

**IN THE LEASEHOLD VALUATION TRIBUNAL**

8012

**Case No :** CAM/33UF/LAM/2012/0001

**Property :** Trafalgar Court, 42 Cromer Road, Mundesley, Norfolk NR11 8DB

**Between :**

- (1) Alan & Delia ROPER
- (2) ADUR SERVICES LIMITED
- (3) Paul ROPER
- (4) Judy BATCHELOR
- (5) Eric POOLEY

**Applicants**

and

**LONDON LAND SECURITIES LIMITED**

**Respondent**

---

**MANAGEMENT ORDER**

---

1. In this Management Order, the Directions and the Schedule of Rights, Functions and Services attached to this Management Order the following expressions shall have the meanings set below :
  - a) "the Property" shall mean and include the buildings, outhouses, gardens, amenity space, drives, pathways, roads, parking spaces, landscaped areas, passages, bin-stores, attics, common parts and all other parts of the property known as Trafalgar Court, 42 Cromer Road, Mundesley, Norfolk NR11 8DB.
  - b) "the Landlord" shall mean London Land Securities Limited, the Respondent to this Applications, or in the event of the vesting of the reversion of the residential underleases of the property in another, the Landlord's successors in title.
  - c) "the Leases" shall mean the long leases and/or underleases of flats in the Property and "Lease" shall be construed accordingly. For clarification, the eight intended flats, the development of which has not yet been completed, are to be treated on the assumptions that they have already been built and that the Landlord shall pay a share of the service charge in respect of each such flat, until such time as it has been demised on a lease imposing an obligation to pay a proportionate share of the maintenance charge, as if the Landlord were a leasehold owner of that flat on the same terms and conditions as all the other leases.
  - d) "the Tenants" shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and "Tenant shall be construed accordingly.

- e) "The Managers" shall mean Bruce Roderick Maunder Taylor and Michael Harrison Maunder Taylor of Maunder Taylor, Chartered Surveyors, 1320 High Road, Whetstone, London N20 9HP, or either of them.

2. It is hereby ordered that:

- a) In accordance with s.24 (1) of the Landlord and Tenant Act 1987 the Managers shall be appointed as managers of the Property.
- b) The Order in Paragraph 2(a) above shall continue until 30<sup>th</sup> June 2015.
- c) The Managers shall manage the Property in accordance with :
- i. the Directions and Schedule of Rights, Functions and Services attached to this Management Order;
  - ii. the respective obligations of the Landlord under the Leases by which the flats at the Property are demised by the Landlord and in particular with regard to repair, maintenance, decoration, renewal and provision of services to and insurance of the Property; and
  - iii. the duties of managers set out in the Service Charge Residential Management Code (2009) ("the Code") or such other replacement Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.
- d) The Managers shall :
- i. Provide to the Landlord and any tenant who requests the same an up-to-date copy of the PI insurance cover of the Managers; and
  - ii. Ensure that any sub-agent has the requisite and suitable PI insurance cover, shall retain a copy of the same, and shall provide a copy within 14 days of the making of this Order to the Landlord and any tenant who requests one.

Dated 6<sup>th</sup> August 2012

Graham K Sinclair – Chairman  
for the Leasehold Valuation Tribunal

## DIRECTIONS

1. That from the date of appointment, 6<sup>th</sup> August 2012, and throughout the appointment the Managers shall ensure that they have appropriate professional indemnity cover in the sum of at least £2,000,000 and shall provide copies of the current cover note upon request being made by the Tenants, the Landlord or the Tribunal.
2. That the Managers in the performance of their functions and duties, and in the exercise of their powers under this Management Order, shall :
  - a) Exercise all the reasonable skill, care and diligence to be expected of managers experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and duties and the exercise of the said powers;
  - b) Shall indemnify the Landlord in respect of any loss occasioned by any negligent act or omission of themselves, their servants or agents; and
  - c) Shall act impartially, independently and in a non-partisan way, whether in relation to individual leaseholders or to groups of leaseholders.
3. That not later than 2 weeks after the date of this Management Order the Landlord and the Applicants shall make available to the Managers all such books, papers, memoranda, records, computer records, minutes, correspondence, facsimile correspondence, electronic mail and all other documents and records as are necessary for the management of the Property and are within its custody, power or control or the custody, power or control of any of its servants or agents, in which last case it shall take all reasonable steps to procure such delivery from its servants or agents.
4. That the Landlord shall not later than 2 weeks after the date of this Management Order give full details to the Managers of all sums of money it holds or which are held by its servants or agents in the service charge fund and the reserve fund (if relevant and however described) and in the major works fund in relation to the Property and including giving copies of any relevant bank statements, and shall by that date pay any such sums to the Managers. In the case where such sums are held by the Landlord's servants or agents, the Landlord shall take all reasonable steps to procure the giving of such information and documents and the making of such payment to the Managers. If the Landlord or its servants or agents shall thereafter receive any sums under the Leases, it shall forthwith pay or take all reasonable steps to procure payment of such sums to the Managers.
5. That the Landlord and its servants and agents shall give reasonable assistance and co-operation to the Managers in pursuance of their functions, rights, duties and powers under this Management Order and shall not interfere or attempt to interfere with the exercise of any of their said rights, duties or powers by due process of law. For the avoidance of doubt this shall not prevent the Landlord from bringing legal proceedings (or any other due process of law) should the Managers act unlawfully and/or negligently and/or contrary to the powers and duties set out in this Management Order.

6. That the Landlord shall allow the Managers all reasonable access to those parts of the Property retained by it in order that the Managers might conveniently perform their functions and duties, and exercise their powers under this Management Order.
7. Upon a leaseholder admitting, or a court or tribunal finding (upon application by the Managers for a determination to that effect), that a breach of covenant has occurred then :
  - a) The Landlord shall when reasonably required by the Managers serve a notice under s.146 of the Law of Property Act 1925, which notice shall be drafted by the Managers or their agents and in respect of which the Landlord shall provide reasonable assistance if required;
  - b) The Landlord shall if reasonably required by the Managers, and using solicitors nominated by them, bring proceedings for forfeiture against any tenant in breach of his lease and in respect of which breach, save for non-payment of rent, a s.146 notice has been served;
  - c) The Managers will incur in the first instance the costs and expenses of a) and b) above, including legal costs if reasonable and appropriate, which costs may be recovered by the Managers under the terms of this Management Order.
8. That the Landlord shall deliver to the Managers within one week copies of all specifications, tenders, planning permissions and all other consents, permissions, documents and instruments which the Landlord has, or which come into the power, control or custody of the Landlord after the date of this Management Order, concerning or arising out of the Landlord's construction of additional flats at the Property or which are in the power, control or custody of any of the Landlord's servants or agents, in which last case it shall take all reasonable steps to procure such delivery from its servants or agents.
9. That the rights and liabilities of the Landlord and/or any former managing agent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon the date 2 weeks from the date of this Management Order become rights and liabilities of the Managers. Insofar as the present buildings insurance contract is concerned the Managers shall be expected to test the market at the next renewal. For the avoidance of doubt this paragraph shall not affect contracts for the provision of services which are no longer current, and in particular shall not prevent the Landlord from bringing proceedings in its own name, if so advised, against any contracting party concerning the previous Phase 1 major works contract that was not completed.
10. That the Managers shall account forthwith to the Landlord for the payment of ground rent received by them and shall apply the remaining amounts received by them (other than those representing his fees) in the performance of the Landlord's covenants contained in the leases.
11. That the Managers shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges under the Leases of the Property) in accordance with the Schedule of Functions and Services attached.

12. That at the expiry of 6 months from the date of this Management Order, the Managers shall prepare a brief written report for the Tribunal on the progress of the management of the Property up to that date and shall submit the same to the Tribunal by no later than 1<sup>st</sup> March 2013.
  
13. That the Managers shall be entitled to apply to the Tribunal for further directions in accordance with Section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited) to the following events:
  - a) Any failure by any part to comply with Paragraph 2 of these Directions and/or;
  - b) (If so advised) upon the service of the report in Paragraph 6 of these Directions, and/or;
  - c) In the event that there are insufficient sums held by him to pay the Managers' remuneration.

## **SCHEDULE OF RIGHTS, FUNCTIONS AND SERVICES**

### **A. Service Charges**

- 1.1 The Managers shall have the right to treat the service charge financial year for the Property as commencing on the date of this Order for one year and thereafter from year to year.
- 1.2 The Managers shall have the right to demand and receive from the Tenants, as the proprietors of any flats in the Property, and their successors in title to any flats in the Property, service charge contributions in such reasonable and proper proportions to be determined by the Managers. For clarifications, the Managers are to treat the Property as being 32 flats, each contributing to the service charge account.
- 1.3 The Managers shall have the right to demand and receive from the Tenants half-yearly payments of service charges in advance on account of actual expenditure to be incurred by the Managers on the first date of this Order in such sum as the Managers shall reasonably determine having regard to the likely costs to be incurred and in respect of which service charges are payable during the relevant financial year and for avoidance of doubt shall have the same right in respect of each subsequent service charge financial year. Insofar as the planned major works are concerned the Managers may collect contributions forthwith after the expiry of the present s.20 consultation process; such contributions being payable within one month of demand being made.
- 1.4 The Managers shall have the right to establish and maintain a reserve fund ("the Reserve Fund") to make provision for any maintenance, repair and renewal of the Property which shall not be carried out in the service charge financial year during which any contribution towards the Reserve Fund is demanded.
- 1.5 The Managers shall, in their discretion and having regard to any reasonably necessary anticipated repair, maintenance and renewal works required at the Property, be entitled to demand from the Tenants a reasonable contribution towards the Reserve Fund as part of the service charges for works of maintenance, repair and renewal of the Property which will not be carried out within the service charge financial year during which the demand for payment is made and for avoidance of doubt all references to "service charge" or "service charge" within this Management Order shall include such contribution to the Reserve Fund.
- 1.6 The Managers shall have the right to demand and collect ground rents, insurance rents and any other payments due from the Tenants.
- 1.7 The Managers shall prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the Tenants as per their percentage share under the terms of their respective Leases, and shall have the right to amend such service charge budget during the course of any particular financial year if the Managers find it appropriate or necessary to do so for the property management of the Property.

- 1.8 The Managers shall have the power and the duty to carry out the obligations of the Landlord contained in the Leases (save as varied by the terms of this Management Order), and in particular, and without prejudice to the generality of the foregoing shall have:
- a) the Landlord's obligation to provide services;
  - b) the Landlord's repairing, maintenance and renewal obligations;
  - c) the Landlord's obligation to arrange insurance of the buildings on the Property ("the Buildings") with a reputable insurer PROVIDED that the Managers shall neither determine nor vary the Respondent's existing contract for the insurance of the buildings without the consent of the Tribunal; and
  - d) the Tribunal recognizes that the Landlord's covenants are currently in breach and that the Managers' plan requires some considerable time before all such breaches can be remedied, during which the Managers have no liability for pre-existing breaches save in respect of any additional damage caused by any failed or negligent attempt by them to remedy the same.
- 1.9.1 The Managers shall have the power in their own name to bring and defend any action or other legal proceedings in connection with the Leases or the Property including but not limited to proceedings against any Tenants in respect of arrears of rent, service charges or other monies due under the Leases, and to make any arrangements or compromise, save that the Managers shall not have the right to continue any such action or other legal proceedings or to make any arrangements or compromise on behalf of the Landlord in relation thereto, as shall have been commenced before the date of his appointment and which the Landlord shall be at liberty to pursue. For the avoidance of doubt:
- a) This does not include any claim arising out of the earlier Phase 1 major works contract and is without prejudice to the rights of the Landlord specifically referred to in Directions paragraph 9; and
  - b) The Managers shall within 14 days of the receipt by them of any forensic accountancy report indicate to the Landlord whether they intend to bring or compromise claims against leaseholders for any arrears of service charges arising since October 2009 and, if so, against which leaseholders. Should the Managers elect not to take the above steps then the Landlord shall retain the right to do so, and such proceedings shall thenceforth be excluded from this clause 1.9.1 of the Schedule.
- 1.9.2 The Managers shall have the power in their own name to bring and defend any action or other legal proceedings against the Landlord in respect of the works required to complete the eight flats of which the development has not yet been completed, whether that be for the completion works of those flats or whether it be for the recovery in respect of arrears of rent, service charges or other monies due under the assumed Leases by which the Landlord holds those flats pursuant to the terms of the Order.
- 1.9.3 For clarification, such action or other legal proceedings shall include the power in their own name to seek a Charging Order and Order for Sale against any Tenant or the Landlord in the event of non-payment of sums due.
- 1.10 In the event that the Tenants shall be in breach of their covenants in the Leases and/or their obligations as provided in this Management Order, the Managers shall be entitled to

recover from any such Tenant on a full indemnity basis any costs, fees, charges, expenses and/or disbursements reasonably incurred or occasioned by them in the appointment of any solicitors, counsel, surveyors or any other professional reasonably retained by the Managers for the purposes of enforcing such covenants or obligations, whether or not the Managers bring any proceedings in court or before any tribunal.

PROVIDED THAT in default of recovery of the same from the particular Tenant in breach of the covenants in the Leases and/or the obligations as provided in this Management Order, the Managers shall be entitled to recover the same through the service charges.

- 1.11 The Managers or their appointed managing agent shall place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the Property within the service charge budget.
- 1.12 The Managers shall have the power to appoint a managing agent, solicitors, accountants, architects, surveyors and such other professionally qualified persons as may reasonably be required to assist them in the performance of their functions.
- 1.13 The Managers shall have the power to appoint any agent or servant to carry out such functions or obligations which the Managers are unable to perform themselves or which can be more conveniently done by an agent or servant and the power to dismiss such agent or servant.
- 1.14 The Managers shall have the power to open and operate bank accounts in their own name in relation to the management of the Property and to invest monies received pursuant to their appointment in any manner specified in Parts I and II of the First Schedule of the Trustee Investment Act 1961 and to hold those funds received from the Tenants of the flats in the Property pursuant to Section 42 of the Landlord and Tenant Act 1987.

PROVIDED THAT the Managers shall deal separately with and shall distinguish between monies paid as contribution towards the Reserve Fund and all other monies received pursuant to their appointment.

- 1.15 The Managers shall have the power to claim in the bankruptcy, insolvency, sequestration or liquidation of any Tenant or the Landlord owing monies due under his, her or its Lease.
- 1.16 The Managers shall have the power to receive, consider, refuse, grant or otherwise deal with applications for consents or licences of whatever nature as to dealings, alterations or any other matters requiring the consent of the Landlord under the Leases which relate to the Tenants or as to their flat(s). In relation to such applications the Managers shall where applicable use their best endeavours to secure a reasonable open market premium and shall account to the Landlord therefore. Where the Managers have confirmed that such consent or licence shall be granted the Landlord shall execute all necessary documents to give effect thereto without delay or request for payment.

PROVIDED THAT the provisions of this paragraph shall be subject to an obligation on the part of the Managers to give reasonable notice to the Landlord of any such applications received by them and the terms thereof which they propose to grant, with the intent that



the Landlord shall have the opportunity of making observations to the Managers on such applications and consents.

1.17 The Managers shall have the power to borrow at the best available rates reasonably available, all sums reasonably required by the Manager for the performance of their functions and duties and the exercise of their powers under this Management Order in event of there being:

- a) arrears, or other shortfalls of service charge contributions due from any Tenant; or
- b) arrears, or other shortfalls of other sums due from any Tenant, such borrowing to be secured (if necessary) on the interest of the defaulting party.

## **B. Accounts**

2.1 The Managers shall prepare and submit to the Landlord an annual statement of account detailing all monies received and expended on its behalf. The accounts may be certified by an external auditor if required by the Managers.

2.2 The Managers shall upon request produce for inspection receipts or other evidence of expenditure.

2.3 All monies collected on the Landlord's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution of Chartered Surveyors. Any interest on monies held on the Landlord's behalf will accrue to the Landlord. Any reserve fund or major works monies will be held in a separate client account with interest (if any) accruing to that client account.

## **C. Maintenance and repairs**

3.1 The Managers shall deal with major works, routine repair and maintenance issues and instruct contractors to attend and rectify problems. The Managers shall deal with all building maintenance relating to the services and structure of the building. The Managers shall proceed with due diligence, but subject to receipt of funds from the Tenants and/or the Landlord, with a programme of major restoration works in order to restore reasonable repair over a reasonable period of time.

3.2 The Managers shall give consideration to works to be carried out to the Property in the interest of good estate management and make the appropriate recommendations to the Landlord and the Tenants.

3.3 The Managers shall set up a planned maintenance, repair and renewal programme to allow for (amongst other matters and without imposing any limitation) the periodic redecoration of the exterior and interior common parts and such other periodic maintenance, repair and renewal as may be required at the Property.

**D. Fees**

- 4.1 Save for any major works contracts or long term agreements in respect of which statutory consultation is required, fees for typical management services shall be a basic fee of £175 per flat p.a. plus VAT (with in this case only no fee for the unbuilt flats). "Typical" services included within this fixed fee are defined as :
- a) Preparation of the annual service charge budget, sending out of service charge invoices to all parties in accordance with the terms of this Order, and sending out of final reminders 14 days thereafter. A Schedule of arrears will be supplied to the Managers as appropriate;
  - b) Maintenance of all book-keeping records in preparation for their submission to an accountant for audit;
  - c) Checking of invoices upon receipt and authorizing payments to contractors, suppliers, etc.;
  - d) Carrying out quarterly site inspections to record any issues found, and dealing with those issues insofar as they do not exceed the statutory consultation threshold;
  - e) Preparation and implementation of contracts with suppliers of services to the property (for which statutory consultation is not required) as appropriate;
  - f) Dealing with *general* correspondence and communications with all parties (any lengthy and/or contentious correspondence, issues or complaints between the parties, and any non-payment of service charges being referred to the Managers to deal with); and
  - g) Any other services considered by the RICS Blue Book to be normal management.
- 4.2 The professional fees of any architect, surveyor, or other appropriate person in the administration of a contract for major works carried out to the property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on leaseholders informing them of the works, and supervision of the works) will be charged separately.
- 4.3 The Managers shall be entitled to recover all costs, fees, expenses and disbursements properly and reasonably incurred in employing any solicitors, counsel, surveyors, architects, accountants or any other professional.
- 4.4 An additional charge for dealing with solicitors enquiries on transfer will be made on a time related basis payable by the outgoing lessee.
- 4.5 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- 4.6 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 4.1 above, are to be charged on a fee basis as follows:

- Bruce Roderick Maunder Taylor: £300 per hour plus VAT
- Michael Harrison Maunder Taylor: £150 per hour plus VAT

These fee rates to be reviewed annually and any annual fee increase will be capped in accordance with changes in the Consumer Prices Index (CPI).

**E. Complaints Procedure**

- 5.1 The Managers shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the Managers on request.

**TRAFALGAR COURT, 42 CROMER ROAD, MUNDESLEY, NORFOLK NR11 8DB**

---

**MANAGEMENT PLAN**

---

1. A copy of the PI Insurance cover of the Managers is attached.
2. A copy of the Managers' Complaints Handling Procedure is attached.
3. A brief summary of the experience of the proposed Managers, as relevant to this matter is attached.
4. Enquiries have already been made about the current buildings insurance policy and a copy of the current cover note is attached.
5. An invitation for a meeting with the Landlord has already been made without response. That invitation will be immediately repeated. The Managers acknowledge that, if appointed, they will act as the appointee of the Tribunal, to act impartially and objectively with all parties and not to favour any one party against the interests of any other party unless there is some good reason for that.
6. On receipt of the Management Order (if made), the Managers will cause a copy thereof to be delivered to all leaseholders, the Land Registry for noting on their records, the insurance company and broker for noting on their records, and any other relevant party as might be known to the Managers.
7. On receipt of the Management Order (if made), the Managers will make contact without delay with the architects and other professional advisers for the currently proposed major works with a view to agreeing a strategy and timeline for proceeding with such major works (subject to receipt of monies) under the following priorities:
  - i. Make the building wind at watertight
  - ii. Remedy important health and safety matters
  - iii. Remedy those matters which are the subject of Local Authority Enforcement Notices
  - iv. Repair externally
  - v. Repair services
  - vi. Repair internal common parts
  - vii. Maintenance of grounds and external facilities
8. On receipt of the Management Order (if made), the Managers will take steps to appoint a local managing agent to attend to those functions and duties which are best carried out locally, the objective being that the Managers will control and direct those professional advisers involved in the major works, those professional advisers in any recovery or other proceedings, and those matters concerning direct contact with the Landlord or proceedings against the Landlord.

9. At the expiry of 2 weeks after receipt of the Management Order (if made), either the Managers will have received those monies, documents and other matters directed by the Tribunal, or will instruct a solicitor to take proceedings in the County Court to enforce the Order against the Landlord with a view to obtaining those matters by Court Order and costs.
10. Within 2 weeks after receipt of the Management Order (if made), the Managers will submit service charge demands to all lessees and seek early payment or instruct solicitors to take recovery action. That recovery action to include, if appropriate or necessary, a Charging Order on the property of the Tenant or Landlord concerned with a view to seeking an Order for Sale if appropriate or necessary.
11. The Managers anticipate that the major works will probably have to be authorized in stages as money is received into the service charge/reserve fund accounts. It is therefore anticipated that, as soon as there is sufficient money to proceed with work of a wind and watertight nature, that work will proceed acknowledging that other work in the currently proposed major works programme might have to be temporarily held back pending receipt of further funds.
12. It is intended that the local managing agent will maintain the bank account for the ordinary service charges. Accounting processes will be dealt with by the local managing agent but the reserve fund bank account will be maintained by the Managers. Recovery action for service charges and/or reserve fund monies will be handled by the Managers and major works monies payable to the professional advisers or the builders will be advanced to the local managing agent as and when valuation certificates and professional fee invoices have been received, validated and authorized by the Managers.
13. The Managers have read the Tribunal's decision in Case Number CAM/33UF/LIS/2011/001 and, in consequence anticipate that, either the Landlord's attitude as reflected in that decision will change to a co-operative attitude, or the Managers will have to take legal proceedings against the Landlord and those Tenants associated with the Landlord. The proposed Managers are in no doubt as to their powers and responsibilities in that regards (if the Order is made substantially as drafted) and refer to their statement of experience in which similar County Court enforcement action had to be taken against the Landlord in another similar case of non co-operation last year.
14. The proposed Order anticipates that the Managers will provide a formal report to the Landlord, the Tenants and the Tribunal by 1<sup>st</sup> March 2013. It is anticipated that, by that date, a more detailed Management Plan will have been prepared for submission to the Tribunal with:
  - a) A report on the degree of cooperation obtained, or not, with the Landlord and steps taken if cooperation has not been established.
  - b) A financial report on both ordinary service charges and reserve fund/major works monies.
  - c) A detailed phased programme of major works to bring the property into good repair.

- d) A report on all and any other relevant management matters.
- e) Probably with a request (or application if deemed necessary) for a determination of reasonableness and payability of any amended budget for the first year's service charges in case such determination is required for any legal proceedings which might be necessary for the recovery of unpaid service charges/reserve fund/major works monies.

15. A service charge budget is attached for the first year's service charges commencing from the date of the Management Order (if made) with a request that, in its determination (if a positive determination) the Tribunal confirms the reasonableness and payability of this budget.

.....  
**B R MAUNDER TAYLOR**

.....  
**M H MAUNDER TAYLOR**

**DATED** .....

-