

9810



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

**Case Reference** : CAM/00MC/LVM/2014/0001

**Property** : Aveley House, Iliffe Close, Reading  
RG1 2QF

**Applicants** : Sarah Wall; Mr and Mrs V Mehta;  
Charlotte Frost; Christopher Coull;  
Ginny Lau; Abhay Mehta; Mr R and  
Mrs J Mehta; D A Green; A M and H  
B Haycox; Libby Schweber; Alister  
Napier; Susana Puente; Paul  
Hradek; Andrew Stokes; Steven  
Hagen; K Robinson; David Lawton

**Represented by** : John Mortimer

**Respondents** : (1) Labyrinth Properties  
(2) Crest Nicholson (South West) Limited

**Date of Application** : 31<sup>st</sup> January 2014

**Type of Application** : For variation of an Order appointing a  
Manager – section 24(9) of the Landlord  
and Tenant Act 1987 (“the Act”)

**Tribunal Members** : David S Brown FRICS (Chair)  
Bruce M Edgington (Judge)

**Date of decision** : 9<sup>th</sup> April 2014

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**DECISION**

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The Order of the Leasehold Valuation Tribunal dated 9<sup>th</sup> May 2012 is varied (a) by extending the appointment of John Mortimer as Receiver and Manager on the same terms save that the new period of appointment shall commence on the 1<sup>st</sup> June 2014 and expire on the 31<sup>st</sup> May 2016 and (b) the order is made by the First-tier Tribunal (Property Chamber) rather than the Leasehold Valuation Tribunal.

## STATEMENT OF REASONS

### Background and Application

1. By an Order dated 9<sup>th</sup> May 2012, a Leasehold Valuation Tribunal appointed John Mortimer of John Mortimer Property Management Limited as manager and receiver of the property at Aveley House, Iliffe Close, Reading, RG1 2QF (as defined in paragraph 1(a) of the Order), the appointment to continue until 31<sup>st</sup> May 2014.
2. The Applicants, through John Mortimer, have submitted an application under section 24(9) of the Act for variation of the Order to extend the appointment of John Mortimer “for a further two years or, if it pleases the court, until further notice”.
3. On 14<sup>th</sup> February, Countrywide Estate Management wrote to the Tribunal stating that they “*will provide no defence to the appointment of John Mortimer Property Management Limited*”, adding that they had not received instructions from the landlord. The Chair responded that, from the application papers, the Respondents are Labyrinth Properties and Crest Nicholson (South West) Limited and if Countrywide Estate Management wished to apply to be joined as a party it should submit an application within seven days. No such application was received.
4. Directions were issued on 20<sup>th</sup> February 2014 for a paper determination on or after 8<sup>th</sup> April but stating that at any time before the application is determined, any party may make a request to the Tribunal that a hearing should be held or the Tribunal may decide that a hearing is necessary, in which case it will give notice to the parties that it intends to hold an oral hearing. No such request has been made.
5. The directions also required the Respondents to serve on the Applicants, and copy to the Tribunal, a statement of reply to the application by 5pm on 21<sup>st</sup> March. No such statement has been received.

### The Law

6. Section 24(9) provides that the Tribunal “*may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section*”.
7. Section 24(9A) provides that “*the tribunal shall not vary or discharge an order under subsection (9) on the application of a relevant person unless it is satisfied –*  
(a) *that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made,*  
*and*  
(b) *that it is just and convenient in all the circumstances of the case to vary or discharge the order*”.

### The Applicants' Case

8. John Mortimer Property Management Ltd, on behalf of the Applicants, have submitted a statement of case, with supporting documents including a "Managing Agents Report".
9. They state that the property continues to have a requirement for a managing agent as there are a number of on-going major maintenance issues which are being dealt with. A main area of concern at the time of the appointment was the leaking roof, which was a building defect. Following exhaustive correspondence with the developer, Crest Nicholson, and the NHBC no assistance has been forthcoming and the cost of repairs must therefore come from the service charges. Following section 20 consultation the order is ready to be placed for the roof repairs/replacement.
10. They list a number of other outstanding maintenance issues, including communal lighting, car park lighting, emergency lighting and gas remedial works.
11. They request that the Order be extended to give stability to the development and the Lessees, so that they can make further progress in the management of the development, to maintain the high standards that have been reached and to ensure continuity of the maintenance of the fabric of the building.

## **Discussion**

12. The circumstances which led to the Order being made included:-
  - failure to repair the garage door,
  - failure to repair the leaking roof,
  - failure to produce service charge accounts as soon as is practicable,
  - breach of lease terms relating to service charge apportionment and failure to apportion appropriate charges to Rimaud House,
  - failure to decorate the Maintained Property,
  - failure to attend to flashing indicator light on smoke vent control panel,
  - failure to comply with the RICS Service Charge Management Code.
13. The Managing Agents Report indicates that some of these issues have been addressed but some works remain outstanding. The Property Expenditure spreadsheets indicate that a proportion of service charge expenditure is being allocated to Rimaud House.
14. In the light of the information provided and of the lack of any objections from the Respondents, we are satisfied that extending the appointment of John Mortimer will not result in a recurrence of the circumstances which led to the order being made.
15. The main outstanding issue appears to be the roof repair/replacement works. It would be sensible to allow these to be completed under the current management arrangements, especially as John Mortimer has been involved in the correspondence with the NHBC and has conducted the section 20 consultation. It is clear that after a period of inadequate management, John Mortimer has been active in addressing repairs and

other matters that have required attention . We are therefore satisfied that it is just and convenient in all the circumstances of the case to vary the Order by extending the period of appointment.

16. The purpose of section 24 of the Act is to enable a tribunal to appoint a manager because of circumstances that exist at the time. It was considered by the Leasehold Valuation Tribunal that a fixed term order was appropriate. In view of the fact that there are specific items that are yet to be dealt with, particularly the roof repairs, we consider that a further fixed term is appropriate rather than an indefinite period. A two year extension should be sufficient for the works to the roof to be completed and accounted for and we therefore extend the appointment for that period.

*Any party to this Decision may appeal against the Decision with the permission of the Tribunal. The provisions relating to appeals are set out in Part 6 of **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**. An application for permission to appeal must be delivered to the Tribunal within 28 days after the Tribunal sends the Decision to the person making that application.*

**D S Brown FRICS (Chair)**

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