. The bundle contained the Applicant's lease but no other. This raised two issues for the Tribunal (1) who had been served with the application and (2) whether the proposed order would impose obligations on any leaseholder not found in their lease.

Service & terms of Commercial Leases

8. The application was served with a schedule of the flat leaseholders and (where appropriate) their mortgagee's. This schedule did not include the commercial units.

9. The directions issued by the Tribunal on 6 November 2024 provided for service of the application by the Tribunal on "all persons likely to be significantly affected by the application". It appeared to this Tribunal that that would not have led to service on the commercial tenant(s) about whom the Tribunal had no information.

10. Strutt and Parker, at least, had an element of informal notice but of a very limited sort, Mr Leete having visited the ground floor commercial unit and asked for a copy of the lease. Mr Leete was, understandably, directed by staff in the branch to Strutt and Parker's head office. Such notice is not a substitute for service of the application.

11. After a short adjournment to review the other flat leases with his instructing solicitor Ms Bright (who attended the hearing) Mr Spence (who appeared for the Applicants) informed the Tribunal that the residential leases were in substantially the same form with the same 33.3% service charge apportionment. The Tribunal was happy to accept this submission.

12. The commercial units posed more difficulty – no lease was available for download at the land registry none being registered. This suggested a

short lease below the seven year requirement for registration. The Tribunal might be able to take an informed guess as to the terms of such leases, which rarely make provision for service charges beyond insurance but it seemed inappropriate to do so where the commercial tenant(s) had not been served. The Tribunal should not risk 'rewriting the bargain' a leaseholder has made without giving them an opportunity to be heard.

13. In light of that position Mr Spence invited the Tribunal to make a management order that provided for the landlord to meet the costs attributable to the commercial units and to permit it to recoup them (so far as the lease and law allow) from the commercial tenants.

14. This seemed to the Tribunal to be a pragmatic solution. On a formal level it appears that the commercial tenants should have had notice of the hearing having an interest in the management of the Building (although a limited one given the likely short term of their interest). Although this difficulty is a result of the manner in which the case has been prepared it did not appear desirable to waste tribunal time, or the Applicant's expense, in an adjournment in the circumstances.

15. The Tribunal accordingly provides for a liberty to apply provision in the management order against the possibility of commercial tenants wishing to be heard. The landlord can have no complaint if it is left in a disadvantageous position – the commercial units were not obliged to participate even if served or identify the terms of their lease, it was within the Respondent's gift to provide all of this information and, where property is retained by the landlord (or in this case made subject to a short lease and, seemingly, being available for a rack rent) it is a normal term of a management order that the landlord meets the proportion of the service charges attributable to the retained parts.

Evidence of Mr Ridley-Holloway

16. Mr Ridley-Holloway attended the hearing and confirmed his evidence. So far as it is necessary to say so in the circumstances the Tribunal had no hesitation in accepting his evidence which was, of course, unchallenged. The matters set out by Mr Ridley-Holloway are addressed below under "Grounds for the Application".

Evidence of Mr Leete and management plan

17. The proposed manager, Mr Leete, attended the hearing and answered the Tribunal's questions in a clear and straightforward manner. Mr Leete appeared to the Tribunal to have substantial experience in the management of listed buildings and to be an appropriate person to appoint as a manager. Mr Leete's proposed remuneration appeared reasonable in the context of listed building and the potential of a degree of difficulty if the Respondent remained unresponsive. Mr Leete appeared to be appropriately insured.

18. Mr Leete confirmed to the Tribunal that he understood the role of a Tribunal appointed manger (i.e. that the manager is accountable to the Tribunal and, subject to the supervision of the Tribunal, is "in charge" for the duration of the appointment). Mr Leete has experience as a tribunal appointed manager in respect of another building. Mr Leete, rightly, emphasised that he wished to have a dialogue with the leaseholders and had already consulted them informally in respect of the management plan and had their support. Mr Leete satisfied the Tribunal that he was well aware that the Respondent had legitimate interests that he would need to have regard to.

19. In respect of the management plan Mr Leete gave evidence that there was much that could be done quickly and at limited cost (for example health and safety compliance and internal cleaning) that would have a significant impact on the Building. Mr Leete detailed longer term plans, which had clearly been given some thought, for further works as necessary to the exterior of the Building.

20. Mr Leete explained his provision for a handover as a professional courtesy but, pragmatically, accepted that he was likely to receive very little or no information or funds from the Respondent.

21. Mr Leete stated that if necessary he would take the steps required to bring in funds from any party not contributing as required and agreed with the Tribunal that if, as appears likely, his management is starting from scratch (in the sense that there is unlikely to be a reserve to be paid over or, indeed, any form of handover) he would be unlikely to achieve what the Building requires in two years. Mr Leete suggested that a five year period was realistic but envisaged an application to extend the period of management having 'proven himself' in the first two.

22. In light of that evidence (which emerged through questions from the Tribunal) Mr Spense sought appointment of Mr Leete for five years.

23. The Tribunal concludes, having had regard to the plan for management, that Mr Leete is a suitable person to be appointed as manager of the Building and has the necessary skills and experience to manage the Building. The Tribunal appoints Mr Leete for a period of five years. It appeared to the Tribunal that the management plan was predicated on funds being available by at least the second year of management. If s.20 of the Landlord and Tenant Act 1985 is complied with and, at the end of that process, when funds are demanded, the Respondent continues to fail to engage, it is possible that Mr Leete will have to himself engage in some form of enforcement process. If that is necessary (and the Tribunal hopes not) it appeared unlikely that all the necessary funds would be available (let alone expended) by the second year, five years would allow for a full cycle of cyclical works.

Grounds for Application

24. The Tribunal is satisfied that the formal steps required to be taken by the Applicants have been taken. A preliminary notice under s.22 of the Landlord and Tenant Act 1987, valid on its face, was served by the applicants on or about 29 July 2022.

25. The broad basis for the application, as foreshadowed at the start of this decision is that the Building showed no signs of management since 2017. The preliminary notice is, however, correctly put on the technical basis of breaches of covenants under the Applicant's lease and breaches of the RICS code of practice ("the Code"). The notice also identifies that the Respondent had failed to deal with routine enquiries in relation to the sale of Flat 1 and that other circumstances exist that make it just and convenient to appoint a manager.

26. The contractual obligations said to be breached are, inter alia:
    a. The obligations in paragraphs 2.2 and 2.3 of Schedule 7 of the Applicant's lease to serve notice of the insurance placed in respect of the Building and to provide a copy of the insurance policy and schedule and receipt for that years premium.
    b. The obligations in paragraph 4 of Schedule 7 of the Applicant's lease to prepare and send estimates of the service costs each year and, at the end of the year, to prepare and send a certificate of the service costs and to keep proper accounts, records and receipts
    c. The obligation to provide the services in Part 1 of Schedule 7 of the Applicant's lease including, inter alia, a lack of cleaning to the common parts, a need for redecoration, loose floorboards in the common parts, evidence of penetrating damp, cracks to the parapet wall and vegetation grown thereon, a need for cleaning of the wall, an absence of health and safety assessments, an absence of a fund for future anticipated expenditure.

27. The obligations under the Code said to be breached are, inter alia:

a. A lack of telephone contact details or meetings with property managers
b. A lack of procedure for regular inspections
c. An absence of health and safety policies or risk assessments
d. Lack of a complaints procedure
e. An absence of the use of due diligence and professional expertise to make an assessment of expenditure necessary to maintain the Building in the next year
f. An absence of inspections to prepare a program of planned and cyclical works
g. An absence of regular cleaning
h. Failure to provide answers or adequate answers to pre-contract enquiries

28. On the same day as the preliminary notice the Applicants also served notice pursuant to s.21 of the Landlord and Tenant Act 1985. The Respondent made a limited response to that notice in that a Report was prepared by the Respondent's surveyors Thames Valley Surveying dated 14 September 2022. That Report identified, inter alia, a state of repair consistent with the Applicant's complaints that there was no fire risk assessment available and no statutory testing available for the fire alarm and emergency lighting.

29. The Respondent committed on a number of occasions to carry into effect the 14 September 2022 report, to date (some two and a half years later), on the evidence before the Tribunal, it has done nothing. The Respondent has also not, at least not in a way that has had any discernible results, followed up on commitments to appoint managing agents.

30. Accordingly the grounds in the application in respect of breaches of the Applicant's lease and the Code are , as summarised above, appear to the Tribunal to be made out. The Tribunal is not on the evidence before it able to make any findings as to how any funds paid by Ms Araujo are

being held but that is essentially a product of the Respondent's lack of engagement rather than being a point against the application.

31. The appointment of a manager is a discretionary remedy under s.27 (4) of the Landlord and Tenant Act 1987. It is sometimes said that it is a remedy of last resort – the test is in fact simply whether as a matter of discretion the Tribunal considers it just and convenient (see *Ata v Sinclair* [2024] UKUT 423 (LC) para 55). In this case the matters proven more than justify the appointment of a manager, indeed if the test were one of last resort then that threshold would clearly be met, the Tribunal sees no other route on the law as it stands and on the evidence before it whereby the Building will be managed in accordance with the Applicant's lease, the provisions of the Code or, indeed, at all.

s.20C/ Para 5A Applications / Costs

32. The Application has succeeded, the Applicant's are successful in their application. The Application was caused by the Respondent's failure to comply with the terms of the Lease or to manage the Building in accordance with the Code. It appears to the Tribunal to be just and equitable, given the substantial and justified complaints of the Applicants and their success in this litigation to made Orders under s.20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from demanding any costs incurred in this litigation from the Applicants by way of service or administration charges. Nothing in this decision should be taken as indicating that the Respondent has the contractual power to demand such costs.

Appeals

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 rpeastern@justice.gov.uk .

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.

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.

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.