



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

**Case Reference** : CHI/29UL/LAM/2020/0001

**Property** : 1, The Leas, Folkestone, Kent CT20 2DR

**Applicants** : The long lessees, members of 1 The Leas Residents Association (1TLRA)

**Representative** : Comptons Solicitors LLP

**Respondent** : Champion and Bushell Limited

**Representative** : Allsquare Law

**Type of Application** : Appointment of a manager

**Tribunal Member(s)** : Judge J Dobson  
Mr W H Gater FRICS MCI Arb

**Date of Order** : 16th December 2020

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**MANAGEMENT ORDER**

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1. In this Order:
  - 1.1. **“The Property”** includes all those parts of the property known as 1, The Leas, Folkestone, Kent CT20 2DR.
  - 1.2. **“The Landlord”** means Champion and Bushell Limited or their successors in title to the reversion immediately expectant upon the Leases.
  - 1.3. **“The Tenants”** means the proprietors for the time being of the Leases whether as lessee or under-lessee and "Tenant" shall be construed accordingly.
  - 1.4. **“The Freeholder”** means Palinbrook Limited and Sandgate Nominees Limited or their successors in title.
  - 1.5. **“The Leases”** means all leases and/or underleases of flats in the Property.
  - 1.6. **“The Manager”** means Mr Jonathan Mothersdill.
  - 1.7. **“The Interim Management Order”** means the Interim Management Order dated 30 June 2020.
  - 1.8. **“The Management Order”** means this Order of today’s date.
  - 1.9. **“The Functions”** means any functions in connection with the management of the Property, including any obligations and powers of the Landlord under the Leases and including, but not limited to, the matters set out in the Schedule of Functions and Services referred to in and attached to this The Management Order
  - 1.10. **“The Code”** means the Royal Institute of Chartered Surveyors Service Charge Residential Management Code 3rd Edition.
  - 1.11. **“The Fee Proposal”** means the fee proposal document submitted to the Tribunal by the Manager and dated 26th June 2020.
  - 1.12. Reference to “the Tenants” shall be a reference to them both jointly and severally and the obligations on each of their parts shall be owed respectively jointly and severally and shall include their respective successors in title.
2. In accordance with s.24(1) of the Landlord and Tenant Act 1987 the Manager shall be appointed as manager of the Property as from 16th December 2020.
3. The Order shall continue until 30<sup>th</sup> June 2022.

4. In the event that either or both parties wish to extend the term of the Management Order, then they shall each / jointly apply or write (as appropriate) to the Tribunal by 30 April 2022 to inform the Tribunal of their request. If all parties agree to the extension of the term of the Management Order and agree the length of the extension, then the Tribunal may, if it determines it appropriate to do so, make any further Order on paper.
5. The primary purposes of the Management Order are arranging and overseeing the carrying out of works to the Property (save any completed during the period of the Interim Management Order) in relation to fire safety, water assessment and safety, lift safety, loose masonry/tiles and other health and safety concerns as soon as possible, including- but not limited to- arranging for any appropriate further survey of or other report on the building with a view to producing a programme of repairs and maintenance to implement the works reasonable, to tender for those works and appoint appropriate contractors, and to carry out any appropriate section 20 consultation on the proposed works, and further to raise the funds by way of service charges to meet the costs of the reasonable works.
6. The Manager shall manage the Property in accordance with:
  - a) the Directions and Schedule of Functions and Services attached to this Order;
  - b) save where modified by this Order, the respective obligations of the Landlord and the Lease whereby the Property is demised by the Landlord and in particular with regard to repair, decoration, provision of services and insurance of the Property;
  - c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development act 1993; and
  - d) The provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.
7. Notwithstanding any provision in the Lease, and for the avoidance of any doubt, this order applies permits the Manager to recover the costs as service charges of any works that may be construed as improvements to the Property.
8. The Manager shall keep the Landlord and the Tenants informed of the progress of the works and will supply them with copies of all material correspondence and documents relating to works at the Building. The Manager will report to the Landlord and the Tenants on the progress of the works every month.

9. The Manager shall register the Order against the Landlord's registered title K646062 as a restriction under the Land Registration Act 2002 or any subsequent Act. The wording of the restriction shall be:

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration [or their conveyancer] that the provisions of paragraph 19 of the Order of the Tribunal dated 16th December 2020 have been complied with.”

10. The Manager shall, within 14 days, inform the Freeholder, of the making of this Order.
11. Pursuant to s.20C of the Landlord and Tenant Act 1987 and on the Tribunal finding it to be just and equitable, the Respondent's costs for this application shall not be added to the service charges.

## **DIRECTIONS**

12. From the date this Order comes into effect, namely 16th December 2020, no other party including the Freeholder shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
13. Where there is a conflict between this Order and any provision in any Lease of a flat within the Property, the terms of this Management Order shall prevail.
14. The Landlord and its servants or agents shall give all reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of his said rights, duties or powers by due process of law. For the avoidance of doubt this shall not prevent the Landlord from bringing legal proceedings (or any other due process of law) should the Manager act unlawfully and/or negligently and/or contrary to the powers and duties set out in this Order.
15. The Landlord and its servants or agents shall allow the Manager and his employees and agents access to all parts of the Property in order that the Manager might conveniently perform his functions and duties and exercise his powers under this Management Order.
16. The rights and liabilities of the Landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall from the date of this order retain the rights and liabilities of the Manager throughout the term of this Management Order.
17. The Manager shall act fairly and impartially in his dealings to all parties concerned in respect of the Property.
18. The Manager shall in the performance of his 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.
19. On any disposition [other than a charge] of the Landlord's estate in the property registered under title no K646062, the Landlord will procure from the disponee of the property, a direct covenant with the Manager, that the disponee will (a) comply with the terms of this order and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from its disponee.
20. From the date of appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £2million and shall provide copies of the

current cover note upon a request being made by any Tenant of all or any part of the property, the Landlord or the Tribunal. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

21. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the Leases) in accordance with the Schedule of Functions and Services attached.
22. Within 56 days of the conclusion of the Management Order the Manager shall prepare final closing accounts. The Manager shall also serve copies of the accounts on the Landlord, and Tenants who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter the Manager shall reimburse any unexpended monies to the paying parties, or, if it be the case any new Tribunal appointed manager or, in the case of dispute, as decided by the Tribunal upon application by any interested party. The Manager shall supply a copy of the Final Accounts to the Tribunal.
23. The Manager shall prepare a report by no later than 7th January 2022 on the progress of the management of the Property up to that date and shall electronically file such report with the Tribunal and provide a copy to the 1 The Leas Residents' Association and the Respondent. The report shall provide:
  - i) an update generally, including in which as to major works;
  - ii) indicate any issues that have arisen and remain, with a plan to address them and
  - iii) set out any specific matters to be addressed before 30th June 2022 and whether those are anticipated to be completed before that.
24. The Manager may apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987. Such directions may include (but are not limited to) the following:
  - a. any clarification or confirmation of the Manager's powers and responsibilities, including but not limited to those additional to a managing agent;
  - b. any failure by any party to comply with an obligation imposed by this Order;
  - c. (if so advised) upon the service of the reports in paragraph 24 and 25 of these directions;
  - d. further directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or pay the Manager's remuneration; and/or
  - e. any other matter in connection with the management of the Property including inter alia his entitlement to be remunerated

in respect of any matter or step he is required to take in the exercise of his functions.

## **SCHEDULE OF FUNCTIONS AND SERVICES**

The Manager shall:

### **Insurance**

1. Maintain appropriate building insurance for the Property.
2. Ensure that the Manager's interest is noted on the insurance policy.

### **Ground Rent**

3. Collect and account for the ground rents payable under the Leases.

### **Service charge**

4. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the under-lessees as per the percentage share of under the terms of their under-lease.
5. Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the property within the service charge budget.
6. Have the authority to demand as soon as the Manager shall consider it appropriate from the date of this order and in addition to the provisions in the Fourth Schedule to the Leases and otherwise within the Leases, payments in advance, to facilitate urgent and other reports and works, and balancing payments at the end of the accounting year, to establish a sinking fund to meet the Landlord's obligations under the Lease, to allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund.
7. Administer the service charge and prepare and distribute appropriate service charge accounts to the Tenants as per the percentage share under the terms of their Leases.
8. Demand and collect service charges, insurance premiums and any other payments due from the Tenants and collect arrears of service charge and insurance and any other payments that have accrued after his appointment.
9. Instruct solicitors or appropriate agents as the Manager shall in his discretion determine appropriate to recover unpaid rents, insurance



premiums and service charges, and further to recover any other monies due to the Landlord upon the Landlord's instructions.

10. Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the Property within the service charge budget.
11. Recover through the service charge the cost of any surveyors, architects, solicitors, counsel and other professional persons or firms fees incurred by him whilst carrying out his functions under the Order and including in respect of any application to the Tribunal for further directions or for determination of the reasonableness of service charges, whether in relation to major works or otherwise.
12. Prepare and submit an annual statement of account detailing all monies received and expended on its behalf.
13. Produce for inspection upon reasonable written notice, receipts or other evidence of expenditure.
14. Account for all sums collected in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, subject to the Manager receiving interest on the monies whilst they are in his client account. Any reserve fund monies to be held in a separate client account with interest accruing to the Landlord.
15. Produce a final account ("the Final Accounts") at the end of the term of his appointment of the sums received and expended by him throughout the period of his appointment.
16. Pay any sums held in the service charge account to the person for the time being entitled to receive the payment of service charges under the Leases.

### **Administration Charges**

17. Recover administration charges from individual Tenants for his costs incurred in collecting service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action.
18. Publish the costs of his charges for debt recovery and the timetable allowed for each course of action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002.

### **Accounts**

19. Maintain efficient records and books of account, which are open to inspection by the Landlord and the Tenants. Upon request, produce for inspection, receipts or other evidence of expenditure.

20. Maintain on trust an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which, service charge contributions, shall be paid.

21. Account for sums collected in accordance with the Code.

### **Repair and Maintenance**

22. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. The Manager shall also deal with all building maintenance relating to the services and structure of the Property, which includes compliance with all regulatory and statutory requirements.

23. Consider the works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Landlord and the Tenants.

24. Deal with the fire safety, water assessment and safety, lift safety and loose masonry/tiles and other health and safety concerns and any other works identified as urgent.

25. Arrange for any further survey of and/or report into the property with a view to clarifying the scope of the urgent and other works required.

26. Arrange and supervise the urgent and any other major works which are required to be carried out to the Property including preparing or arranging by a surveyor or other suitable professional the preparation of a specification of works and obtaining competitive tenders.

27. Administer a planned maintenance programme to allow for, including but not limited to, the periodic re-decoration of the exterior and interior parts and repair of the property following the completion of the urgent works.

28. Liaise with the relevant statutory bodies responsible for buildings.

29. Ensure that the Landlord, and the Tenants are consulted on any proposed works to the Property and give proper regard to their views, including ensuring that copies of programmes of planned and major works are sent to the Landlord and the Tenants.

30. Incur any necessary expenditure in respect of the provision of all necessary health and safety equipment and in complying with all regulatory and statutory requirements.

### **Fees**

31. Charge fees for the above-mentioned management services in accordance with the manager's fees set out in the Fee Proposal.

Accordingly, the Manager's fee for the above-mentioned management services will be £10,750, reflecting a basic fee of £250 per flat per year. The basic fee will include those services for the Annual Fee at paragraph 3.4 of the Code.

32. Charge for any work carried out over and above those services at the rates set out in the Fee Proposal or any greater sum as may subsequently be authorised in advance by the Tribunal, in respect of which the Manager may apply.
33. Charge fees in respect of major works carried out to the property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on Tenants informing them of the works and supervising the works) in addition to the professional fees of any architect, surveyor, solicitor or other appropriate person in the administration of a contract for such works, notwithstanding that no such fees are provided for in the Fee Proposal, to the extent only that such fees are authorised in advance or subsequently by the Tribunal.
34. Charge VAT on all the fees quoted above where appropriate at the rate prevailing on the date of invoicing.

### **Right to Bring Legal Proceedings**

35. Be entitled to bring proceedings and/ or defend proceedings in any court or tribunal in respect of the Property and/ or sums owed or otherwise payable in respect of the Property, including any causes of action (whether contractual or tortious) accruing before or after the date of the Interim Management Order.

Such entitlement shall include, but shall not be limited to, bringing proceedings in respect of any arrears of service charge and/or ground rent attributable to any of the flats in the Property and for which purpose 'proceedings' shall include any application made under Part 7 or Part 8 of the Civil Procedure Rules 1998 for judgment in the County Court or High Court including a charging Order or any application made to the First Tier Tribunal under s.27A Landlord & Tenant Act 1985 or s.168(4) and Schedule 11 of the Commonhold & Leasehold Reform Act 2002 and shall further include any appeal made against any decision made in any such proceedings.

36. Be entitled to instruct solicitors and counsel and other professionals for the taking of legal proceedings.
37. Be entitled to be reimbursed from the service charge account any costs, disbursements or VAT for taking proceedings including any fees payable to solicitors, accountant, counsel or expert on a full indemnity basis. If any of those costs are recovered direct from the defaulting Tenant or Landlord those costs should be refunded to the service charge account.

## **Complaints Procedure**

38. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the institution on request.