



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

**Case Reference** : CHI/21UF/LVM/2022/0003

**Property** : Longridge Court, Longridge Avenue,  
Saltdean, Brighton, East Sussex BN2 8LY

**Applicants** : Ian Crawford (Flat 3)  
Keith Partridge (Flat 7)  
Joanne Marion (Flat 8)  
Laura Wells (Flat 10)  
Philip Stevens (Flat 12)

**Representative** : Bate and Albon (ref RC/0037371)

**Respondent** : Panayiotis Theodssiou

**Representative** : Helix Law Limited

**Tribunal appointed  
Manager** : Gary Pickard

**Type of Application** : Variation of a Management Order and  
Application for an Order under S.20C  
Landlord and Tenant Act 1985

**Tribunal Member(s)** : D Banfield FRICS  
Regional Surveyor

**Date of Decision** : 17 November 2022

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**DECISION**

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## **Background**

1. The Applicant seeks a variation to the management order expiring on 2 May 2023 by extending its term to enable major works to be completed and an application is also made for an Order under Section 20C of the Landlord and Tenant Act 1985. The variation of the management order is opposed both as to the length of the variation sought, but more importantly in itself- the Respondent's position is that there should be no extension at all.
2. Directions were given in June, further Directions in August and a review of the bundle by Judge Dobson on 16 September 2022. The Directions stated that the application would be likely to be determined on paper unless a party objected by the time provided for in the Directions. The Directions included provisions in relation to a bundle for the determination.
3. On receipt, the bundle was examined by Judge Dobson who found it not to be in accordance with the Tribunal's guidance. A revised bundle has been provided and despite some remaining issues with the content of the bundle Judge Dobson considered that the issues raised can be determined on the papers as there is no identifiable dispute as to facts which require resolving at an oral hearing.
4. The hearing bundle comprises 162 numbered pages plus an index and references in this decision to page numbers will be shown as[x].

## **The Law**

### **5. Landlord and Tenant Act 1987**

24 Appointment of manager by the court.

(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;

## **The Evidence**

### **The Applicants**

6. The grounds of application stated are that *“The current manager has been unable to complete major works due to the freeholder delaying and frustrating the process.*

*A variation of the existing order is required, to keep the current manager in place beyond 2023, in order to protect the interests of the leaseholders who were successful (sic)if (sic)making out the grounds for the initial appointment of Gary Pickard as manager. Mr Pickard is happy to have the appointment extended and has an in depth knowledge of the building following his appointment in 2018, he is therefore (sic) best placed to continue with his work and ensure the major works are completed.*

*If the freeholder contests the application or incurs legal costs in relation to it, those costs should not fall to the leaseholders, who successfully (sic)made out the grounds of default by the freeholder in the action brought in 2018” [19]*

7. In a statement on behalf of the Applicants [22] Mr Stevens says that *“Major works to the Property have not yet been completed due to problems in receiving contributions to planned works from the Respondent and the Applicants are desirous of ensuring the property manager has sufficient time to ensure the required works are completed by the extension of the appointment of Gary Pickard.”*

8. Mr Pickard has provided a statement [24] attached to which are accounts for 2018/19,[33] 2019/20[39] and 2020/21 [46]. It was stated that accounts for 2021/21 were to follow.

9. Mr Pickard explains that following his appointment on 3 May 2018 a meeting was held with the Lessees on 24 September 2018 [54] at which it was agreed to carry out repairs. After raising a demand for sufficient funds for anticipated expenditure he commenced S.20 consultations on 29 October 2018 [56]attaching a specification prepared by Ross Pocock of Infinity Surveying in respect of the north and south entrances. A

statement of estimates was served on 10 December 2018 which included a response dated 6 November 2018 in which the Respondent stated that he was not liable for any of the costs, S.20 did not affect him, and the 6 Leaseholders would have to pay for the entire cost of repairs and restorations. In a further response dated 7 November 2018 the Respondent “demands 6 weeks extension from today in order to employ his own Surveyors and Contractors to get fresh quotations and plans” Other comments were made regarding the cleaning company, the cost of scaffolding and building insurance[61].

10. The work commenced in September 2019 but due to various delays in obtaining Building Regulation Approval for replacement handrails the works were completed in February 2022.
11. On 8 October 2018 he served a first part notice in relation to phase 1 works [65]with work commencing in September 2019 following service of a part 2 notice [67] and receipt of monies from the lessees and the rental income on the flats which his office collects the Respondent not having made any contribution since his appointment.
12. Once work started asbestos was discovered [70] the eradication of which would cost increase the costs considerably. The works were halted, and a revised consultation commenced with a part 1 notice on 16 December 2019 [76].
13. On 21 January 2020 the Respondent replied out of time to which a reply was sent on 31 January 2020.
14. A meeting was held with the Lessees [54]and following expiry of the part 2 notice dated 15 February 2020 [82] a service charge demand was raised of £11,000 per flat. This, together with funds derived from the flats’ rental income enabled the works to commence in June 2020.
15. Due to a shortage of available funds Infinity Surveying reduced the scope of the contract but ensuring the upper part of the property was weathertight pending the receipt of further funding and to limit the extent of further scaffolding.
16. In an email dated 13 February 2020 [84] the Respondent stated amongst other things “I hereby give you Notice to quit all your above repairs and restorations because they are too expensive and we can (can’t?) afford them.” “After all you can not decide over me” “Also remember I am not a leaseholder and I am not affected by your notices”
17. There were significant delays due to Covid-19 and proceedings were issued against the Respondent for the recovery of service charge arrears on 8 March 2021.[97]
18. The Respondent has defended the proceedings alleging negligence on various grounds.

19. A first part notice with a copy of the specification and schedule of works was served on 6 October 2021 [99] in relation to phase II works including those deferred from Phase I.
20. A second part notice was served on 16 February 2022 [101] which included observations received.
21. On 27 February 2022 a nomination and tender documentation was received from the Respondent but, having been issued after the result of the tendering process had been made available to the Respondent Mr Pickard did not consider the process to be fair. He therefore sought his solicitor's advice which is awaited. Due to paucity of funds no contract has been awarded.
22. No progress has been made in collecting funds from the Respondent and he has indicated that if the Respondent were to meet the arrears from a sale of one of the flats that sale would not be opposed.
23. Mr Pickard lists the outstanding works as;
  - As set out in the phase II schedule
  - Redecoration of the common parts
  - Re-carpeting of the common parts
  - Installation of an entry phone system
24. Mr Pickard considers that unless a Tribunal appointment is made the works will not be completed or not completed to an appropriate standard.

### **The Respondent**

25. In a witness statement from the Respondent [103] Mr Theodossiou opposes the extension of Mr Pickard's appointment for an additional 5 years and records that the appointment was made on 3 May 2018 for a period of 5 years and that the Order was that Mr Pickard would manage the Property in accordance with the Directions and Schedules of Functions & Services set out within the Order.
26. He refers to the various notices of intention served on him in relation to works of which he has limited knowledge and that the works set out within the Notice of Intention dated 6 October 2021 and Statement of Estimates dated 16 February 2022 remain incomplete.
27. The Respondent says that Mr Pickard's conduct has been prejudicial to him and not in the best interests of the leaseholders. Despite his provision of a tender document on 27 February 2022 confirming a lower tender than that in the statement of estimates, this was ignored, and his comments not addressed in full. Mr Pickard prevents him from attending meetings and having any say whatsoever.

28. Having worked all his life in construction he considers the cost of asbestos removal to be no more that £4,000-£5,000 and further quotations must be sought.
29. In the ongoing litigation in the County Court the Court is likely to order an expert to be instructed to report on whether the quotations are correct. Given that there are 6 months until the expiration of Mr Pickard's term there is time to select an experienced and suitable replacement.
30. The Respondent considers it strange that asbestos wasn't found during Stage 1 of the works which required scaffolding for which an explanation is required from Mr Pickard.
31. In referring to Clause 6(4)(viii) of the Management Order regarding party matters and the recovery of costs from adjoining owners Mr Pickard has failed to make any progress in meeting this obligation and securing any contribution from the four commercial shops adjoining the property and as referred to in the Applicants' Counsel's skeleton argument filed prior to the 2018 management Order being granted.
32. The Respondent considers an additional 5 years to be unnecessarily long and that he will continue to try and resolve any outstanding service charge issues including resolution of the County Court case and selling his interest in one of the flats.
33. The grounds cited in the application for a Section 20(c) order that his actions have prevented major works being completed is challenged in that, as referred to in Mr Pickard's report, much of the delay was caused by Covid-19. I should not be prejudiced as a result of delays which I am not to blame for.
34. In summary the Respondent says that it is not just and convenient for the order to be varied by extending Mr Pickard's term by 5 years due to his failure to carry out his obligations under the existing Order. If however a further appointment was to be made it is requested that the Order should include a term that said manager seek rectification of the service charge liability of the adjoining commercial properties.

### **The Applicants' Reply**

35. In a reply Mr Pickard says that;
  - a) He doesn't understand the freeholder's suggestion that works have been prejudicial to him and not in the interests of all
  - b) An independent surveyor's advice was sought at all times and the works carried out in accordance with Infinity Surveying Ltd.'s specifications.
  - c) The tender report was sent to all lessees and the freeholder on 3 February 2022 with a commencement date for of the Notice of

15 February to allow for any delay in the post to Australia. A reply was received from the freeholder on 27 February with a separate tender from which it was clear that he had seen the tender report and was aware of the other tenders. The date for nomination of contractors as set out in the part one notice had expired on 15 January 2022 and to have accepted a tender would have rendered the whole process unfair. The Respondent's contractor was out of time, had not been sent to Infinity Surveying as required, the contractor is unknown to him or Mr Pocock, no address was given, the tender wasn't on headed paper and no documents produced in relation to Health & safety, Public Liability Insurance etc were produced.

- d) Each tenderer was responsible for pricing asbestos removal in accordance with the schedule and specification
- e) As a consequence of the investigations carried out from the scaffolding initially erected the scope of the specification was extended to take account of works not included previously including the asbestos. A new consultation process was entered into and concluded which included the additional works. A meeting was held with the lessees (their representative objected to the potential presence of Mr Theodossiou. A copy of the minutes was distributed to all lessees and Mr Theodossiou by both mail and email on 31 March 2022.
- f) The order suggested that I should take advice concerning contributions from the commercial units. I took such advice and was clearly told that there was no basis on which a contribution could be obtained from the commercial elements.
- g) Advice was obtained from ODT LLP and Paul Barnes Esq thereof. The advice received was unequivocal basically that since 100% of the service charge contributions were obtained from the residential apartments the commercial units could not be obliged to contribute.
- h) The list of outstanding works referred to at para 23 above does not include works to the south and west elevations which will be the subject of further consultation in due course when funds permit.

## **Decision**

36. The Court of Appeal in *Orchard Court Residents Association v St Anthony Homes Limited* [2003] 2EGLR 28(CA) established that there was a distinction between making and varying an Order and that they dealt with quite separate issues. The Court of Appeal said that under section 24(9) of the 1987 Act it was not necessary for the Applicant to demonstrate again that the grounds for making a management order under section 24(2) existed. The Court of Appeal observed that the legislation imposed no criteria on how the Tribunal should exercise its discretion when an application for variation was made by an interested person other than the landlord.

37. The Tribunal, therefore, has wide discretion when considering applications under section 24(9) provided it has regard to relevant considerations. The Court of Appeal in *Orchard Court Residents Association* favoured the term “just and convenient” to capture the approach that should be adopted by the Tribunal when exercising its discretion on applications for variations.
38. This is a case where the relationship between the Lessees and Freeholder have broken down necessitating the lessees’ application to appoint a Manager in 2018. The Tribunal appointed Manager has, since his appointment, arranged for works to be carried out hampered amongst other matters by the unwillingness of the freeholder to contribute a share of the costs. It is clear from the Respondent’s response of 6 November 2018 included in the statement of estimates dated 10 December 2018 that he did not at that time understand the role of a Tribunal appointed Manager and that he was obliged to contribute to a share of the costs in respect of the retained flats.
39. Clearly this lack of understanding continued as in his email dated 13 February 2020 [84] the Respondent stated amongst other things “I hereby give you Notice to quit all your above repairs and restorations because they are too expensive and we can (can’t?) afford them.” “After all you can not decide over me” “Also remember I am not a leaseholder and I am not affected by your notices”
40. Whilst the Respondent may not consider himself a leaseholder he should be aware of Clause 1.3 of the Tribunal’s 2018 Management Order which states “*Under the terms of the Leases, the Respondent is liable to contribute for each of its flats on the same basis in every respect as if it was a leaseholder subject to the same terms as the other Lessees. Such contribution shall include, by reference to clause 4(2) of the Leases, the Respondent’s liability to pay six-twelfths (i.e. 50%) of all monies to be expended in complying with the landlord’s covenants under clauses 6(2) and 6(4) of the Lease.*”
41. By expecting Mr Pickard to accept a tender as described in paragraph 35 (c) having already carried out a competitive tender exercise indicates a lack of appreciation of the manner in which a Tribunal appointed Manager should carry out their functions.
42. Given this lack of funding and co-operation from the Freeholder coupled with the issue of Covid-19 it is unsurprising that not all of the building works have been completed as planned and as such the Tribunal has no criticism of Mr Pickard’s conduct.
43. Turning now to whether an extension of the term is warranted I am persuaded that further works are required some of which have already been put in train and for which continuity is required. I am therefore satisfied that an extension of Mr Pickard’s term should be made.



44. Whilst reference to a 5 year extension is made by the Respondent such a period does not appear in the Application or statements from the Applicant, merely that the appointment should be extended beyond 2023.
45. Given that the task given to Mr Pickard in 2018 was to get the property into a fit state of repair and that progress has been made I consider that, subject to no further international health incidents occurring, a further 3 years should be sufficient to complete the task.
46. The Respondent asks that any Order should require the Manager to seek rectification of the service charge liability of the adjoining commercial properties. Mr Pickard has said that investigations have been made and a Solicitor's advice is that there are no grounds whereby the commercial units can be required to contribute.
47. The Tribunal accepts this and declines to vary the existing Order to include such a requirement.
48. Mr Pickard's appointment is therefore extended in the terms of the attached Order.

## **S.20C Order**

### **The Law - Limitation of service charges: costs of proceedings.**

“(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before... the First-tier Tribunal... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made-...

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal...”

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.”

## **The Application**

49. The current manager has been unable to complete major works due to the freeholder delaying and frustrating the process and a variation of the existing order is required, to keep the current manager in place beyond 2023. If the freeholder contests the application or incurs legal costs in relation to it, those costs should not fall to the leaseholders, who successfully made out the grounds of default by the freeholder in the action brought in 2018.

## **The Respondent's objection**

50. The grounds cited in the application for a Section 20(c) order that his actions have prevented major works being completed is challenged in that, as referred to in Mr Pickard's report, much of the delay was caused by Covid-19. I should not be prejudiced as a result of delays which I am not to blame for.

## **The Decision**

51. At paragraph 24 of the decision in SCMLLA (Freehold) Ltd, Re Cleveland Mansions, and Southwold Mansions [2014] UKUT 58 (LC) the Deputy President stressed that as an order under section 20C interferes with the parties' contractual rights and obligations, it ought not to be made lightly, or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances.
52. At paragraph 75 in Conway & Ors v Jam Factory Freehold Ltd [2013] UKUT 592 (LC) he said: " In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make."
53. This is a case where the Applicants have been wholly successful in their application. Whilst external factors played some part in the delays in completing the repairs required, the Freeholders unwillingness to engage with the Tribunal appointed Manager and to deny his financial liability played a significant part in causing the delays experienced leading to further time being required. I am satisfied therefore that the requested Order should be made.
54. **By Section 20C of the Landlord & Tenant Act 1985 the Tribunal makes an Order that all or any of the costs incurred, or to be incurred, by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.**

D Banfield FRICS  
Regional Surveyor  
16 November 2022

## **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 [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.

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**ORDER FOR THE APPOINTMENT OF MR GARY PICKARD  
AS MANAGER**

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Upon considering the Application and supporting evidence  
IT IS ORDERED THAT

1. Paragraph 2 of the Management Order attached to the Tribunal's determination dated 3 May 2018 under reference CHI/21UF/LAM/2018/0001 shall be varied as follows;
2. In accordance with Section 24(1) of the LTA 1987, Mr Gary Pickard of Jacksons, 193 Church Road, Hove, east Sussex BN3 2AB ("the Manager") be appointed manager of the Property for a period of **eight years** from 3 May 2018.
3. All other terms of the Order remain unaltered.

D Banfield FRICS

Date 16 November 2022