



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

Case Reference : MAN/00CG/LVM2018/0001
MAN/00CG/LVM/2019/0001
MAN/00CG/LVM/2019/0002
MAN/00CG/LSC/2019/0014
MAN/00CG/LVM/2020/0002
MAN/00CG/LDC/2020/0016
MAN/00CG/LSC/2020/0036

Property : Whitecroft Works, 69, Furnace Hill,
Sheffield S3 7AH

Parties : Richard Britton
(represented by PMLS Solicitors, Miss Zanelli)

and

: Mr & Mrs S.D. Hayes

Type of Application : Various applications under Sections 27A and
20CLandlord and Tenant Act 1985 and
Section 24 Landlord and Tenant Act 1987

Tribunal Members : Mr J R Rimmer
Mr J Faulkner

Date of decision 21st February 2022

Decision : (1) The management order in respect of
Whitecroft Works appointing
Richard Britton as manager is
extended to 31st March 2025.

- (2) The management fees for the period shall be:
£14,600 for the year to 31.03.2023
£15,330 for the year to 31.03.2024
£16,097 for the year to 31.03.2025
net of any chargeable VAT**
- (3) In the event of the manager needing to seek ad hoc payments from leaseholders towards current service charges a clear explanation should be provided with the demand indicating to what it relates, why it is being levied and why the current budget does not provide for the amount in question.**
- (4) The manager is permitted to seek the remuneration for additional works set out in paragraph 10 herein.**
- (5) The management order is extended to enable the manager to demand copies of notices of assignment of leases where such notices are required by the lease to be provided to the landlord.**
- (6) Further consideration will be given in the near future to the CHS system after further information is received from the parties.**

Preliminary

The Tribunal has already considered a number of applications within this complex set of proceedings relating to the management order in force with respect to the residential complex known as Whitecroft Works, Furnace Hill, Sheffield and to the service charges relating to the property arising out of the need to execute works to satisfy the requirements of an enforcement notice imposed by South Yorkshire Fire and Rescue Service (SYFRS) to deal with such extensive shortcomings in fire safety that it was necessary to implement fire marshal duties at the property.

Mr Britton was appointed as the manager, initially on an interim basis in late 2019 and has since overseen extensive works. These include compartmentalisation of the building and the provision of adequate smoke ventilation works to a redundant lift shaft. This has led, progressively, to the

removal of the fire marshals and the lifting of the enforcement notice, an action plan being agreed in its place, as the works have proceeded.

There remains for the Tribunal to consider a number of matters, some arising within the applications listed at the top of the header page to this document and others from matters that arose within the proceedings, or as a consequence of how they progressed.

They are as follows:

1 The reasonableness, or otherwise, of the costs that have now largely crystallised, in relation to the remaining works required in respect of the smoke ventilation issue, mainly redecoration.

2 Certain additional costs that have been incurred that were not apparent earlier in the proceedings, together with the professional costs incurred by the current and former managers.

3 The extension of the management order that has now expired after it had been extended on an interim basis.

4 The terms of that order, if extended, in relation to:

- a) The remuneration of the manager
- b) The extension, or otherwise, of the order to encompass dealing with issues in relation to the metering of the Common Heating System (CHS) and the collection of the charges relating to it.

5 The reconciliation of invoices received, payments made and monies received by the former manager Mr Bigge as against the payments Mr Britton was now being called upon to meet.

All parties had made their relevant submissions and provided a bundle of documents to assist the Tribunal at the video hearing that took place on 26th January 2022

The issues

6 Additional costs

A number of additional costs had arisen during the carrying out of the works required to the development, or were now crystallising as a result of what had been completed and were not otherwise accounted for in the 2020 and 2021 accounts (as to the production of which, see below). These included the dry riser works and some ventilation works. Corridor works were detailed in the 2020 budget and, thereafter, accounts

- Ventilation works were, however, ongoing and final invoices had not been paid.
- Redecoration works. These were progressing, but in tandem with final ventilation works. There had been some delay and all works were behind schedule. Exploration of that issue suggested that the covid pandemic had

- affected this, in relation to sourcing both contractors and materials, but progress has been steady.
- It had been necessary for the lift cabin to be removed from the redundant lift shaft to allow for the installation of the ventilation system. This cost was approximately £4,000.00 and some parts had thereafter been cannibalised for use elsewhere in the development.
 - There had been further work carried out in relation to the drawing of CAD technical plans which he considered over and above what was anticipated within his scheme of management and for which he would seek additional remuneration at £75.00 per hour

7 Mr Hayes had queried the amounts involved, but now accepted that the works were necessary and now appeared to be reasonable, given the need to remove the lift cabin and the overall achievement of Mr Britton in bringing the fire safety matters towards a conclusion (and under the originally estimated budget), but having some reservations as to the time the works were taking to reach that conclusion. There had also apparently been an agreement reached with the head-lessee of what had formerly been the retail section of the development for a significant contribution (c£70,000.00) to the fire safety costs.

8 The Tribunal is of the view that on the evidence before it from the parties the costs being incurred in relation to the ventilation works and decoration were being incurred reasonably and, given the SYFRS view that the enforcement notice could be lifted, to a reasonable standard.

9 The Tribunal is also satisfied that the evidence before it suggested that the cost of the removal of the lift cabin was reasonable in the circumstances.

10 The Tribunal's attention was drawn to the CAD drawings by Mr Britton during the course of the hearing and the Tribunal is satisfied that from its knowledge and experience as an expert tribunal that both the hourly rate used by Mr Britton and, by reference to that rate, the time spent reflected in the total cost is reasonable. An explanation for them being required is provided by Miss Zanelli in her submission dated 3rd September 2021. The costs, totalling £3,650.00, are set out on page 404 of the agreed bundle.

The management order – extension in time?

11 The current management order is extended until 31st March 2022. In anticipation that the outstanding fire safety matters would be concluded, or reasonably near conclusion by that time and, indeed this seems likely to be the case.

12 Mr Britton would like to see it extended through to the end of March 2025. He expressed the view that he would like to enjoy the fruits of his labours, which the Tribunal took to mean to navigate the management of the development through quieter waters than he had experienced hither to.

13 Mr Hayes was not so sure. His first view was to leave Mr Britton in post until the enforcement notice was lifted. Mr Britton's response included the information that it was now lifted and replaced by the action plan,

14 Mr Hayes then accepted that Mr Britton should remain for the time being without excluding the possibility of an application being made in due course to replace him. The Tribunal would remind the parties that since these proceedings have started no other candidates have put themselves forward, although the Tribunal accepts that now the threat of closure has receded through Mr Britton's many efforts volunteers may now be more willing to come forward.

15 The Tribunal would remind the parties that it cannot vary or discharge an order if it believes the proposal made would lead to a recurrence of the situation which pertained at the time it was made, [section 24(9A)(1) L+TA 1987].

16 The Tribunal, in the circumstances, consider it appropriate to extend the order to 31st March 2025. No doubt if an application is made within that time a Tribunal will deal with it in an appropriate manner.

17 On behalf of Mr Britton his solicitor, Miss Zanelli proposed an appropriate fee level to be:

Year to 31/03/2023 £14,600.00

Year to 31/03/2024 £15,330.00

Year to 31/03/2025 £16,097.00

the increases being an annual rate of approximately 5%. Mr Britton is not currently registered for VAT but this would need to be added if registration took place.

18 The Tribunal is of the view that this represents a reasonable charge for the likely work involved and the expertise required of a manager for such a development. Mr Hayes did not appear to disagree.

The management order – extension of scope

19 A number of matters remained for consideration before the Tribunal in relation to extending the managers powers within the order to accommodate recent developments and the experiences encountered by previous managers and Mr Britton.

20 There had already been extensions during the course of these proceedings, notably in relation to the power to levy interim charges to deal with fire safety costs in addition to payment made in accordance with annual budgets and also to the physical extent of the order within the building to incorporate the lift shaft (within the demise to the head leaseholder of the retail area) to enable the ventilation works to be carried out.

21 Notices of assignment

These were considered in the light of experience, suggesting that the manager would have greater and more immediate control of service charge funding if he was aware from the time of the transfer of a lease as to who would now be the service charge payer. Mr Britton considered it appropriate for provision to be made within the order for him to receive copies of notices of assignment.

22 There appeared to be no dissenting voice at the conclusion of the Tribunal's consideration and the Tribunal was itself satisfied that this step would assist the manager in the proper execution of his functions in relation to the service charge and the management order is therefore varied in this regard as set out herein.

CHS responsibilities

23 The common heating system supplied to the new build flats within the development, but not those in the older part, has been a bone of contention between all those involved with Whitecroft Works for some time. It has already featured as a subject for consideration before both this Tribunal and the Upper Tribunal.

24 the Tribunal summarises its understanding of the situation as this:

- 1) The boiler house within the development contains a master and slave boiler to operate a closed hot water circulation system circulating in a continuous loop through the new build section.
- 2) The system then supplies both heating and hot water to the individual flats, with the master/slave boilers providing sufficient output to cope with any fluctuation in demand for either. No water is drawn off, it merely heats the water cylinder and radiators in the flats.
- 3) The pipework passes through the common parts of the new build section before entering each flat, where a three-way valve controls input to the flat and provide a point where usage is metered for the flat in question and a timer and thermostat control how much hot water enters the flat or by-passes it.
- 4) Although historically radiators on the system were available to heat the common parts their efficacy has been questioned and since before the proceedings mentioned above were "switched out"
- 5) It may be that this switching out has simply been shutting off the radiators in question which could be turned on again quite simply, rather than any more complex technical process.
- 6) The system nevertheless loses heat through the pipework in the common parts in its progress to the individual flats which, unlike within the flats, is not monitored or metered.
- 7) A metering system operates via a "Switch2" system to record usage in the flats, as recorded by the meters, and the balance of usage is then taken to be that for the supply through the common parts and the operation of the boilers themselves.

- 8) The accuracy of the calculation is not assisted by the metering system which is apparently prone to breakdown and the potential lack of clear information in relation to vacant flats.
- 9) Any cost payable by a lessee of a relevant flat is not recoverable as a service charge because it relates to provision within a particular flat and not to the flats in general.
- 10) A “fair proportion” of the costs are recoverable under paragraph (2)(2) of the Fourth Schedule to the lease as assessed by the landlord’s surveyor acting reasonably,
- 11) This may include, under paragraph (2)(2), the costs of the meter rents and associated administration costs.
- 12) The remaining cost should then be recoverable as an outgoing in respect of the building.

25 Such systems are not uncommon within residential complexes and are prone to throwing up points of difficulty as occurred, and were resolved, in the previous proceedings.

26 It is suggested that a possible way of easing such difficulties might be to incorporate into the managers functions and powers a means of managing the billing of the system to better effect.

27 There are clearly issues with the functioning and maintenance of the metering equipment. The Tribunal notes the observations in the Upper Tribunal decision that the ancillary costs may be recovered under paragraph (2)(2) of the Fourth Schedule which refers specifically to meter rents. If the meters are rented it suggests to this Tribunal that they are the responsibility of the landlord, with consequent liability for installation and repair, with the cost being subsequently recoverable through appropriate rents.

28 If an effective metering system is to operate then this might have advantages for the manager in carrying out his duties and responsibilities. In the absence of attendance by the landlord at the hearing in January the Tribunal had considered it appropriate to seek further views as to the efficacy, or otherwise of further management powers, in particular to deal with the metering issues identified and the charging mechanism for lost energy through boiler system and the piping in the common parts of the new building.

Invoice reconciliation

29 Considerable concern has been expressed by a large number of leaseholders in relation to the monies being sought by Mr Britton, following his appointment, when compared with sums already requested and paid to Mr Bigge. It was not clear whether some monies were being requested twice, and, if so, what had happened to monies already paid in the 2019 service charge year to Mr Bigge.

30 The perceived difficulties were exacerbated by the calls being made by Mr Britton for payment of the fire marshal costs that had not appeared in the initial budget prepared for the year and which represented considerable extra expenditure in proportion to the original expected costs.

31 Hart Shaw, Chartered Accountants, have provided a report analysing the position as at 31st October 2019, when Mr Britton took up his post and this postulates a position that now appears to be accepted by all parties that:

- 1) All balances for individual leaseholders are correct at that date (and are detailed in the report) and the balance funds transferred to Mr Britton are correct
- 2) There has been no duplication in respect of the combined claims for payment of Mr Bigge and Mr Britton.
- 3) What has happened appears to be that Mr Bigge has collected payments from leaseholders into a pot, based on invoices received and monies required, but has paid other invoices prior to him stepping down.
- 4) Mr Britton has correctly raised demands for the unpaid invoices, but the sums already paid by the leaseholders will be accounted for against other invoiced costs. When the 2020 accounts are finally published the picture will be apparent. This will not now be as great an act of faith as was possibly anticipated.

32 In anticipation that there can be greater clarification of what Mr Britton has yet to pay the Tribunal sets out in its extensions to the management order some directions to Mr Britton as to information he should supply to the leaseholders. The Tribunal does note, however, that the 2020 service charge accounts, when available, will clarify the position when all costs up to that point have been set out in a final form.

33 It would also be of considerable assistance to the potential payees of the service charges in the present circumstances to have a clear picture as to what is being sought by way of payment and why if ad hoc charges are raised. Directions are provided herein to assist Mr Britton in that regard.

Legal costs

33 Considerable legal costs have been incurred by both Mr Bigge and Mr Britton in the course of these proceedings. Provided they have been reasonably incurred, in a reasonable amount, they are recoverable as the cost of the manager under the management order.

34 It is perfectly possible for these sorts of tribunal proceedings to be conducted without the aid of solicitors, or counsel. Mr (and Mrs) Hayes have done so and have put their case clearly to the Tribunal. The fact that this is possible is not the correct test for the Tribunal to apply. It must ask itself whether it was reasonable in the circumstances for those parties to seek legal representation.

35 The Tribunal is satisfied that it was. Mr Bigge, in his circumstances, could not properly have conducted proceedings from his perspective without seeking appropriate assistance.

36 Similarly, Mr Britton, approaching the role as he did in very difficult and forbidding circumstances and finding himself with an array of difficulties before him, was entitled to seek professional representation. At the hearing on 26th January 2022 Mr Hayes hit the nail on the head. His comment that had the boot been on the other foot he would have wanted a solicitor sums up the situation with both brevity and accuracy.

37 If professional costs are appropriate in principle, they must then be looked at further to consider the amounts involved. They are detailed within the bundle of documents for solicitors and then counsel for Mr Bigge and for Miss Zanelli's successive firms for Mr Britton.

38 Given the complexity of the proceedings, the hearings involved and the expertise required to navigate a path through them to a considerable number of conclusions, The Tribunal regards the amounts in question to be reasonable. They can indeed be judged against other legal fees considered elsewhere within these proceedings.

39 To the Tribunal's mind there is nothing in the charges that have been levied to suggest that they are in any way out of the order, or excessive in the way they reflect the skill and expertise of the professionals employed.

J R RIMMER (Judge)

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