



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

**Case reference** : **LON/00AX/LVM/2018/0007**

**Property** : **41 The Avenue, Surbiton, Surrey  
KT5 8JW**

**Applicant** : **David Gaster (leaseholder)  
Mark de Brett (leaseholder)  
Mansoureh de Brett (leaseholder)**

**Representative** : **N/A**

**Respondent** : **DWD Property and Investment  
Company Limited (freeholder)  
James Harradine (leaseholder)  
Hester Decouz (leaseholder)  
Sarah Robertson (Manager)**

**Representative** : **N/A**

**Type of application** : **Variation of order appointing a  
manager**

**Tribunal member(s)** : **Tribunal Judge Prof R Percival  
Mr H Geddes RIBA**

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

**Date of decision** : **9 April 2018**

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**DECISION**

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### **The application**

1. The Applicants apply under section 24(9) of the Landlord and Tenant Act 1987 ("the Act") for a variation in an order made under section 24(1) of the Act dated 22 May 2015; and for an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs of the proceedings may not be recovered through the service charge.
2. The application for variation is that the order be extended for three years, and that alternative arrangements be made for the remuneration of the manager.

### **Background**

3. Ms Robertson is the current manager. The existing order expires on 31 May 2018. The original order was made with the consent of the freeholder, with no other party objecting.
4. In directions dated 20 February 2018, the Tribunal ordered that forms be sent to the parties upon which they could indicate whether they supported or opposed the applications, and whether they wished the application to be heard orally. Responses supporting the applications were received from the first Applicant and the Manager. No responses opposing the applications were received. No responses requested an oral hearing.
5. On 28 February 2018, the second and third Applicants were added.

### **Determination**

6. The application states that when the original application was made, it was envisaged that a specified schedule of works would be undertaken under the order. During the existing currency of the order, all but one of 22 items on that schedule have been completed. The outstanding matter is described as "landscaping issues". The applicant states that the works under this head will cost in the order of £15,000, and that the manager and the leaseholders have agreed that they should be paid for from a sinking fund, which is accordingly being built up, £3,000 being collected annually. The intention is to complete these works in the last year of the extended period proposed. In the interim, it is proposed that Ms Robertson continue to undertake the day to day management of the property.
7. We note that there is no opposition to the variation of the order, and that the Applicants state that the works envisaged have been agreed between the manager and the leaseholders.
8. We consider that the reason for proposing the extension of the order is a reasonable one, and accordingly consider that it is just and convenient in all the circumstances to so order.

9. The parties should note, however, that any application to further extend the appointment will be closely scrutinised by the Tribunal.
10. The basis upon which it is contended that remuneration of the manager should be varied is set out in a statement of case by the manager. She related that during the currency of the order to date, £400 a year has been collected under a provision of the original order, which made allowance in paragraph 16 for reasonable fees for duties set out in paragraph 2.5 of the RICS Code. These relate to major works subject to statutory consultation, and are in addition to a per unit fee of £250, and 8.5% of the net cost of major works.
11. The statement of case states that, should the order be extended, the work (we assume, before the major landscaping exercise) will not be such as to trigger the statutory requirement for consultation, and that therefore this provision should be made referable to paragraph 2.4 of the RICS Code (as is the unit cost).
12. The application is unopposed. The per unit fee is reasonable and moderate. In the circumstances, we consider it just and convenient to allow the variation.
13. In the circumstances, we consider it unlikely that any costs will fall on the Respondent. Nonetheless, we accept that it would be reasonable to make an order under section 20C of the Landlord and Tenant Act 1985, and hereby do so.

**Name:** Tribunal Judge Prof R Percival **Date:** 9 April 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).



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**ORDER**

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1. It is ordered that the Management Order made by the Tribunal under case number LON/00AX/LAM/2015/0002 dated 22 May 2015 be varied as follows:

(i) That in paragraph 2, the date “2018” be deleted and “2021” be substituted.

(ii) That in paragraph 16, sub-paragraph a. be deleted and the following substituted:

“An annual fee of £250 per flat plus an annual fee of £400 for performing the duties set out in paragraph 2.4 of the RICS Code.”

**Name:** Tribunal Judge Prof R Percival **Date:** 9 April 2018