



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

Case reference : **BIR/00GA/LAM/2024/0005**

Subject premises : **Gwynne Gate
Catherine Street
Hereford
HR1 2ED**

Applicant : **Alain Lenain**

Respondent : **Gwynne Gate Management Limited**

Type of applications : **(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 : **Deputy Regional Judge Nigel Gravells
Mr Neil Atherton MRICS**

Date of Decision : **23 April 2025**

DECISION

Preliminary

- 1 This is a decision on two applications by the Applicant, Mr Alain Lenain, the leaseholder of Flat 4, Gwynne Gate, Catherine Street, Hereford HR1 2ED. By the first application, under section 24 of the Landlord and Tenant Act 1987 ('the 1987 Act') the Applicant applied for an order appointing Ms Lisa Badham as manager of the Gwynne Gate development ('the section 24 application'). By the second application, under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act') the Applicant applied for an order for the limitation of costs ('the section 20C application').
- 2 The Respondent is Gwynne Gate Management Limited, the freeholder and current manager of the Gwynne Gate development.
- 3 The applications were received by the Tribunal on 6 September 2024.
- 4 The Tribunal issued Directions on 30 September 2024.
- 5 A hearing (by remote video conferencing) was held on 25 March 2025. The hearing was attended by (i) Mr Lenain and Mr Henry Todd, another of the leaseholders at Gwynne Gate; (ii) Ms Badham, the proposed manager; and (iii) representing the Respondent, Mr Michael Williams, the current managing agent, and Mr Robert Williams, one of the directors of the Respondent company.

Background

- 6 The Gwynne Gate development ('the development') is located in Hereford city centre and comprises 15 self-contained flats with courtyard parking. The development was completed around 2015. Three of the flats are located in a converted public house. The remaining flats were newly constructed on land to the rear of the converted public house and are accessed from three stairwells.
- 7 The Respondent company is the freeholder (having acquired the freehold from the developer, Perfection Ltd, in 2016) and the current manager of the Gwynne Gate development. The Respondent company is owned by the leaseholders, with one share allocated to each flat.
- 8 In 2019 the Respondent appointed Mr Michael Williams as its managing agent.
- 9 The current dispute appears to have originated in the Applicant's concerns about the costs of painting the three stairwells providing access to the newly constructed flats. He questioned the estimates/quotations obtained by Mr Williams and the final invoice, which was included in the service charges demanded from the leaseholders.
- 10 That dispute was the subject of an application by the Applicant to the First-tier Tribunal under section 27A of the 1985 Act (BIR/00GA/LIS/2023/0040). The Applicant was largely successful, although there was some misunderstanding as to the period over which the relevant costs were incurred and/or chargeable to the service charge. The Tribunal reviewed its original decision and issued a revised decision on 25 March 2025.

- 11 The Applicant's concerns about Mr Williams' management of the development broadened and the Applicant initiated the preliminary stage of the section 24 application for the appointment of a manager. On 14 July 2024, pursuant to section 22 of the 1987 Act, the Applicant served a notice on the Respondent, indicating that the Applicant intended to apply to the Tribunal for an order for the appointment of a manager, specifying the grounds on which the Tribunal would be asked to make the order.
- 12 The specified grounds were -
 - (i) that the Respondent had made unreasonable service charges;
 - (ii) that the Respondent assumed responsibility for NHBC claims by four leaseholders but mismanaged those claims by failing to claim VAT;
 - (iii) that the Respondent appointed a managing agent who was not a member of a redress scheme;
 - (iv) that the Respondent failed to follow vote-counting rules at an AGM.
- 13 The section 22 notice alleged various breaches of the RICS Residential Management Code, although, apart from the matters mentioned in paragraph 12(i), (iii) and (iv) above, the Applicant provided no particulars of the alleged breaches.
- 14 Finally, the section 22 notice stated that the above matters should be remedied by the appointment of 'a properly qualified managing agent'.
- 15 On 6 September 2024 the Applicant made the section 24 application to the Tribunal.
- 16 In the application the Applicant largely repeated the substance of the section 22 notice.
- 17 Some further elaboration was provided in an undated document and in oral submissions at the hearing.

Section 24 application

- 18 Section 24 of the Landlord and Tenant Act 1987 provides (so far as material) —
 - (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

...

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

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

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

(ac) where the tribunal is satisfied –

(i) that any relevant person has failed to comply with any relevant provision of any code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

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

or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

- 19 In neither the section 22 notice nor the section 24 application did the Applicant expressly link his allegations to the grounds set out in section 24(2) of the 1987 Act; but he appeared to be relying on section 24(2)(ab), (ac) and, arguably, (b). However, although his allegations addressed the first requirement of paragraphs (ab) and (ac), the Applicant made very limited reference to the second and separate requirement (and the sole requirement in paragraph (b)) that the Tribunal must be satisfied that ‘it is just and convenient to make the order in all the circumstances of the case’.
- 20 The Respondent not only sought to answer the specific allegations but, on the ground that many of those allegations were historic, the Respondent concentrated on the second requirement.

The first requirement

- 21 The Tribunal considered the four grounds set out in paragraph 12 above.

That the Respondent had made unreasonable service charges

- 22 The determination of the Tribunal on the section 27A application (see paragraph 10 above) establishes that the Respondent included in the service charge demands unreasonable costs for the painting of the three stairwells.
- 23 However, in the view of the Tribunal, the Applicant failed to establish any dishonesty or impropriety on the part of the Respondent or Mr Williams. The Tribunal was satisfied that any such allegations were refuted by Mr Williams.

That Respondent assumed responsibility for NHBC claims by four leaseholders but mismanaged those claims by failing to claim VAT

- 24 Although Mr Williams agreed to co-ordinate the NHBC claims (as required/requested by NHBC), the Tribunal is of the view that he did not do so in his capacity as managing agent and under the management responsibilities contained the Applicant's lease. For that reason the Tribunal is not persuaded that any failings on the part of Mr Williams in managing the NHBC claims could provide grounds for the making of a management order under section 24 of the 1987 Act.
- 25 In any event, the Tribunal finds that the Applicant failed to establish any mismanagement on the part of Mr Williams. Specifically, the Tribunal accepts the evidence of Mr Williams that the VAT due to the four leaseholders was recovered in full.

That the Respondent appointed a managing agent who was not a member of a redress scheme

- 26 Mr Williams acknowledged that, contrary to the requirement of the RICS Residential Management Code, he was not a member of a redress scheme until April 2024. He stated that he was not aware of the requirement but that, as soon as he became aware, he immediately applied for and was admitted to membership of the Property Ombudsman scheme.

That the Respondent failed to follow vote-counting rules at an AGM

- 27 The Applicant argued that the Respondent failed to comply with voting rules on the Applicant's motion at an AGM in April 2023 to remove Mr Williams as the Respondent's managing agent.
- 28 The Applicant failed to provide a copy of the Respondent company's Articles but the Tribunal accepts that there may have been a failure to comply with the requirements of section 321 of the Companies Act 2006.
- 29 However, Mr Williams stated that the voting procedure used at the AGM in April 2023 was the same procedure used during the time when the Applicant himself chaired the company AGMs.
- 30 In any event, again the Tribunal is not persuaded that any failings on the part of the Respondent in relation to vote-counting provide grounds for the making of a management order under section 24 of the 1987 Act.

Summary on the first requirement

- 31 In relation to the first requirement of section 24(2), for the reasons stated in the preceding paragraphs the Tribunal is satisfied that the Applicant's first and third allegations are well-founded.
- 32 However, the Tribunal notes that both breaches are historic and have been remedied.
- 33 Nonetheless, the threshold of the first requirement is satisfied by establishing a single relevant breach.

The second requirement

- 34 Turning to the second requirement of section 24(2), the Tribunal must be satisfied that 'it is just and convenient to make the order in all the circumstances of the case'. Whereas the threshold of the first requirement is reasonably easily met, the threshold of the second requirement is rather higher; and Tribunals have repeatedly stressed that the appointment of a manager under section 24 of the 1987 Act is a remedy of last resort.
- 35 Against that background, in determining whether it is just and convenient to make an order the Tribunal considered a number of factors –
- (1) Although the facts which establish the first requirement are in their nature historic, the appointment of a manager is largely concerned with the future; and that requires the Tribunal to assess the quality of the Respondent's likely future management if the Tribunal does not order the appointment of a new manager. On the basis of Mr Williams' written and oral responses to the present application, the Tribunal is satisfied that the Respondent and Mr Williams as managing agent are providing and will continue to provide a good standard of management of the Gwynne Gate development.
 - (2) Although a section 24 application by a single leaseholder may in principle succeed, an application made jointly by a significant number of the relevant leaseholders is more likely succeed. However, in the present case, although the Applicant was supported by three other leaseholders, it appears that the remaining leaseholders support the continuation of the present management.
- 36 The only representation made by the Applicant in relation to the 'just and convenient' issue was that two of the leaseholders supporting the application are resident on the development and the other two are 'closely involved' with the development; and that all four care about the management of the site, want their money to be handled and spent correctly and want professional property management. The Tribunal presumes that that those sentiments are shared by all the leaseholders.
- 37 In the circumstances the Applicant failed to persuade the Tribunal that the threshold of the 'just and convenient' requirement had been met.

Summary

- 38 For the reasons set out above, the Tribunal is not satisfied that the Applicant has established any of the grounds in section 24(2); and therefore the Tribunal may not make a management order under section 24.

The Applicant's proposed manager

- 39 Since the Tribunal is not satisfied that any of the grounds in section 24(2) is established, it is strictly unnecessary to consider the suitability of the Applicant's proposed manager.
- 40 However, in the view of the Tribunal, it is appropriate to comment briefly on that issue.

- 41 The Applicant proposed that the Tribunal should appoint Ms Lisa Badham (of B Complete Property Management Limited) as manager of the subject premises.
- 42 Pursuant to the Tribunal's Directions, Ms Badham provided a statement, indicating her willingness to be appointed as manager of the subject premises and setting out her management plans.
- 43 Ms Badham was questioned by the Tribunal. It became apparent that Ms Badham has no professional qualifications in residential property management and that she has little more than two years' experience of residential property management.
- 44 It is appropriate to record that Mr Williams expressed positive views of Ms Badham.
- 45 However, while the Tribunal has no reason to question the professional competence of Ms Badham, it takes the view that it would be inappropriate for the Tribunal to exercise its jurisdiction under section 24 of the 1987 Act by appointing as manager a person who has no professional qualifications in residential property management and who has such limited experience of residential property management.

Summary

- 46 The Tribunal refuses the Applicant's application for an order appointing Ms Badham as manager of the subjected premises.

Section 20C application

- 47 Section 20C of the 1985 Act provides (so far as material) –
- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- ...
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.
- 48 The Applicant has failed in his application to have Ms Badham appointed as manager of the Gwynne Gate development. He has failed to establish any of the grounds set out in section 24(2) of the 1987 Act.
- 49 In the circumstances, the Tribunal is of the view that this is a case in which it would not be just and equitable to make an order under section 20C of the 1985 Act.

Appeal

- 50 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.

- 51 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 52 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 53 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

22 April 2025

Professor Nigel P Gravells
Deputy Regional Judge