12608

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/38UC/LAM/2017/0003**
Property	:	**Woodbank House, 399 Banbury Road, Oxford OX2 7RZ**
Applicant	:	**Mrs Marilyn Driver-Davidson**
Representative	:	**Mr Maunder-Taylor FRICS MAE**
Respondent	:	**Milford House Management Company (Oxford) Limited (1)** **Dr HGhafari (2)**
Representative	:	**For the second Respondent, Mr J Davies of Counsel with Dr H Ghafari, Mr C Bartlett of Premier Estate Agents and Premier Short Lets and Ms M Bricker of Breckon and Breckon Managing Agents**
Type of Application	:	**Application under Section 24 of the Landlord and Tenant Act 1987**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs H C Bowers BSc (Econ) MSC MRICS** **Mr D Barndon MRICS**
Date and venue of Hearing	:	**Magistrates' Court, Oxford on18th January 2018**
Date of Decision	:	**24th January 2018**

DECISION

DECISION

The Tribunal dismisses the application by Mrs Marilyn Driver-Davidson on the grounds set out below.

BACKGROUND

1. On 18th January 2018 we heard an application from Mrs Marilyn Driver-Davidson (the Applicant) seeking the appointment of a manager for the property at Woodbank House, 399 Banbury Road, Oxford OX2 7RX (the Property). The first Respondent Milford Management Company (Oxford) Limited (MMC) is a leasehold owned company which also owns the freehold. Each leaseholder, of which there are six, owns a share in the company. The second Respondent Dr Hamid Ghafari is the owner of flats 1, 2 and 6 and is also a proxy for Mr Noon who is the leaseholder of Flat 4. There are three directors of MMC, those being Dr Ghafari, the Applicant and Mr Pearson who is the leaseholder of Flat 5.

2. By an application dated 5th July 2017 the Applicant, through her representative Mr Bruce Maunder-Taylor, sought the appointment of an alternative manager under the provisions of section 24 of the Landlord and Tenant Act 1987 (the Act). The application did not indicate who the manager was to be but subsequently it was proposed that Mr Martin Kingsley MRIPM of K & M Property Management Limited from Barnet should fulfil the role.

3. Accompanying the application was a copy of a letter dated 10th July 2017, only 15 days before the application, setting out the concerns of the Applicant under section 22 of the Act. A number of issues were set out. These included an allegation that Dr Ghafari, being the owner of three flats and the controlling director of MMC exercised control contrary to the terms of the lease and the RICS code. There were also complaints made about Breckon and Breckon who are managing agents. Allegations were made that some of the flats owned by Dr Ghafari were being used other than in accordance with the terms of the lease and possibly for immoral purposes. It was suggested also that the banking arrangements fell foul of section 42 of the Act. It is right to note, however, at the time the matter came before us it is accepted that a fire risk assessment had been carried out, that the lights in the common parts were now working and that a problem with a vent in respect of the fire safety equipment had been resolved. There were other issues which we will deal with in due course.

4. Before the hearing we were provided with a bundle of documents running to some 385 pages and we also received skeleton arguments from Mr Maunder-Taylor and from Mr Davies of Counsel. We also had a copy of the fire safety assessment dated 16th February 2016. We noted all that was said in the skeleton arguments and will come back to those in due course. An issue was raised regarding the validity of the section 22 notice which we will deal with in due course.

5. The bundle before us included the application, the directions order and a copy of the lease of Flat 3. We also had the Applicant and second Respondent's statements of case, two witness statements from Dr Ghafari and a witness statement from Mr Bartlett. We were also provided with a witness statement

from Katie Leppard of Breckon and Breckon but she was not able to attend the hearing and instead Ms Bricker attended but adopted the contents of Miss Leppard's statement. Finally, we had a copy of Mr Kingsley's letter setting out his management plan, a draft management order and a copy of the Upper Tribunal case of *IvetaNemcova v Fairfield Rents Limited [2016]UKUT303(LC).*

INSPECTION

6. Prior to the hearing we inspected the Property in the company of the Applicant and second Respondent together with Mr Maunder-Taylor and Mr Davies. Ms Bricker was also there.

7. The Property comprises a purpose built detached building, dating from approximately 2004. The building contained six flats, two at each floor level. There is one entrance and stairs then rising to each floor. Internally, the common parts appeared, on our inspection, to be in good order and were clean. There was common parts lighting which we were told worked by way of an external censor and a wired fire alarm system although no fire extinguishers were present. Externally, the Property is of brick construction with tiled fascias at second floor level, the windows are UPVC, as are the fascias and soffits. There is little woodwork. A bin store holds six bins, although in fact there appear to be 12 bins, being one for recycling and one for general rubbish and some of these bins are stored outside the bin store. There is also a car parking area sufficient to take one car for each flat and an area to secure bicycles. The garden is relatively plain being grassed with a shrubbed border. We noted one of the fences appears to be leaning slightly. The development presented well at the time of our inspection.

HEARING

8. At the start of the hearing Mr Davies on behalf of the second Respondent indicated that he believed that there was a failure in the section 22 notice to state both the grounds and the provisions of section 24 that were relied upon to satisfy us that a management order could be invoked under the Act. It was not he said a technical defect but went to the very basis upon which the Tribunal could act and that the letter referred to above was sufficiently in error for us to disallow the section 22 notice. Whilst the letter appeared to set out the factual grounds relied upon by the Applicant, no indication was given as to how those fitted into the structure of section 24.

9. Mr Maunder-Taylor responded and appeared to indicate that section 22(3) may be invoked if necessary and that it was perfectly reasonable to combine the grounds and the provisions of section 24. Reference had been made in Mr Davies' skeleton argument, which we had noted to the guidance contained in a book from Tanfield Chambers but Mr Maunder-Taylor said that was guidance only. As a failsafe he also directed us to section 24(7) of the Act which says as follows: *"In a case where an application for an order under this section is preceded by the service of a notice under section 22 the Tribunal may if it thinks fit make such an order notwithstanding:*

(a) that any such period specified in the notice in pursuance of subsection (ii)(d) of that section was not a reasonable period or,

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or any regulations applying to the notice under section 54(3)."

10. We do not propose to get too embroiled in this particular matter given our findings. Suffice to say if it were a matter of importance in this application, we would take the view that although the letter from Mr Maunder-Taylor may not comply with the guidance suggested by the Tanfield Chambers book nor set out perhaps in schedule form, the grounds and the relevant parts of section 24 relied upon, it seems to us that anybody reading the letter could quite clearly see what the grounds were and that the allegations contained did fall within the provisions of section 24, at least in some respects.

11. In a short opening to us Mr Maunder-Taylor suggested that Dr Ghafari was in effect in control of the building and that he ignored the lease, the law and the RICS code. The primary concerns were the banking arrangements, the sub-letting and the immoral use. Mr Maunder-Taylor kindly confirmed that the fire risk assessment issue, lighting, cleaning and dustbin areas, which though were not specifically referred to in the section 22 notice, were nonetheless issues of concern to the Applicant, had been resolved. He suggested that these issues gave some indication of the historic problems encountered at the building. There were other minor issues such as the absence of a long term maintenance plan, a suggestion that the external decorative finishes had been neglected and the inappropriateness of paying a gardener in cash. They were not pursued to any great degree at the hearing and we will deal briefly with those in the findings section.

12. Mr Maunder-Taylor then called Mrs Driver-Davidson who relied on the statement of case that she had produced dated 4th November 2017 and which we had had the opportunity of reading in advance. The statement of case was taken as her evidence in chief and she was then asked questions by Mr Davies. Briefly her position appeared to be this. She had met Dr Ghafari in April of 2013 when she had purchased the flat with her husband. No share certificate had been produced but an early meeting had reached some agreement that she would collect post. She was, however, of the view that there had been problems from the time of taking up residence. She said chaos had been caused by short term lets and what seemed to have been a quiet residential apartment block was suddenly subject to a number of children, toys and other matters which affected her enjoyment. She said that there were up to ten children at any one time and she had seen for her own eyes one or other of these children causing damage to her car. There had also been an incident involving a scooter but these were somewhat dated.

13. Asked why she objected to Breckon and Breckon managing the Property, she replied that she was unhappy that they were an asset management company although she had no objection to a property/residential manager being involved. She did not consider her flat an asset and that it should, therefore, be managed by a properly qualified property manager. We were directed to a number of emails that passed between her and Dr Ghafari as well as others. The suggestion was made that the position of her flat meant that she was not able to keep an eye on the coming going from the Flats 1 and 2, which she denied saying that she was in

a position to do so because she stood in the car park and took photographs. We were told that during the period until 2016 it seems that she lived in London with her husband at the weekends and travelled up to the Oxford flat on Monday afternoon returning home Friday or maybe Saturday. During this time, she said that she had seen a number of men entering and leaving particularly Flat 2. She described three different types of men one being in army uniform, the other a businessman and someone else who looked as though they worked on the roads. She had also noticed black bags being left and that curtains were drawn day and night. She had taken photographs of a number of cars and that there was a repetition of some number plates.

14. Her view was that one if not both of Flats 1 and 2 were being used as what she called a pop-up brothel. She reported this matter to the police and was given contact details by Mr Bartlett, who handled the lettings of Dr Ghafari's flats. However, she said to us that she would not contact Mr Bartlett as he was only an agent and that she considered it appropriate to contact Dr Ghafari or Breckon and Breckon. It appears that she was away for a period of time but when she returned the problem still persisted. Apparently, she had acquired the flat with her husband to be near to her daughter and son-in-law and their grandchild. From 2016 it seems that as a result of health issues for her husband they were now permanently living at the Property and proposed to sell their London property and make Oxford their main residence.

15. Asked about her contact with the police, we were referred to a number of emails. It seems, however, from what she was saying that the police decided to take no action because of the nature of the short-term lettings. There was she said no continuous occupation but the police had advised her to keep taking notes. She was satisfied, however, that at times the use of Flats 1 and 2 were not for holiday accommodation or usual short lets. Her complaint has also been put to the Council but that did not seem to take the matter any further. It was put to her that in fact she was aggressive and abusive to people staying at the Property, which she did not accept. Apparently, Mr Bartlett had suggested a meeting at the Applicant's solicitor's office in London but that did not take place. She seemed, however, to be of the view that Mr Bartlett was not an important element in the problem and that this had to be dealt with either by Dr Ghafari or by Breckon and Breckon.

16. In answer to some questions from the Tribunal, she told us that she considered the illegal use was also based on the comings and goings. She had spoken to some of the women who were in the properties in 2014, largely about black plastic bags being stored and there were photographs showing those bags and what apparently seemed to be a used condom and a packet. Asked whether the alleged immoral use continued, she thought that it was and that there were still occupations taking place of one, two or three days. She told us that she had not given Mr Bartlett's details to the police and had only met him a couple of times, the first it appears in 2013. She also told us that the police had been planning a raid but that the alleged faulty parties had moved out the day before.

17. After the luncheon adjournment, we heard from Mr Kingsley, the proposed manager who had provided a management report and a management order which appeared to have been drafted by Mr Maunder-Taylor and which still

contained Mr Maunder-Taylor's details. He told us that he had been involved in leaseholder management for some 31 years and although he had undertaken some commercial management, it was predominantly residential. He confirmed that he managed no properties in Oxford, the nearest being Watford. He has three employees who assist him who are unqualified but are experienced and have been trained by him. He referred to notes of an inspection, which appeared to be on the back of a compliments slip indicating that he had looked at the Property some three months before in the presence of the Applicant and thought that there were matters that required attention. These included the cleaning, the bin stores and a general cleaning, which he noted was poor. He also referred to a rear fence which was falling over, a broken bollard and some tree damage.

18. He said that it would be necessary to carry out internal and external decorations. He indicated that he thought the interior required smartening and that externally the Property had not been refurbished, he thought since prior to 2010 and that it would be prudent to deal with it now. He said that he would inspect the Property on a quarterly basis and that he made his assessment of works based on his own observation and matters that he was told by the Applicant. He told us that he has an out-of-office telephone number. Apparently, he is now a Tribunal appointed manager for seven blocks but felt that they could give sufficient care to the Property if he was appointed.

19. Under further questioning it became apparent that he had not appreciated that the windows to the development were UPVC as were the fascias and soffits. It also appears that the management order that he had seen was not the one included within the bundle before us. Although he clearly has a number of management orders in his possession, he had not produced any.

20. After Mr Kingsley, we heard from Dr Ghafari. He had provided two witness statements but Mr Davies concentrated on the second one as the first witness statement dealt with his application to be joined as a party. We noted the contents of the second witness statement and as with the Applicant, it does not seem to us necessary to recount that in any great detail as it is a document common to both parties. However, in answer to questions from Mr Davies as additions, he confirmed that at the conclusion of the letting agreement to Premier, which is the end of March this year, he would be intending to discontinue the arrangement that allowed short-term lets and to revert to AST lettings. He did not, however, accept that he was in control of the management of the Property although conceded that although there had been an attempt to arrange directors' meetings none had taken place since 2013.

21. He confirmed he had every confidence in Breckon and Breckon and attended their offices most months to deal with payment of invoices and to check the accounts. He also checked site visit reports. He told us that the internal parts had been decorated in 2015 as had the front door and denied that other works undertaken were only as a result of the service of the section 22 notice. He told us that in his view Breckon and Breckon monitored the position well. As to the gardener, who had been employed for some time, apparently he sent texts and photos to Dr Ghafari if there were any problems. Mention had been made in the Applicant's evidence of tree works but no works were required so far as he was aware and certainly this had not been raised by other tenants.

22. On the question of banking, he accepted that the bank account in the first Respondent's name was not recorded as a trustee or client account. He said that when management had moved from Hazelvine he had wanted to use somebody local and also to keep the service charges at no more than £900 per annum per flat. He conceded that Breckon and Breckon had recommended the transfer of the account to them, but he said he wanted to check accounts and to issue cheques thus keeping some control. He was asked what would happen if MCC went into liquidation as that could affect the accounts. For his part he could see no reason why this should happen. The only income in respect of the MCC account was in relation to service charges and that was the only outgoings.

23. He confirmed he had no insurance to cover him as a director and seemed to be unsure how he would cope if he were sued for negligence. However, he was of the view that Breckon and Breckon would deal with that position and confirmed that if no appointment of manager order was made, he would be happy to pass over the bank account to Breckon and Breckon for them to deal with.

24. He was then asked about the agreement he had entered into with Mr Bartlett's company which resulted in him allowing Premier Lettings to use the Flats 1, 2 and 6 from March 2013 to March 2018. It was put to him that this was in breach of the terms of the lease as it was a letting which would have required a deed of covenant and no such deed had been obtained. He told us that he had sought the advice of solicitors and a surveyor on the question of the sub-letting and had been told that it was satisfactory. He said that he relied on Mr Bartlett, as he did with Breckon and Breckon, to act professionally. He did not, however, sign any agreements that Mr Bartlett's company may enter into with any tenants and had no real knowledge of the terms of any lettings. He confirmed that Premier did handle some other flats of his but this was the only property where they had three flat under their control. He said he was aware of complaints and had inspected the Property and indeed visited regularly. He did not, however, contact Premier nor visit their office to see who was occupying his three flats. He told us that he had no contact from the police or the Council but that he had spoken to other tenants who did not appear to have the same problems, although he did have complaints from them about the behaviour of the Applicant.

25. He could see no need for planned maintenance at present. There was apparently over £12,000 in the MCC account. The Property was low maintenance, only containing six flats and he was satisfied that as and when work was needed, it could be dealt with.

26. He was referred to a copy of the accounts which showed that there had been painting to the staircase in 2015. We were told that most flats were around 1,000 square feet containing two or three bedrooms. He again denied that he had control but accepted that the Applicant as a director should be involved. It appeared that the Applicant had tried to obtain financial details from Breckon and Breckon but was told that she should just rely on the accounts. Finally, he did give us his word that in the future any letting arrangements would only be as an AST and not short-term lets.

27. We then heard from Mr Bartlett. He confirmed that they did carry out checks on people intending to rent the flats to make sure the information they had given to Premier was bona fide. Checks were made through Airbnb and he also worked closely with three other companies in Oxford who dealt with short-term lets. Apparently, those companies together with Mr Bartlett had produced a blacklist of tenants and these were checked before any letting took place. He told us about the problems he had had with another property where it appears a brothel had been set up. The police were informed and within a short period of time the property was raided and the occupiers had vacated.

28. Asked about his relationship with the Applicant, he told us that he was hands-on at the start when she had made complaints. He gave her his personal phone number and had attended the Property he thought perhaps as much as ten times. However, he pointed out that the complaints were often about her and she would not liaise with him. It now appears that his father carries out personal checks on each tenant to ensure that they will act in a proper manner.

29. Under cross examination, he told us that the five-year agreement he had entered into had been drawn up Dr Ghafari's solicitors and he had taken no legal advice. He said that he had read the terms of the lease but had not appreciated the need for a deed of covenant. He was aware of the residential usage contained within the terms of the lease, he felt that that usage was not being breached by the arrangements. He had produced a list showing the types of lettings that had occurred. This indicated that from April 2013 to November 2017 there had been a total of some 258 stays. The bulk were holiday lets of periods of one to seven nights, again most of those lettings came through Airbnb although some were unknown. He explained that as being perhaps a deficiency of his records as he could not find out exactly what might have been the case from some files. He confirmed that he had never been approached by the police in respect of the Property and had never been obliged to ask any tenant to vacate a flat at the Property.

30. He told us he was stopping the short-term lets at the Property because the rates now achievable are not sufficient as it is a crowded market and also the Applicant's negative attitude has an impact on tenants. He thought it would be a good idea if short lets ceased to apply at the Property as these appeared to be the main subject of the Applicant's complaint. He was asked a number of times whether he thought an independent manager would be appropriate but was not drawn on that subject.

31. Asked a little more about the types of lettings, he told us that he provided weekly cleaning, although there would be a change-over of linen and bedding if the lettings were on a shorter basis. There was cleaning equipment in the flats. The Airbnb arrangements were now more competitive and more secure financially. There was greater control over the occupiers and this had improved over a passage of time. If there had been illegal use by a proposed tenant in another flat, that would he thought be capable of discovery through the web site checks that can be undertaken. If the proposed tenant were new, then there would be no profile and that would not be quite so easy but he told us that there could be a refusal to let if there was no such review. It was he said down to him to make the final decision.

32. Finally, we heard from Ms Bricker replacing Katie Leppard as a witness. Her witness statement was noted and we had had the opportunity of reading that in advance. She told us she had joined Breckon and Breckon in 2015 and reported directly to Katie Leppard. She did deal with the day to day management of the flats but it was Katie Leppard who did most of the inspections and made the decisions on matters. She told us she was aware that the Applicant was a director of the first Respondent but she had not dealt with the enquiry made by the Applicant concerning the accounts and would not hand over documents without first speaking to Miss Leppard. She confirmed that Dr Ghafari attended their offices about once a month to go through the bills and to sign cheques. It was, she conceded, unusual for a director to do this but there was at least one other example where this happened. She told us that the company managed over 60 blocks of flats and there had been training, for example on the provisions of section 42 of the Act.

33. We then invited submissions from both Mr Davies and Mr Maunder-Taylor. Mr Davies referred us to the terms of his skeleton argument and whether or not the short term lets breached the terms of the lease was a question of law. The matter we had to decide was whether it was just and convenient to make an appointment. He accepted that some short stays would be acceptable but some may not be. Clearly immoral use would not. He referred to the fact that there had been involvement of the police and the Council but in fact nothing had occurred. There had been no raid in 2014, although one might have been planned, which was in contrast with the situation which Mr Bartlett found himself in another property where the police came very quickly. Other occupiers of the Property had not complained, for example tenant in Flat 4 which was above Flat 2 had not made complaints and nor had the tenants of Mr Pearson in Flat 5. He suggested to us that Mr Bartlett was conscientious using the Airbnb enquiries and that he presented as a responsible agent who had given his details to the Applicant, although she had chosen not to approach him.

34. He said we should also consider the Applicant's conduct. There had been issues with contractors and Miss Sharda, the tenant of Flat 4, complaints made to Mr Bartlett and to Breckon and Breckon and to Dr Ghafari.

35. Insofar as the Property itself was concerned, he submitted that it was well presented in well-kept grounds. The proposed manager had been suggesting issues that did not exist and a number of matters had been resolved.

36. As to the bank account, he reminded us that it was a limited company and held only lessee's funds. There may technically be a breach but that could easily be resolved by transferring the account to Breckon and Breckon. Returning the to just and convenient point, he submitted that any alleged immoral use appeared to be largely in 2014 and although it was said to be continuing, there was sparse references to same. We also were reminded that Dr Ghafari had given his word not to allow short-term lets in the future. He said the proposed manager was distant from Oxford, his nearest property being in Watford, he was already responsible for seven management properties and it was he suggested impractical for him to deliver a suitable service. Furthermore, the costs were some three and a half times more than presently charged and none of the other lessees supported

the application. Mr Kingsley was not it was suggested by Mr Davies the man for the job.

37. Mr Maunder-Taylor reminded us that the difficulties in this case revolved around Dr Ghafari owning three of the properties and being proxy for the fourth. There were no director's meetings, no information was made available to the Applicant only the accounts. The culture appeared to be to keep costs as low as possible, which he suggested had been achieved by neglecting the Property and repairs. Some items have been undertaken since the section 22 notice had been served but he submitted in evidence Dr Ghafari had indicated that if the current management arrangements remained, not a lot would change. He said that he would prevent short-term lets but was unclear about the banking arrangements. Mr Maunder-Taylor was of the view that he acts to control income and expenditure, the latter being limited as much as possible.

38. He thought a two-year appointment of Mr Kingsley would enable the Property to be got back on track and that until then it was not just and convenient to give Dr Ghafari control. This had been going on for a number of years and an independent person was required. Insofar as Dr Ghafari was concerned, it was suggested that he has not read the lease properly. This was evidenced by the lack of the deed of covenant with Mr Bartlett's company, a lack of familiarity with both section 42 of the Act and the RICS code. He took no responsibility, had no minutes of any meeting and in Mr Maunder-Taylor's view the management was out of control and desperately needed an independent person to take over.

39. Few he said would be willing to take on the role as a Tribunal appointed manager and it would be difficult to deal with the issues, the problems having been built up but he thought that two years would enable the matters to be put right. Whilst conceding that Mr Kingsley had made some mistakes, he was of the view that he was a suitable candidate and it was only after appointment and a full inspection and review that he would able to assess what was needed.

40. After we had heard from both Mr Davies and Mr Maunder-Taylor, we were told that there were no applications for costs, no section 20C application and no other matters for us to consider.

THE LAW

41. The law applicable to this matter is set out below.

FINDINGS

42. We will firstly dispose of the argument concerning the validity of the section 22 notice, although given our decision this is of little importance. However, we find that we prefer the argument of Mr Maunder-Taylor namely that the notice does make clear to anybody reading it, the grounds can easily be interpreted by reference to section 24. Furthermore, the provisions of section 24(7) set out above would seem to enable us to rescue the situation. It is not clear that the preparation of the notice by a professional has any bearing on the exercise of our discretion under that subsection. Nothing would be gained by striking out the Notice at the hearing. The parties were present, the Respondents were well aware

of the complaints made and, in those circumstances, we find that the section 22 notice was effective.

43. The more difficult matter is whether or not it is just and convenient to appoint an independent manager to handle this Property. We remind ourselves that this is a fairly newly built Property containing six flats with an uncomplicated legal and physical structure. It should not require a great deal of management input. There is no complaint by Mrs Driver-Davidson that the service charges are excessive. The latest set of accounts to March 2017 show no particularly unusual items of expenditure and the present management fees are around £195 per flat contrasting with the £600 plus VAT that Mr Kingsley proposes. It is a property that should be capable of being managed without that level of expense being incurred.

44. We have little doubt that the short-term lettings that have been allowed by Dr Ghafari have caused problems, particularly to the Applicant. She is of course the only resident leaseholder. Dr Ghafari owns three of the six flats, is a proxy for the fourth and Mr and Mrs Pearson own the other. None live at the Property although we were told that Mr Noon's son now occupies Flat 4 whilst a property they are intending to live in is renovated.

45. There is a conflict of interest as to the usage to which the short-term lets have been put. There is no doubt that there have been short term lets and if one reviews the Upper Tribunal decision referred to above of Nemcova v Fairfield Rents, there is an argument that could be raised by a landlord in a forfeiture case that the usage of the flats by Dr Ghafari are in breach of the terms of the lease.

46. In the present case of course we have a lessee-controlled management company, which despite Dr Ghafari's comments does seem to be largely administered by him, and the practicalities of bringing an action for breach of covenant against a lessee who controls four of the six flats is to say the least problematic. Whether there is the possibility of some form of claim for derogation of grant is another matter but it is unclear what benefit there would be to the Applilcant i9n any such action.

47. However, we must deal with the practicalities. We were not overly impressed with Mr Kingsley as a witness who attended a hearing with notes written on the back of a with-compliments slip and failed to appreciate the construction of the windows and other elements of the building. This did not inspire us with confidence. Furthermore, we think that as he is a Tribunal appointed manager of seven other properties in London, he has enough on his plate without having an additional property in Oxford, which appears to be off his usual range.

48. The real issues in this case are the short terms lets, the control of the bank account and what appears to be the exclusion of the Applicant from management decisions. We are not satisfied that the appointment of Mr Kinglsey is just and convenient.

49. However things do need to change and we rely on Dr Ghafari's promise to the Tribunal, that he will desist from using his three flats for anything other than AST lettings. We hold him to that promise. We do not consider that we can take an

undertaking from him but if he fails to adhere to this arrangement once his letting agreement with Mr Bartlett's company stops at the end of March, then he may find himself on a sticky wicket if a further application is made for the appointment of a manager. As to the question of the bank account, this we think can be simply dealt with by it being transferred into the control of Breckon and Breckon who will ensure that it complies with the provisions of section 42 of the Act. A separate account for reserve fund monies would seem to be necessary. It would also, we would hope, allay any concerns that Mrs Driver-Davidson has about Dr Ghafari having total control. She is of course a director of the company and has certain rights that she could invoke under company law.

50. We believe from the evidence given to us that there have been instances when the Applicant has perhaps reacted to circumstances in a somewhat unhelpful manner. However, equally we accept that it must be fairly galling to live in such a property to find your car parking space taken or blocked and there being a constant turn round of people occupying flats when you are trying to make the place your home.

51. The other issues raised in the section 22 notice are minor. Much have now been resolved. We cannot see at the moment there is the need for a planned maintenance programme given the age of the block and its construction. As we have indicated above, the setting up of a separate bank account to hold what might be constituted a reserve fund would make sense. However, there appears to be no indication that the Property is being managed generally in an unsatisfactory manner. Certainly, when we inspected it presented well and was clean and well maintained.

52. In the circumstances we decline to make an order appointing Mr Kingsley.

53. Accordingly, whilst not making an order for the appointment of Mr Kingsley as a manager, we do reiterate the need for Dr Ghafari to desist from using his flats on short-term lets and to hand over more control to Breckon and Breckon who he appears to have faith in and who on the face of it seem to be doing a reasonable job. Furthermore, it is we think appropriate that he calls regular directors' meetings, perhaps one a year, where those directors can participate. Whether Mr and Mrs Pearson can attend is a matter for them but he needs to engage with Mrs Driver-Davidson so that she feels part of the management process. We hope that in preventing short-term lets and dealing with the bank account as we have indicated, this will be an easier process.

54. Neither party sought costs from each other and accordingly there are no further orders to be made in this case.

Andrew Dutton

Judge: A A Dutton

Date: 24th January 2018

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

The Relevant Law

22 Preliminary notice by tenant.

(1)Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—

(i)the landlord, and

(ii)any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2)A notice under this section must—

(a)specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;

(b)state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;

(c)specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d)where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e)contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4)In a case where—

(a)a notice under this section has been served on the landlord, and

(b)his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage,

the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

24 Appointment of manager by a tribunal.

(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

(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)where the tribunal is satisfied—

(i)that unreasonable variable administration 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 a code of practice approved by the Secretary of State under section 87 of the **M1**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.

(2ZA)In this section "relevant person" means a person—

(a)on whom a notice has been served under section 22, or

(b)in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A)For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a)if the amount is unreasonable having regard to the items for which it is payable,

(b)if the items for which it is payable are of an unnecessarily high standard, or

(c)if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B)In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3)The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4)An order under this section may make provision with respect to—

(a)such matters relating to the exercise by the manager of his functions under the order, and

(b)such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5)Without prejudice to the generality of subsection (4), an order under this section may provide—

(a)for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b)for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c)for remuneration to be paid to the manager by any relevant person , or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d)for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6)Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7)In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a)that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b)that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8)The M3Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) the tribunal shall not vary or discharge an order under subsection (9) on the application of any 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.]

(10)An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11)References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.