



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

Case Reference : **LON/00AR/LAM/2021/0018**

Properties : **1-45 Maxim Tower, 46-47 Exon Apartments, 77-111 Lexicon Apartments, 112-131 Axiom Apartments, 132-149 Zetex Apartments, 150-189 Index Apartments, Mercury Gardens Romford Essex RM1 3AP
1-40 Holly Court, Dolphin Approach, Romford RM1 3AP**

Applicants : **P Sullivan, C Bell, G Coleman, J Dhanani, K Milczarek, C Norton, I Chatters**

Representative : **P Sullivan**

Respondent : **FirstPort Property Services Limited**

Representative : **Mr Cameron Stocks of Counsel and J B Leitch Ltd**

The Manager : **Ms R Mahoney**

The Landlord : **Fairhold Properties No.5 Limited**

Representative : **Estates & Management Limited**

Tribunal members : **Judge Pittaway
Mr A Harris LLM FRICS FCI Arb**

Date of Order : **10 January 2022**

[DRAFT] MANAGEMENT ORDER

INTERPRETATION

1. In this Order:

“The Property” means the flats and other premises known as 1-45 Maxim Tower, 46-47 Exon Apartments, 77-111 Lexicon Apartments, 112-131 Axiom Apartments, 132-149 Zetex Apartments, and 150-189 Index Apartments, Mercury Gardens, Romford, Essex RM1 3AP and 1-40 Holly Court, Dolphin Approach, Romford RM1 3AP (collectively **“the Axis Development”**) and registered leasehold at HM Land Registry under title number **EGL499082** comprising the car parking level and the residential buildings on twelve levels.

“The Landlord” shall mean Fairhold Properties No.5 Limited or their successors in title to the reversion immediately expectant upon the Leases.

“The Tenants” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and **“Tenant”** shall be construed accordingly.

“The Respondent” shall mean FirstPort Property Services Limited, formerly Peverel OM Limited, named as the manager in the Leases.

“The Leases” shall mean all leases and/or underleases of flats in the Property.

“The Manager” means Ms Roisin Mahoney of Vision Property & Estate Management UK Limited

“The Superior Landlord” shall mean LSREF3 Tiger Romford S.A.R.L. or their successors in title as freehold proprietors registered at HM Land Registry under title number **EGL435127**.

“The Tribunal” means the First-tier Tribunal (Property Chamber)

“The Cladding Works” means remedial works to replace the defective cladding system to the exterior of the Property.

ORDER

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) Ms Roisin Mahoney of Vision Property & Estate Management UK Limited is appointed as Manager of the Property.
3. The Manager’s appointment shall start on **the date of this Order** (“the **start date**”) and shall end on **31 December 2025** (“the **end date**”).

4. For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the Tenants remain bound by them. Where there is a conflict between the provisions of the Order and the Leases, the provisions of the Order take precedence.
5. The purpose of this Management Order is to provide for the management of the Property by the Manager, including the Cladding Works and acting as Responsible Entity for the purpose of any application to, dealings with, or grant of funding by the Government's Building Safety Fund in respect of the Property. For the avoidance of doubt, this Order is not made by reason of an act or omission on the part of the Landlord.
6. To address the steps identified in the previous paragraph the Manager is empowered to:
 - (a) Make any necessary application to the Building Safety Fund as the Responsible Entity for the Property;
 - (b) Undertake the functions set out in the Schedule hereto in relation to the Cladding Works;
 - (c) Instruct appropriate professional advisers to design, supervise and manage, as well as appropriate contractors to carry out, the Cladding Works;
 - (d) the Manager has the power to incur expenditure in respect of the Cladding Works;
 - (e) Utilise funds contained in the service charge sinking fund for the purposes of funding the Cladding Works; and
 - (f) Demand interim service charges by way of an additional levy for the purposes of funding the Cladding Works.
7. The Manager shall manage the Property in accordance with:
 - (a) the terms of this Order and the Directions set out below;
 - (b) the respective obligations of the Respondent and the Tenants under the Leases whereby the Property is demised by the Landlord (save where modified by this Order);
 - (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 ("RICS") and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993 (whether the Manager is a Member of the RICS or not; and
 - (d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.

8. From the date this Order comes into effect, no other party 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.
9. The tribunal requires the Manager to act fairly and impartially in the performance of their functions under this Order and with the skill, care and diligence to be reasonably 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.
10. The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
11. Any application to extend or renew this Order **must** be made before the end date, preferably at least three months before that date, and supported by a brief report of the management of the Property during the period of the appointment. Where an application for an extension or renewal is made prior to the end date, then the Manager's appointment will continue until that application has been finally determined.
12. The Manager is appointed to take all decisions about the management of the Property necessary to achieve the purposes of this Order. If the Manager is unable to decide what course to take, the Manager may apply to the Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Circumstances in which a request for such directions may be appropriate include, but are not limited to:
 - (a) a serious or persistent failure by any party to comply with an obligation imposed by this Order;
 - (b) circumstances where there are insufficient sums held by the Manager to discharge their obligations under this Order and/or for the parties to pay the Manager's remuneration; and
 - (c) where the Manager is in doubt as to the proper construction and meaning of this Order.

Contracts

13. Rights and liabilities arising under contracts, including any contract of insurance and/or any contract for the provision of any services to the Property, to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:
 - (a) the Respondent shall indemnify the Manager for any liabilities arising before commencement of this Order; and

- (b) the Manager has the right to decide, in their absolute discretion, the contracts in respect of which they will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date this order.
14. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.
 15. The Manager shall provide the Respondent with regular updates as to the progress of the Cladding Works and any major works to the Property generally. The Manager shall inform the Respondent as soon as is reasonably practicable whenever there is a significant development or step forward in the progress of the Cladding Works.
 16. The Manager shall obtain collateral warranties in favour of the Respondent from all contractors and professionals involved with the Cladding Works, in particular, but not limited to, those with design and/or construction responsibilities and the fire engineer. Such collateral warranties to be in a form approved by the Respondent in advance, and provided to the Respondent upon receipt.

Pre-contract enquiries

17. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

Legal Proceedings

18. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and, subject to the approval of the Tribunal, may continue to bring or defend proceedings relating to the appointment after the end of their appointment.
19. Such entitlement includes bringing proceedings in respect of arrears of service charge (but not ground rents) attributable to any of the flats in the Property, including, where appropriate, proceedings before this tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act or before the courts and shall further include any appeal against any decision made in any such proceedings.
20. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so during, or after, this appointment. If costs paid from the service charge are

subsequently recovered from another party, those costs must be refunded to the service charge account.

Remuneration

21. The sums payable are:

- (a) an annual fee of £85 per flat for the 40 flats at Holly Court and £200 per flat for the remaining 189 flats at the Axis Development for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable);
- (b) any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code (so far as applicable); and
- (c) VAT on the above fees.

Ground Rent and Service charge

22. The Manager shall not collect the ground rents payable under the residential Leases.

23. The Manager shall collect all service charges and insurance premium contributions payable under the Leases, in accordance with the terms and mechanisms in the Leases.

24. Whether or not the terms of any Lease so provides, the Manager shall have the authority to:

- (a) demand payments in advance and balancing payments at the end of the accounting year;
- (b) establish a reserve fund to meet the Respondent's obligations under the Leases;
- (c) allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund; and
- (d) alter the accounting year and to collect arrears of service charge and insurance that have accrued before their appointment.

25. The Manager is entitled to recover through the service charge any premium for any indemnity insurance effected by the Manager not otherwise recoverable and the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms incurred by them whilst carrying out their functions under the Order.

Administration Charges

26. The Manager may recover administration charges from individual Tenants for their costs incurred in collecting service charges and insurance which includes the costs of reminder letters, transfer of files

to solicitors and letters before action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Details of the fees charged are set out in the Appendix of additional fees.

Disputes

27. In the event of a dispute regarding the payability of any sum payable under this Order by the Tenants, additional to those under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, may apply to the Tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.
28. In the event of a dispute regarding the payability of any sum payable under this Order by the Respondent, other than a payment under a Lease, the Manager or the Respondent may apply to the Tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.
29. In the event of dispute regarding the conduct of the management of the property by the Manager, any person interested may apply to the Tribunal to vary or discharge the order in accordance with section 24(9) of the Landlord and Tenant Act 1987.
30. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Tenant, or the Respondent may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

DIRECTIONS TO THE RESPONDENT

31. The Respondent must comply with the terms of this Order.
32. The Respondent shall give all reasonable assistance and co-operation to the Manager in pursuance of her functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.

DIRECTIONS TO THE LANDLORD

33. The Landlord must comply with the terms of this Order.
34. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of her functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the

exercise of any of the Manager's said rights, duties or powers except by due process of law.

35. On any disposition other than a charge of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager that the said person 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 the person to whom the Property is to be conveyed.

DIRECTION TO CHIEF LAND REGISTRAR

36. To protect the direction in paragraph 35 for procurement by the Landlord of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate under title no EGL499082. The restriction is to have overriding priority against any search with priority or pending application for a disposition of the registered estate (other than a charge) that has been lodged after the 7 September 2021, being the date of the application to the Tribunal.

“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 [35] of an Order of the Tribunal dated 10 January 2022 have been complied with”

DIRECTIONS TO MANAGER

37. The Manager must adhere to the terms of the Order above.

Registration

38. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph [35] within 14 days of the date of this Order.

Conflicts of Interest

39. The Manager must be astute to avoid any conflict of interest between their duties and obligations under this Order and their contractual dealings. Where in doubt, the Manager should apply to the Tribunal for directions.

Complaints

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

Insurance

41. The Superior Landlord remains responsible for the building insurance for the Property.
42. From the date of appointment, and throughout the appointment, the Manager must ensure that she has appropriate professional indemnity insurance cover in the sum of at least £5 million and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Tenant, the Respondent or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

Accounts

43. The Manager must:
- (a) prepare and submit to the Respondent and the Tenants an annual statement of account detailing all monies receivable, received and expended. The accounts are to be certified by the external auditor, if required under the Leases;
 - (b) maintain efficient records and books of account and to produce for these for inspection, to include receipts or other evidence of expenditure, upon request by the Respondent or a Tenant under section 22 Landlord and Tenant Act 1985;
 - (c) maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and
 - (d) hold all monies collected in accordance with the provisions of the Code.

Repairs and maintenance

44. The Manager must:
- (a) undertake the administrative functions in relation to the Cladding Works as set out in the Schedule hereto;
 - (b) ensure that the Cladding Works are designed, supervised and managed by appropriate professional advisers, and carried out by appropriate contractors, all with the necessary professional indemnity insurance to cover the Cladding Works;

- (c) subject to receiving sufficient prior funds, pay the costs of the Cladding Works;
- (d) the Manager has the power to incur expenditure in respect of the Cladding Works;
- (e) prepare a planned maintenance programme for the period of appointment allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property, as well as any roads, accessways, mechanical, electrical and other installations serving the Property, and shall send a copy to every Tenant and to the Respondent;
- (f) subject to receiving sufficient prior funds:
 - (i) carry out all required repair and maintenance required at the Property, in accordance with the Respondent's covenants in the Leases, including instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the Leases or in accordance with the Order.
 - (ii) arrange and supervise any required major works to the Property, including preparing a specification of works and obtaining competitive tenders.
- (g) liaise with all relevant statutory bodies in the carrying out of their management functions under the Order; and
- (h) ensure that the Respondent, and the Tenants, are consulted on any planned and major works to the Property and to give proper regard to their views.

45. The Manager has the power to incur expenditure in respect of health and safety equipment reasonably required to comply with regulatory and statutory requirements.

Reporting

46. By no later than six months from the date of appointment (and then annually) the Manager must prepare and submit a brief written report to the Tribunal on the progress of the management of the Property up to that date, providing a copy to the Tenants and the Respondent at the same time.

End of Appointment

47. No later than 56 days before the end date, the Manager must:

- (a) apply to the tribunal for directions as to the disposal of any unexpended monies;

- (b) include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a “**Final Report**”); and
- (c) seek a direction from the tribunal as to the mechanism for determining any unresolved disputes arising from the Manager’s term of appointment (whether through court or tribunal proceedings or otherwise).

48. Unless the tribunal directs otherwise the Manager must within two months of the end date:

- (a) prepare final closing accounts and send copies of the accounts and the Final Report to the Respondent and Tenants, who may raise queries on them within 14 days; and
- (b) answer any such queries within a further 14 days.

49. The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed Manager within three months of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.

Signed A Harris
Valuer Chair

Date 10 January 2022

This decision has been finalised by the tribunal members jointly but since the judge is currently abroad, the order has been signed by the second member in his capacity as a valuer chair approved by the Lord Chancellor, and with the approval of the London Regional Judge.

Schedule of Manager's Administrative Role in relation to the Cladding Works ("the Works")

1. Making any necessary application to the Government's Building Safety Fund as the Responsible Entity for the Property, and holding any funding received in a designated account in accordance with the grant funding agreement.
2. Compliance with section 20 of the Landlord and Tenant Act 1985 where necessary in relation to the Cladding Works.
3. Appointment of all relevant professional advisers, consultants and contractors (with the necessary professional indemnity insurance) for the design, carrying out, supervision and management of the Works, including by signing building contracts as employer.
4. Collection of all funds necessary to meet the costs of the Works where the same will not be met by funding received from the Building Safety Fund.
5. Undertaking all relevant accounting duties in respect of the Works.
6. Updating leaseholders and attending leaseholder meetings where necessary. Updating the Respondent, the Landlord and the Superior Landlord and/or their agents as required.
7. Arranging access to flats and relocation of car parking spaces where required.
8. Arranging for payment of certificates issued by contractors and all professional fees due in relation to the Works.
9. Collating EWS1 forms and issuing to leaseholders on completion of the Works.
10. Carrying out any other services in the interests of completing the Cladding Works.