



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

Case reference : **LON/00AU/LVM/2018/0009**

Property : **Hunter & Fisher Houses**

Applicant : **Mr Michael Maunder Taylor**

Representative : **N/A**

Respondent : **The Lessees of Hunter & Fisher
Houses (1)
G & O Estates Limited (2)**

Representative : **N/A**

Type of application : **Variation of an Order appointing a
Manager**

Tribunal member(s) : **Judge Carr
Mr Cairns MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **11th June 2018**

DECISION

1. The application is from the present tribunal appointed manager of the property, Mr Maunder Taylor who seeks the variation of an order appointing a manager under section 24(9) of the Landlord and Tenant Act 1987 (the Act).
2. Mr Maunder Taylor seeks to vary the terms of the order as follows:
 - (i) To allow the landlord to arrange buildings insurance in respect of both houses and

- (ii) To allow the manager to arrange buildings insurance in respect of all flats and common parts and the garages and
 - (iii) To allow the landlord to create a reserve fund and collect reserve fund contributions from lessees.
- 3. The First Respondents to the application are the long leaseholders of Hunter and Fisher Houses. The Second Respondent is the landlord.
- 4. The directions determined that the matter was suitable for a paper determination, unless any request for an oral hearing was received. No such request having been received the matter is being considered on the basis of the written arguments and documents presented to the tribunal.

The arguments of the Applicant

- 5. The Applicant seeks variations of the management order in connection with the power to arrange buildings insurance and in respect of establishing a reserve fund.

Buildings insurance

- 6. The Applicant refers the tribunal to paragraph 1(b) of the current Management Order which provides the Manager with the power and duty to carry out the obligations of the Second Respondent contained within the leases. He also refers the tribunal to various clauses of the leases. He has emphasised particular parts of the relevant clauses, which the tribunal has highlighted.
- 7. Clause 4(vii) of the lease obliges **the lessee** to insure the demised premises against **loss or damage by fire and such other risks as the lessors think fit**.
- 8. Paragraph 5 of the Fourth Schedule of the lease provides for the cost of insurance against **third party risks** in respect of the mansion to be recovered via a service charge, if such insurance shall in fact be taken out by the lessors. The mansion is defined in the recitals of the leases as including the building, the garages and the grounds.
- 9. The Applicant tells the tribunal that the present position is that the Applicant arranges buildings insurance for the common parts of the properties and the lessees are left to arrange buildings insurance for their respective flats and garages if applicable.
- 10. In the event the present position has proved problematic. Dry rot took hold following an escape of water from what turned out to be an uninsured flat. This led the Applicant to write to all lessees requesting confirmation that they had arranged buildings insurance. It transpired that a number of lessees had not arranged building insurance. Allianz Insurance, the current underwriter, would not allow the Applicant to

quote for these individual flats as the dry rot needed resolving first, and furthermore Allianz were no longer agreeable to insuring additional flats on an individual basis.

11. The claim monies in connection with the dry rot damage were paid out later in 2017. Allianz have confirmed that they are agreeable to quoting for one collective policy for all flats at Hunter House and one collective policy for all flats at Fisher House, one policy for garages at Hunter House and one policy for garages at Fisher House. This can only be implemented if the terms of the Management order are varied to provide the Applicant with necessary power.
12. The Applicant submits that it is not in the interests of any lessee at the properties for one or more flats to be without appropriate insurance in the event of a major loss such as a fire. The most efficient way of resolving this matter satisfactorily in the view of the Applicant, is to vary the Management order in the manner sought.

Reserve fund

13. Paragraph 1(d) of the current Management Order, as varied on 16th March 2004, provides for the Manager to serve appropriate consultation notices under section 20 of the Landlord and Tenant Act 1985, and at the conclusion of the appropriate consultation period, each leaseholder shall pay their respective contributions within 14 days of the Applicant's written demand.
14. There is no other provision within the Management Order or the lease enabling the Applicant to establish a reserve fund.
15. The Applicant argues that it is best practice and in line with the current edition of the RICS Code of practice, to have a reserve fund. Whilst he agrees that this could be achieved by a variation of the lease, the Applicant submits that the more cost effective route is to vary the Management Order.
16. The Applicant argues that the variation sought will not result in a recurrence of the circumstances which led to the order being made and that it is just and convenient in all the circumstances.

The position of the Respondents

17. The Applicant has informed all of the Respondents of the proposed variations to the Management Order. There is some indication of support from the Respondents.
18. The lessees of 1 Fisher House objected to the application in the following terms. 'While we are sympathetic to the broad aims of the Applicant, their application is currently written is unacceptable'.
19. The specific arguments of the lessees of 1 Fisher House are, in connection with the insurance position, that there should be a greater

clarity of the necessary detail and consultation with the garage lessees. They also argue that they currently have an insurance contract in place which includes cover against the risks the Applicant seeks to manage.

20. The lessees suggest that to avoid double insurance and unnecessary cost to the Lessees, the court order should impose a clause such that the Applicant insures each risk as Lessee's extant policies expire.
21. In connection with the reserve fund the Lessees of Flat 1 Fisher House argue that, whilst in principle they agree that best practice recommends establishing a reserve fund, there is a problem with varying the management order to achieve such a fund. They argue that the change is to the financial detriment of the lessees and potentially leaves a legacy balance after the Applicant's position as property manager ends. The lessees of Flat 1 Fisher House suggest that protections should be built into any variation of the management order on the lines of the RICS Code of Practice provisions on reserve funds.
22. They also suggest that the balance of the fund should be repaid to the contributing lessees at the determination of the fund. This they accept is contrary to the general expectation in the RICS guidance but is necessary in this particular circumstance because the lease provides no right to set up a reserve fund which is created only by the let of the lessees.

The decision of the tribunal in connection with the proposed variation in respect of insurance

23. The tribunal determines to grant the variation sought in connection with insurance provision.

The reasons for the decision of the tribunal

24. The tribunal has considered the application with varying the provision to include responsibility for insurance. There is no argument that the variation will lead to a recurrence of the circumstances which led to the order being made and it further considers that it is just and convenient in all of the circumstances to make the order sought.
25. It notes the objection of the lessees of Flat 1 Fisher House, but considers that whilst there is a risk of some double payment, the benefit gained by the variation outweighs what it considers will be a minimum cost. It also notes that following receipt of the objections from the lessees of Flat 1 Fisher House the Applicant fully consulted on the details of the new provision.

The decision of the tribunal in connection with the variation requested to establish a reserve fund

26. The tribunal determines not to allow a variation of the management order to enable the establishment of a reserve fund.

The reasons for the decision of the tribunal

27. The tribunal notes the terms of the RICS Code of Practice in relation to reserve funds and in particular its advice that no attempt to collect funds for a reserve fund should be made when the lease does not permit it. It accepts the arguments of the lessees of Flat 1 Fisher House that problems may be caused if and when the management order terminates.
28. It considers that variation of the management order is not the appropriate way to deal with the inadequacy of the lease with respect to the lack of a reserve fund because no management order can be permanent. Even this management order, which does not provide an expiry date, will inevitably terminate at which time a lease variation will have to be sought.
29. Instead the tribunal draws on the RICS Code of Practice paragraph 7.5 which provides advice on how to proceed when there is no provision for a reserve fund. It suggests that the manager should make leaseholders aware and encourage them to make their own long-term saving provisions towards the estimated expenditure. The tribunal is of the view that the manager should consider making an application for variation of the lease to allow for a reserve fund to be set up.
30. The variation as ordered is attached to this decision.

Name: Judge Carr

Date: 11th June 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

CASE NUMBER: LON/00AU/LVM/2018/0009

PROPERTY: HUNTER & FISHER HOUSES, LONDON N19

BETWEEN:

B R MAUNDER TAYLOR

Applicant

AND

THE LESSEES OF HUNTER & FISHER HOUSES (1)

G & O ESTATES LIMITED (2)

Respondents

**ORDER PURSUANT TO SECTION 24(9)
OF THE LANDLORD & TENANT ACT 1987**

The Order for the appointment of a Manager under section 24 of the Landlord & Tenant Act 1987, made on 20 August 2003, as varied by Order on 16 March 2004, is hereby varied as followed:

1. While Mr B R Maunder Taylor FRICS MAE shall remain manager of the Property, the Manager is hereby authorised:
 - a. To insure, as a cost to the service charge account the whole of Hunter House including all flats and the common parts and the whole of Fisher House, including all flats and the common parts.
 - b. To insure Garages 1, 3 and 4 Hunter House, and Garages 2, 3, 4, 5, 6, 7, 8, and 9 Fisher House, as a cost to the owners of those individual garages.

SIGNED: *Judge Caw*

DATE: *11 June 2018*