



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

Case reference : **LON/00BA/LVM/2020/0014**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **Kilmeny House, 36 Arterberry Road,
Wimbledon, London, SW20 8AQ**

Applicant : **Mr David Broome (Appointed Manager)**

Representative : **Downs Solicitors LLP**

Respondents : **The Leaseholders of the property and Kilmeny
House Limited**

Type of application : **Variation of Appointment of Manager**

Tribunal : **Judge F J Silverman MA LLM
Mrs S Redmond MRICS BSc (Econ)**

Date of decision : **30 April 2021**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE . A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which the Tribunal was referred are contained in electronic bundles the contents of which are referred to below. The orders made in these proceedings are described below.

DECISION

- (1) In accordance with section 24(9) Landlord and Tenant Act 1987, the management order made by the Tribunal in respect of the subject property at Kilmeny House, 36 Arterberry Road, Wimbledon, London, SW20 8AQ on 11 December 2018 as amended on 19 March 2019, is hereby varied so that Mr David Broome is replaced as the manager by Mr Richard Thwaites AIRPM with effect from 11 June 2021. A copy of the varied Management Order and Schedule of Functions and Services is attached to and forms part of this Decision.
- (2) All parties remain at liberty to apply to vary or extend the order further prior to the date on which it is currently due to expire, 10 December 2021.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Tribunal appointed Mr David Broome as manager for the subject property under section 24 of the Landlord and Tenant Act 1987 on 11 December 2018.
2. The lessees have been generally content with Mr Broome's management of this problematic building and Mr Broome himself is sorry to leave. However, his firm, HML Andertons, is no longer taking on Tribunal appointments due to issues with their professional indemnity insurance and so he has no choice but to seek to be released from his obligations. He has conscientiously sought a replacement and asks the Tribunal to consider Mr Richard Thwaites of First Port managing agents. He has therefore applied to the Tribunal to vary its order by replacing himself with Mr Thwaites.
3. The Tribunal heard the application by remote video conference on 26 April 2021 at which Mr Broome was represented by Mr James Castle of counsel. Mr Thwaites was in attendance. Two of the Respondent leaseholders, Mr Walker and Mr Holliday attended the proceedings as did an observer from the University of Law.
4. Current restrictions relating to the Covid-19 pandemic prevented the Tribunal from making a physical inspection of the property. The Tribunal was assisted with photographs of the property contained in the bundle.
5. None of the Respondent leaseholders objected to the application.
6. The Tribunal had the benefit of a bundle prepared on behalf of Mr Broome in pdf format containing statements from Mr Broome, Mr Thwaites and other pertinent issues. In particular, Mr Broome's statement reported to the Tribunal on the work he has done and the current state of the building and its management.
7. Mr Thwaites had provided a management plan and the Tribunal asked further questions of him in order to assess his suitability for the appointment. Mr Thwaites had recently been appointed by the Tribunal as manager to replace Mr Broome in a situation similar to the present one. He has little experience yet as a Tribunal appointed manager but considerable experience in the property industry

of managing wide ranging property portfolios. He also has the benefit of a large team of colleagues to assist his work. The Tribunal emphasised to him the personal nature of the appointment and the responsibility it carries.

8. Mr Broome and Mr Thwaites have discussed how the handover would work. Mr Broome would set the budget based on existing arrangements. Mr Thwaites intends to continue the management on the same basis as Mr Broome. The handover will take place on 11 June 2021. Mr Thwaites has already inspected the property with Mr Broome and one of his firm's local property managers and met some of the lessees in a virtual meetings.
9. The existing management order expires on 10 December 2021. The order will undoubtedly need to be extended because much of the work which needs to be accomplished before the leaseholders can resume the management of their building, including the variation of defective leases, has not yet been achieved and cannot be completed in the short time left before the present order expires. The Tribunal has not been asked to grant an extension under the present application. Mr Thwaites recognises that he will need to make such an application and he is recommended to do so shortly after he takes up his appointment in order to ensure the continuity of the order. If any party wishes to extend the order, with or without Mr Thwaites as manager, an application must be made to the Tribunal before the expiry of the current term.
10. In the circumstances, the Tribunal is satisfied that it is just and convenient to vary the order as requested, replacing Mr Broome with Mr Thwaites with effect from 11 June 2021. Kilmeny House requires diligent management and the continuation of the order provides the best opportunity to ensure that problems which caused the order to be made in the first place do not recur.
11. The Tribunal is grateful to Mr Broome for the work he has done since his appointment in 2018 and to both him and Mr Thwaites for their efforts in making the handover as smooth as possible.
12. Both Mr Thwaites's management plan and the handover agreement are also approved by the Tribunal save that the annual uplift to the management fee is restricted to 1%. A future revision of this uplift may be dependent on the manager's progress in achieving the stable management of the building.

Name: Judge F J Silverman

Date: 30th April 2021

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for 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.
4. The application for permission to appeal must 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.

Appendix – relevant legislation

Landlord and Tenant Act 1987

Section 24

- (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;
- (abb) where the tribunal is satisfied—
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, 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 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 Land 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.

IN THE FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference: LON/00BA/LVM/2020/0014

Property: Kilmeny House, 36 Arterberry Road, London SW20 8AQ

Applicant: David Broome (Appointed Manager)

Representative: James Castle, Tanfield Chambers
Downs Solicitors LLP

Respondents: The Leaseholders of Kilmeny House
Kilmeny House Limited

Type of Application: Variation of Appointment of Manager

Date of Hearing: 26 April 2021

ORDER

UPON hearing the Applicant’s application dated 8 June 2020 pursuant to Section 24(9) of the Landlord and Tenant Act 1987 (“**the Application**”) to vary the management order made by the First-tier Tribunal (Property Chamber) (Residential Property) (“**the Tribunal**”) in respect of the subject property at Kilmeny House, 36 Arterberry Road, London SW20 8AQ (“**the Property**”) of 17 July 2017, as varied by further orders of 11 December 2018 and 19 March 2019 (“**the Management Order**”), by appointing Richard John Thwaites as manager of the Property (“**the Manager**”) in substitution for the Applicant

AND UPON reading the Applicant’s Report on the Property dated 28 May 2020, Richard John Thwaites’ Management Plan dated 15 February 2021, the Applicant’s first Witness Statement dated 16 February 2021, and the Applicant’s second Witness Statement dated 6 April 2021

AND UPON none of the Respondents having produced any statement or evidence in response to the Application, nor having indicated any opposition to the appointment of Richard John Thwaites as the Manager

AND UPON the Tribunal hearing oral evidence from the Applicant and Richard John Thwaites

AND UPON hearing James Castle of Counsel for the Applicant

AND UPON the Tribunal having determined that it is just and convenient for the Applicant to be discharged and the Management Order to be varied to appoint Richard John Thwaites the Manager with effect from 11 June 2021

IT IS ORDERED THAT:

1. Richard John Thwaites of FirstPort Property Services Limited, Marlborough House, Wigmore Lane, Luton LU2 9EX is appointed as the Manager in substitution for the Applicant.
2. Richard John Thwaites may delegate his powers, rights, duties, obligations or liabilities to FirstPort Property Services Limited or any employee thereof, as he may reasonably require to assist him in the performance of his functions as the Manager.
3. This order shall continue for a period of 3 years from the date of the second variation of the Management Order, namely 11 December 2018. If the parties wish to apply for any extension of the Management Order, they are encouraged to do so at least 3 months before the Management Order expires on 10 December 2021.
4. The Manager shall manage the Property in accordance with:
 - 4.1. The directions and Schedule of functions and services attached to this order;
 - 4.2. The respective obligations of “the Lessor” and “the Company” by which the flats at the Property are demised to the leaseholders. In particular, the Manager is to have regard to the obligations relating to repair, decoration, provision of services and insurance of the Property, as modified and extended by the directions and Schedule of functions and services attached to this order. For the avoidance of doubt, the Manager is to deal with licenses as set out in clause 2(j) of the leases where the lessor is to provide consent for assignments and sub-lettings; and

- 4.3. The duties of a Manager set out in the Service Charge Residential Management Code or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.
5. The Manager shall register this order against the landlord's registered title to the Property as a restriction under the Land Registration Act 2002, or any subsequent Act.
6. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in his own name in the sum of at least £5,000,000.00 and shall provide copies of the current cover note upon request being made by any lessee of the Property, Kilmeny House Limited, or the Tribunal.
7. No later than 11 June 2021 the parties to this Application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicant shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund, if any).
8. The rights and liabilities of the freeholder, Kilmeny House Limited, arising under any contract of insurance, and/or any contract for the provision of any services to the Property, shall upon 42 days from the date of this order become rights and liabilities of Richard John Thwaites.
9. Subject to 11 below, the Manager shall account forthwith for the payment of ground rent received by him (if any) to the person(s) to whom it is due and shall apply those remaining amounts received by him (other than those representing his fees) in performance of the landlord's covenants contained in the leases.
10. As the collection of the very low ground rent may be uneconomical, the Manager has a discretion as to the extent to which, if at all, he incurs costs in attempting to recover the ground rent from any of the lessees.
11. For the avoidance of doubt, Richard John Thwaites has the right to recover arrears of any monies owing to the Applicant under the Management Order accrued during the Applicant's appointment.

12. The Manager shall be entitled to remuneration (which for the avoidance of doubt) shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of functions and services below.
13. For the avoidance of doubt, the reports produced by the Applicant in respect of the condition of the Property and the remedial works necessary pursuant to the leases remain current. The Manager need not produce any further such reports prior to the expiry of this Management Order on 10 December 2021.
14. Within 28 days of the expiry of the fixed term of 3 years under this Management Order, the Manager shall prepare and submit a brief written report for the Tribunal on the progress and outcome of the management of the Property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessees and on the freeholder, 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, to any new Tribunal-appointed Manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
15. The Applicant shall be given notice of any application to the Tribunal in connection with the Property which relates to his period of appointment as manager.
16. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

INSURANCE

1. Maintain appropriate building insurance for the Property. For the avoidance of doubt, this includes areas and structures outside the footprint of the building itself as well as the building. The insurance is to cover all usual modern risks, including terrorism.
2. Ensure that the Manager's interest is noted on the insurance policy.

SERVICE CHARGE

3. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
4. The Manager has the power to adopt a service charge year starting on the 1st day of January in each year and ending on the 31st December in each year.
5. The Manager has the power to collect an interim service charge in advance.
6. The Manager will adopt the estimate of the service charge for the year commencing 1st January 2021 drafted by David Broome, and will continue with demanding and collecting that estimated service charge from the lessees at the appropriate times.
7. Interim payments of the service charge will be due on the 1st day of January and the 1st day of July in each year.
8. Demand and collect ground rents (insofar as he considers it economic to do so), service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees. The Manager will issue interim service charge demands in good time and by no later than 30 days prior to the service charge demand being issued on 1st January (although in the case of the demand to be issued on 1st January 2019 the Manager will issue the demand as soon as reasonably possible).
9. After the actual expenditure in any service charge year has been certified by an accountant, to demand any shortfall or repay or give credit for any surplus paid.

10. Place, supervise and administer contracts and check demands for payment of goods services and equipment supplied for the benefit of the Property with the service charge budget.

11. The proportion of the total service charge which his to be borne by each flat is as follows:-

1	11.60%
2	15.88%
3	14.24%
4	14.73%
5	12.66%
6	15.54%
7	15.35%

ACCOUNTS

12. Within 90 days from 31st December of each year prepare and submit to the lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager

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

14. Maintain on trust an interest-bearing account/s (if available) at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.

15. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

MAINTENANCE

16. Deal with routine repairs and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structures of the Property.

17. The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondents.
18. The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.
19. In respect of the staircase, to progress any works required as soon as reasonably practicable.
20. The Manager is at liberty to remove the lift if he considers it appropriate so to do. He is under no obligation to replace it, as it is now redundant.
21. The Manager has power to incur expenditure in respect of the provision of all necessary health and safety equipment, and in complying with all regulatory and statutory requirements.
22. The Manager is entitled to recover through the service charge the cost of any surveyors', architects' or other professional persons' fees incurred by the Manager whilst carrying out his functions.

£1 - £20,000	By agreement but not exceeding £750
£20,001 - £50,000	£1,000
£50,001 - £150,000	£2,000
£15,001 - £500,000	£3,000
£500,000+	£5,500

OBTAINING COMPETITIVE TENDERS, TENDER REPORTS AND ADMINISTERING ALL MAJOR WORKS

£1 - £20,000	14% subject to £750 minimum
£20,001 - £50,000	12% subject to £2,800 minimum
£50,001 - £150,000	10% subject to £6,000 minimum
£15,001 - £500,000	9% subject to £15,000 minimum
£500,000+	7% subject to £45,000 minimum

23. All charges under this section will be discounted by any amount paid under the earlier section.
24. An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessees.
25. VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of the invoicing.
26. The preparation of insurance valuations and the undertaking of other tasks, which fall outside those duties described above are to be charged for the time basis.

COMPLAINTS PROCEDURE

27. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.