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

**Case Reference** : **CHI/43UB/LAM/2017/0010**

**Property** : **Old Avenue House, Old Avenue,  
Weybridge, Surrey, KT13 0PS**

**Applicant** : **(1) Shirley Beckwith  
(2) Clare Timmins**

**Representative** : **Mr Sinclair of Counsel**

**Respondents** : **(1) Old Avenue House Residents  
Association Ltd  
(2) Mayada Gardner  
(3) Jo & Ijaz Ahmad  
(4) Andrew Jones**

**Representative** : **In person**

**Type of  
Application** : **Appointment of Manager**

**Tribunal Members** : **Judge I Mohabir  
Mr R A Wilkey FRICS**

**Date and venue of  
Hearing** : **15 December 2017  
County Court in Staines**

**Date of Decision** : **2 January 2018**

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**DECISION**

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## ***Introduction***

1. This is an application made by the Applicants under section 24(1) of the Landlord and Tenant Act 1987 (as amended) ("the Act") for the appointment of a manager in relation to Old Avenue House, Old Avenue, Weybridge, Surrey, KT13 0PS ("the property"). The appropriate section 22 preliminary notice was served on the Respondents on 19 June 2017.
2. The Applicants are the long leaseholders of Flats 1 and 4 respectively in the property. The First Respondent is the present freeholder, which is a resident management company limited by shares. The other Respondents are also long leaseholders of flats 2, 3 and 5 respectively.
3. The property is a Victorian house that was converted into 5 flats.
4. It seems that the leaseholders have not been able to reach agreement for several years regarding the overall management of the property because of the governance of the First Respondent, which included the collection of service charge monies and the repair and maintenance of the building.
5. Consequently, by an application dated 12 September 2017, the Applicants applied to the Tribunal for the appointment of a manager. The detailed and extensive grounds relied on by the Applicants are found at pages 14-22 of the hearing bundle. For reasons that will become apparent, it is not necessary to set out the grounds in any detail and which, in any event, were not challenged by the Respondents.
6. On 15 September 2017, the Tribunal issued substantive Directions as to the filing and serving of evidence by the parties. Strictly speaking, none of the Respondents filed any evidence in opposition to the application. The only "evidence" received by the Tribunal was from the Second and Third Respondents and this amounted to no more than correspondence that confirmed the continuing disagreement between the Respondents generally.

## **The Relevant Law**

7. Section 24 of the Landlord and Tenant Act 1987 provides:

*"(1) A leasehold valuation tribunal may, on an application for an order under this section, by order 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) A leasehold valuation 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...*
- (ii) ...*
- (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;*

*(aba)...*

*(abb)...*

*(ac) where the tribunal is satisfied-*

- (i) where any relevant person has failed to comply with any relevant provision of a 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;*

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

## **Hearing**

8. The hearing in this matter took place on 15 December 2017 following an external inspection of the property. The Applicants were represented by

Mr Sinclair of Counsel. Only the Third Respondents, Mr and Mrs Ahmad, appeared in person. The other Respondents did not attend and were not represented.

9. Both Mr and Mrs Ahmad confirmed that they did not oppose the application for the appointment of a manager if the proposed manager was competent to perform the role.
10. The Tribunal then proceeded to hear evidence from the proposed manager, Ms Mooney, about her knowledge and experience in property management of some 20 years. Pursuant to the Tribunal's Directions, she had filed a management plan and was familiar with the terms of the leases. Ms Mooney confirmed she currently held 3 other Tribunal appointments of similar properties as a manager. She went on to explain how she would attempt to overcome the stalemate reached by the parties regarding the management of the property by giving examples of where she had successfully done so with other properties.
11. Having done so, Mr and Mrs Ahmad also confirmed that they had no objection to Ms Mooney being appointed as the manager of the property.

### ***Decision***

12. The Tribunal was satisfied that section 24(2)(b) of the Act had been met and that a manager of the property should be appointed under section 24(1). The main circumstances that the Tribunal had regard to were:
  - (a) the long standing and historic disputes between the parties about the governance of the First Respondent, the calculation of service charge contributions and the general maintenance of the property.
  - (b) the fact that the obvious mistrust and the breakdown in the relationships between the parties over several years appeared to be insurmountable. This had resulted in an impasse regarding

the management of the property, which could only be achieved by the appointment of an independent manager.

(c) that none of the Respondents had challenged any of the grounds relied on by the Applicants in support of the application and did not oppose the appointment of a manager.

13. The Tribunal was also satisfied that Ms Mooney possessed the requisite knowledge and experience to be appointed as the manager for an initial term of 3 years and it made the order confirming her appointment at the hearing from the same date. The purpose of this decision is to administratively confirm reasons for the Tribunal's decision and to approve the terms of the management order, which is annexed to this decision.

Judge I Mohabir  
2 January 2018

## **Appeals**

1. Any party wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case which application must:-
  - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
  - b. 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
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.

**CASE REFERENCE: CHI/43UB/LAM/2017/0010**

**IN THE FIRST-TIER TRIBUNAL**

**PROPERTY CHAMBER (RESIDENTIAL)**

**BETWEEN:**

**SHIRLEY BACKWITH (1)**

**CLARE TIMMINS (2)**

**Applicants**

**-and-**

**OLD AVENUE HOUSE RESIDENTS ASSOCIATION LIMITED (1)**

**MAYADA GARDNER (2)**

**JO AND IJAZ AHMAD (3)**

**ANDREW JONES (4)**

**Respondents**

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**MANAGEMENT ORDER**

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***Interpretation:***

In this Order:

- (a) "Common Parts" means, as defined in the Leases, the areas and amenities in the Estate available for use in common by the Lessees and occupiers of the Building and all persons expressly or by implication authorised by them, including the pedestrian ways, forecourts, landscaped areas and gardens, entrance halls, landings, staircases, passages, car parking and areas designated for the keeping and collecting of refuse but not limited to them.
- (b) "Leases" means the long leases vested in the Lessees of the Flats.
- (c) "Lessee" means a tenant of a dwelling holding under a long lease as defined by s.59(3) of the Landlord and Tenant Act 1987 ("the Act").
- (d) "the Manager" means Ms Alison Mooney of Westbury Residential Limited of Suite 2 De Walden Court, 85 New Cavendish Street, London W1W 6XD

(e) "the Premises" means all that property known as Old Avenue House, Egerton Road, Weybridge to include the 5 residential flats, common parts and the garages

***Preamble***

**UPON THE APPLICANT** having applied for the appointment of a Manager under Part II, Landlord and Tenant Act 1987

**AND UPON JO AHMAD AND IJAZ AHMAD** attending and not opposing the application of the appointment of a manager, nor the appointment of Ms Alison Mooney as the Manager pursuant to s.24(1) of the Landlord and Tenant Act 1987

**AND UPON MAYADA GARDNER AND ANDREW JONES** not attending and not opposing the application of the appointment of a manager, nor the appointment of Ms Alison Mooney as the Manager pursuant to s.24(1) of the Landlord and Tenant Act 1987

**AND UPON** the First-Tier Tribunal being satisfied that the Applicant is entitled to so apply and that the jurisdiction to appoint a Manager is exercisable in the present case

**AND UPON** the First-Tier Tribunal being satisfied that the conditions specified in s.24(2)(b) of the Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a Manager

**IT IS ORDERED THAT**

***The Manager***

1. The appointment of the Manager of the Premises pursuant to s.24 of the Act for a period commencing with the date of this Order shall continue, initially for 3 years, and is given for the duration of her appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the First Respondent and in particular:
  - (a) To receive all service charges, interest and any other monies payable under the Leases from the date of appointment. Any arrears due for the period prior to appointment shall be recoverable by the First Respondent but any funds so recovered shall be deposited with The Manager, who shall be responsible for the recovery of future service charge payments during the currency of this Order and any extension hereto, the recovery of which shall be at the discretion of the Manager.



- (b) The Power and duty to carry out the obligations of the First Respondent contained in the Leases and in particular and without prejudice to the foregoing:
  - (i) The First Respondent's obligations to provide services;
  - (ii) The First Respondent's repair and maintenance obligations; and
  - (iii) The First Respondent's power to grant consent.
  - (iv) The obligation to provide notices under the Leases shall be met if such Notices are sent to the Manager and not to the First Respondent
- (c) The power to delegate to other employees of Westbury Residential Limited, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist her in the performance of her functions, and pay the reasonable fees of those appointed.
- (d) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform herself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- (e) The power of the Manager or on behalf of the First Respondent to bring any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee in respect of arrears of service charges accruing from the date of appointment or other monies falling due under the Leases from that date and to make any arrangement or compromise on behalf of the First Respondent. The Manager shall be entitled to an indemnity for both her own costs reasonably incurred and for any adverse costs order out of the service charge account.
- (f) The power to commence proceedings or such other enforcement action as is necessary to recover sums due from the First Respondent pursuant to Paragraph 1 (e) of this Order.

- (g) The power to enter into or terminate any contract, or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of her functions.
- (h) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to her appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 or any replacement and to hold those funds pursuant to S.42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the Leases (if any) or to power given to her by this Order) and all other monies received pursuant to her appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.
- (i) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the First Respondent or any Lessee owing sums of money under her Lease.
- (j) The power to borrow all sums reasonably required by the Manager for the performance of her functions and duties, and the exercise of her powers under this Order in the event of there being any arrears, or other shortfalls, or service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e., on the leasehold interest of any Lessee, and the freehold of the Premises in respect of the Respondent).
- (k) The power to insure the whole building as a cost to the service charge account.
- (l) The power to raise a reserve fund.

2. The Manager shall manage the Premises in accordance with:

- (a) The Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;

- (b) The respective obligations of all parties – landlord and tenant – under the Leases and Transfers and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and
  - (c) The duties of managers set out in the Service Charge Residential Management Code (the “Code”) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to S.87 of the Leasehold Reform, Housing and Urban Development Act 1993.
- 3. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.
- 4. From the date of this Order, the First Respondent shall not, whether by any agent, servant or employee, demand any further payments of future service charges, administration charges or any other monies from the Lessees at the Premises, such functions having been transferred to the Manager from the date of this Order. For the avoidance of doubt the Respondent may seek to recover service charge arrears up to the day before appointment provided any monies so recovered are deposited with the Manager.
- 5. The First Respondent and the Lessees and any agents or servants thereof shall give all reasonable assistance and cooperation to the Manager in pursuance of her duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of her said duties and powers.
- 6. Without prejudice the generality of the foregoing hereof:
  - (a) The First Respondent shall permit the Manager and assist her as he shall reasonably require to serve upon Lessees any Notices under S.146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.
  - (b) The First Respondent shall deliver to the Manager any contract relating to the caretaker and cleaners at the Premises including all PAYE slips and P46, if applicable. If the First Respondent fails to deliver such documentation, the Manager shall be entitled to terminate the employment contract(s) of those

persons and arrange such other similar services as, in her absolute direction, he thinks fit.

- (c) It is the obligation of the First Respondent to provide the Manager with all information necessary to deal with the management of the Premises. This shall include, but is not limited to, up to date details of each leaseholder, full details of any employment contracts, full details of any ongoing contracts relating to the Premises, full details of all funds held by the Respondent with copies of all bank accounts relating thereto, the transfer of such funds to the Manager shall be undertaken by the Respondent without delay and without set off, together with the depositing of any monies recovered from lessees in respect of service charges accruing prior to the date of appointment.
  - (d) The First Respondent shall deliver to the Manager all keys, fobs and other access/entry cards to the Premises, including keys to services and the meter cupboards and safety equipment. If the First Respondent fails to deliver such keys etc, the Manager shall be entitled to remove the existing locks and other security systems currently installed at the Premises and install such locks and other security as, in her absolute direction, he thinks fit.
  - (e) The rights and liabilities of the First Respondent arising under any contracts of insurance to the Premises shall continue as rights and liabilities of the Manager.
  - (f) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.
7. The Manager shall in the performance of her functions under this Order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure they have appropriate professional indemnity cover in the sum of at least £2,000,000 providing copies of the current cover note upon request by any Lessee, the First Respondent or the Tribunal.
8. The Manager shall act fairly and impartially in her dealings in respect of the Premises.

9. The Manager's appointment shall continue from the date of this Order and the duration of her appointment shall be limited to an initial period of 3 years and shall be subject to review before the year has expired.
10. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leaseholder interest (whether by assignment or fresh grant) or freehold.

***Liberty to apply***

11. The Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with S.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
  - a. Any failure by any party to comply with an obligation imposed by this Order;
  - b. For directions generally;
  - c. Directions in the event that there are insufficient sums held by them to discharge their obligations under this Order and/or to pay their remuneration.

Signed: Judge I Mohabir

Dated: 2 January 2018

## SCHEDULE

### FUNCTIONS AND SERVICES

#### **Financial Management:**

1. Administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the proportions under the terms of the Leases at year end.
2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees in the proportions set out in paragraph 1 above and in accordance with the provisions of 1(n) above. Instruct solicitors to recover any unpaid service charges and any other monies due to the Respondent.
3. Create a form of reserve fund.
4. Produce for inspection (but not more than once in each year) within a reasonable time following a written demand by the Lessees or the First Respondent, relevant receipts or other evidence of expenditure, and provide BAT invoices (if any).
5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills and in particular in respect of the following matters, which are to be undertaken as soon as funds allow:
  - Arrange for a Health and Safety, Fire prevention and asbestos report to be commissioned
  - Arrange for a condition survey of the Premises to be undertaken by a qualified chartered surveyor
  - Arrange for an electrical survey to be conducted by a suitably qualified electrical contractor
  - Undertake such works as are advised as being of an emergency nature, if any, arising from the above reports as soon as possible

- Provide a written report to the Tribunal within three months to confirm what (a) steps have been taken to comply with the above and the works and costs associated therewith (b) what further steps are required (c) any further powers that the Manager may require
  - Before the expiration of the 3 year period, that is to say at least one month before expiry attend before the Tribunal to provide a full report and, if required to seek an extension of her appointment, which the Tribunal will consider, taking into account all representations received.
6. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises and within the next 28 days to call for and attend a meeting with Lessees to explain her appointment under this Order and to explore the possibility of lessees joining the Respondent management company as directors.

**Insurance:**

7. As a matter of extreme urgency to take out in accordance with the terms of this Order an insurance policy in the Manager's own names in relation to the buildings and the contents of the common parts of the Premises with a reputable insurer, and provide a copy of the cover note/schedule to all Lessees and the Respondent.
8. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

**Repairs and Maintenance**

9. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary subject to the priorities given at paragraph 5 above.
10. Administer contracts in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.
11. Manage the Common Parts and service areas of the Premises, including the arrangement and supervision of maintenance.

12. Carry out regular inspections (at the Manager's discretion but not less than monthly) without use of equipment, to such of the Common Parts of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

**Administration and Communication**

13. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquiries from the Lessees or their solicitors.
14. Provide the Lessees with telephone, fax, postal and email contact details and complaints procedure.
15. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

**Fees**

16. Fees for the management services to be determined in accordance with the Schedule of Management Fees and other Charges annexed hereto.
17. Manager third party administration costs to be determined in accordance with the Schedule of Management Fees and other Charges annexed hereto.



**Schedule of Management Fees and other Charges to be included in General Budget:**

Commencement Date:	2 January 2018
Premises:	Old Avenue House, Weybridge, KT13 OPS
Management Fees:	£2,500 + VAT per annum
Company Secretarial Fees:	£500.00 + VAT per annum

**ADDITIONAL SERVICES & FEES**  
**(not included in the service charge budget)**

**(NB All fees are quoted exclusive of VAT at the prevailing rate.)**

**Meetings**

The Agent will attend up to 4 out of hours residents' committee meetings in the first year at no additional cost to the Fees specified in this Agreement. Thereafter the Agent's attendance at more than 2 out of hours meetings each year may be subject to the hourly rates (as set out below), plus any reasonable travel expenses and disbursements, subject to agreement with the Client.

**Inspections**

Four working hours inspections are allowed for in the management fee at no additional charge. Additional attendance during works is subject to a project management payment of 2% for Section 20 qualifying works under £50,000.00 and 1% for Section 20 qualifying works over £50,000.00.

**Company Secretarial Services:**

The transfer of shares or membership to new owners including issue of certificates are charged (to the incoming leaseholder) at £90.00 exclusive of VAT.

## **WESTBURY RESIDENTIAL HOURLY CHARGE OUT RATES**

Director/FTT Appointed Manager	£250 + VAT per hour
Associate Director	£225 + VAT per hour
Team Leader	£200 + VAT per hour
Senior Property/Accounts Manager	£175 + VAT per hour
Property /Accounts manager	£150 + VAT per hour
Assistant Property/Accounts	£125 + VAT per hour
Administrator	£100 + VAT per hour

Westbury Residential Ltd reserves the right to review these rates in accordance with Clause 6. Daily rates are available for necessary attendance at court/tribunal, etc.

### **Other fees:**

#### **Licence for alterations**

(Fee met by the lessee concerned) Administration fee of between £150 to £750 (exclusive of VAT) depending on the complexity of the application and the degree of liaison required. Building surveyors fees and legal fees will be charged separately by the professionals concerned.

#### **Licence to Assign/Notice of Transfer or Mortgage (if applicable)**

(Fee met by the lessee concerned) Administration fee of £90.00 (exclusive of VAT) per notice. Legal fees for the preparation of the documentation will be charged separately by the solicitors concerned.

#### **Pre-sale enquiries**

(Fee met by the lessee concerned) Our standard fee for the provision of information relating to pre-sale enquiries is £285 (exclusive of VAT) for a standard service (replies within 10 working days). We offer an express service (replies within 5 working days) for an additional £100 (exclusive of VAT). The information packs that we provide are tailored to the flat in question and include comprehensive replies to all the questions normally raised by solicitors along with all relevant documentation.

#### **Credit Control Action (further than standard reminder process)**

(Fee met by lessee concerned) Westbury Residential reserve the right to charge on our hourly basis for any additional credit control work required where a leaseholder does not pay their due service charges or ground rental following the third reminder, including writing further letters, referral to legal action, and attendance at court or Tribunal as and where may be required.