11881

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAE/LVM/2016/0001**
Property	:	**244-258 Church Lane, Kingsbury, London NW9 8SL**
Applicant	:	**Leaseholders of the flats and commercial units as set out on the schedule attached hereto**
Representative	:	**Mr Alan Dixon, Solicitor of DKLM LLP Solicitors** **Mr C Hills, Director of Bridgeford & Co (current Tribunal appointee)**
Respondent	:	**Criterion Estates Limited**
Interested Persons	:	**Mr John Webb accompanied by Mr Reed of ABC Block Management (suggested alternative Tribunal appointee)**
Type of Application	:	**Application for the variation of an order appointing a manager under Section 24 of Landlord and Tenant Act 1987**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs S F Redmond BSc (Econ) MRICS** **Mr L G Packer**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 27th July 2016**
Date of Decision	:	**16th August 2016**

DECISION

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DECISION

1. **The Tribunal determines that the decision made on 18th September 2014 (the Order) re-appointing Mr Hills as the manager of the property under the terms set out should remain and that the correction certificate dated 30th July 2015 should be set aside.**
2. **The Tribunal confirms that the Order provides that the management is of the building at 244 – 258 Church Lane, Kingsbury, including both commercial and residential units.**
3. **Further the Tribunal orders that there be an amendment to the Order to provide that the owners of the residential and commercial premises shall pay to Mr Hills forthwith the sum of £280 in respect of the residential units and £420 in respect of the commercial units to cover the costs of the insurance of the property for the coming year.**

BACKGROUND

1. An application was made by those parties shown on the attached schedule seeking to amend a management order made by this Tribunal under case number LON/OOAE/LAM/2014/0014 on 18th September 2014. As the skeleton argument prepared on behalf of the Applicant says, we are asked to determine:
   - Whether the Order (not dated 18th December 2014 as stated in the skeleton argument) should be varied in order to include the commercial units following the corrective order made on 30th July 2015 (the Correction).
   - Whether such variation of the management order would result in any recurrence of the circumstances which led to the corrective order being made.
   - Whether it is just and convenient to vary the order.
   - Whether to make an order under Section 20C of the Landlord and Tenant Act 1985.

2. It is helpful to recount the background and chronology to the management of the property at 244 - 258 Church Lane, Kingsbury, London NW9 8SL (the Property). In this application a number of leaseholders both of the residential and commercial elements (the Applicants), made application in 2014 for the appointment of Mr C Hills to continue with the management of the Property.

3. There are eight maisonettes which sit above eight commercial units. The leases for the maisonettes and the commercial units are pretty much the same and certainly in relation to the commercial units reserve no commercial rent. This appears to have discouraged the landlord, Criterion Estates Limited, from becoming involved in any form of hands-on management notwithstanding that they do seem to retain at least one of the commercial units.

4. As a result, in September of 2006 an application was made to this Tribunal for the appointment of a manager under Section 24 of the Landlord and Tenant Act 1987 (the Act). By an order made on 24th January 2007 the Tribunal satisfied itself that it was appropriate to appoint a manager under the Act and at that time appointed Mr Paul Cleaver of Urang Limited for a period of three years from 14th February 2007. This appointment clearly envisaged that Mr Cleaver would manage the Property which included both the residential accommodation and the

commercial units. This is as set out at paragraph 23 of the order made by the Tribunal in February of 2007.

5. Thereafter on 30th November 2011, case number LON/OOAE/LAM/2011/0009, Mr Chris Hills (erroneously referred to as Mr Hill) was appointed to manage the Property for the period of two years and it is clear from the decision that the appointment was intended to manage both the residential and commercial property with the fee computed accordingly. The premises described in the order attached to the decision of the Tribunal dated 30th November 2011 is recorded as Church Lane, Kingsbury, Middlesex and the property is so described as mixed business and residential accommodation at paragraph 1 of the decision. There is some confusion in that the decision in 2011 refers to Mr Cleaver's appointment in January of 2007 for a period of two years notwithstanding that the decision appears to indicate that the appointment is for three years. In any event, it seems that the parties had overlooked the fact that the appointment had lapsed, as it seems two years was the appropriate time, and with some dissatisfaction expressed with regard to the performance of Mr Cleaver, Mr Hills was appointed in his stead.

6. It then seems that again the appointment lapsed before an application was made to renew Mr Hills' role. The matter came before the Tribunal and the Order issued on 18th September 2014 indicating that the appointment would continue for a period of three years on the terms of an agreement between the landlord/residents' management company and the agent setting out the terms of the appointment for the management of the common parts and areas of a residential estate. This agreement refers to the Property as 244 – 258 Church Lane, Kingsbury and an obligation to carry out routine maintenance relating to "the common parts and areas of a residential estate". The agreement also refers to the insurance of the Property including the common parts. The fee set is not characterised in detail, but appears to be an updating of the one set in 2011.

7. As we understand it, this was in reality an intention to continue with the management arrangements that had pre-dated the Order in September of 2014.

8. It then appears that by a letter dated 24th July 2015 Mr John Webb, who is leaseholder/owner of the shop and flat at 246 and 246A Church Lane, wrote to the Tribunal questioning the powers of the Tribunal appointee. It appears that as a result of this letter a correction certificate described as under Rule 50 [of the The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013] was issued on 30th July 2015. The correction certificate states as follows:

    1. The correct address for the Property is 244a – 258a Church Lane, London NW9 8SL. The order appended to the decision identified above refers to 244 – 258 Church Lane which includes commercial premises.
    2. The order under which Mr Christopher Hill of Bridgeford & Co was appointed is amended to reflect solely to the residential premises at 244a to 258a Church Lane and for the avoidance of doubt does not extend to the management of any commercial premises below the maisonettes."

9. It appears that this correction order was sent to Mr Webb but did not come to the attention of the Applicants or Mr Hills until October of 2015. Subsequently an

application was made on 7th December 2015 to appeal the Correction but that was refused on 10th December 2015, although information was appended to the refusal indicating a possible way forward to vary the management order. By 4th January 2016 such an application had been made. Directions were made on 4th February 2016 and a hearing was listed for 23rd March 2016 but did not in fact take place until it came before us on 27th July 2016.

10. In the submissions to the skeleton argument it is said that the correction certificate was made without consulting the Applicants or other lessees at the Property and was made on the basis of one letter from one of the leaseholders.

11. Prior to the hearing we were provided with a bundle of papers, which included the directions, a letter from Bridgeford & Co of 25th February 2016 with appendices, a copy of the residential and commercial leases and what purport to be witness statements from a number of lessees although in fact are merely letters seeking support for the appointment of Mr Hills.

12. On the morning of the hearing Mr Dixon presented us with a further bundle of documents which contained the skeleton argument and previous decisions of this Tribunal as well as further copies of the letters from a number of leaseholders we refer to above. In addition, we were provided with a copy of the case of *Queens Bridge Investments Limited v Miss Sophie Lodge and others [2015]UKUT0635(LC)*.

13. At the hearing on 27th July the Applicants were represented by Mr Alan Dixon, Solicitor of DKLM LLP Solicitors who was accompanied by Mr Christopher Hills, the Tribunal appointee. In addition, Miss Liana Wiltshire the leaseholder of 244A Church Lane was the substitute for Mr Chavda a tenant who had represented the Applicants at the directions appointment. In addition, Mr Mistry, Miss Spackman and Mr Gill also leaseholders both of residential and commercial units attended.

14. Criterion Estates did not attend as they had not done so on previous occasions but this time Mr John Webb of 246A Church Lane was present accompanied by Mr Mark Reed of ABC Block Management whom it was suggested would be the alternative manager in place of Mr Hills. It is right to say that no application had been made by Mr Webb nor did we have any papers before us which would indicate the CV of Mr Reed or his appropriateness as an appointment by this Tribunal. It is also clear that although Mr Webb said he had wished to be a party to the proceedings, no order was made joining him as a Respondent although he was recorded as an interested party.

15. Although Mr Webb had no particular status he told us that his main complaint about the continuing appointment of Mr Hills was the location of Bridgeford & Co. The firm has offices in Brighton, Lymington and Hastings. However, Mr Webb did accept that one managing agent could manage the whole of the building both residential and commercial. It was also pointed out to him that his letter of July 2015 did not seek to appoint another manager.

16. We adjourned the matter for a few minutes to discuss the status of Mr Webb and decided that we would not allow him to make an application to appoint Mr Reed

to be heard before us today. If he wanted to proceed with such an application, he must do so by way of a separate claim so that directions can be issued and the matter dealt with properly, including the opportunity of other leaseholders to make representations.

17. We then moved on to deal with the substantive issue as to whether or not the Order made in September 2014 required variation following the Correction in July of 2015. Mr Dixon reminded us that Mr Webb's letter had been sent to the Tribunal but not to the other parties and that the Correction issued in July 2015 appears not to have been sent to the Applicants or other leaseholders, and its existence did not come to light until October of 2015.

18. An application for permission to appeal was made on 7th December 2015 and the decision refusing permission to appeal, dated 10th December 2015, raises no suggestion that the application was out of time. In refusing permission and refusing to review the Tribunal stated that in its view the decision to deal with the matter by way of a correction certificate was correct, that the appropriate action for the leaseholders was to make an application for the variation of the management order to include commercial premises, that a new application would give all interested parties the opportunity to decide whether an appointment in relation to both commercial and residential properties was the correct approach and made clear that it was not within the Tribunal's power to force any parties to make such an application.

19. As we have indicated above, such an application was made and that is now before us for consideration.

20. Mr Dixon's submission to us was that the earlier orders, which we have recited above, clearly refer to both the residential and commercial premises as being the Property and the intention of the parties was that the manager should manage both elements. Accordingly, the Correction sought to correct something that was not wrong.

21. Mr Webb indicated that he accepted that it was sensible that a manager should deal with both the residential and commercial units, but did not feel able to consent to that element of this application. His main concern was that in his view the Correction issued in July of 2015 should be left in place and that accordingly if we were to make an amendment it should only be from the date of the hearing on 27th July 2016 and that no commercial tenant should be required to pay for any services from July of 2015 to the date of the hearing. Mr Webb was also asked why if the management arrangements for both residential and commercial had been in place since 2007, he did not raise this issue with the Tribunal until 2015. He indicated that there had been something of a history of, in his view, mismanagement. This related both to the distance from the offices of Bridgeford & Co to the Property and also there had been some reference to the manager being unable to manage the yard to the rear of the Property still retained by the landlord. In fact, we were told that the manager was aware of the issue as a health hazard; did not himself have the powers to make the leaseholder remedy it; and had asked the Council to act using their statutory powers.

22. Having heard from Mr Hills who confirmed his willingness to continue both to manage the residential and commercial premises and following discussions in respect of the insurance payments, we granted an adjournment to enable Mr Dixon to review the position in the light of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (the Rules) and in particular the provisions of Rules 50 and 51.

23. After the adjournment, Mr Dixon returned to tell us that in his view the Correction order was part of the decision made in September 2014 and that accordingly if we set aside the corrective order the matter reverts to the position as it was following the September 2014 order. He told us that it was in the interest of justice and also that as his clients had been oblivious of the Correction order made until 9th October 2015 having received no notification of the letter from Mr Webb. In those circumstances it was inappropriate to allow the Correction to stand, it being in effect a procedural irregularity. He also referred to the right to hold hearings as provided for under Rule 31 and the notice required in respect of same under Rule 32. His view was that the Correction was not to put right a clerical error under Rule 50 and that accordingly in the interests of justice should be set aside.

24. On the question of the retrospective effect, he felt it would be wrong for the flat owners to be responsible for any shortfall there might be if the commercial lessees did not pay their fair share. In addition, it could give rise to a claim by the commercial lessees to seek reimbursement of service charges that had been paid up to the date of the Correction from September of 2014 and that there were little funds in the kitty to deal with that eventuality. Furthermore, we were told that the uncertainty was affecting the Property and that Mr Mistry, the owner of 256, had not been able to sell although he wished to do so.

25. Mr Webb, to whom we had extended the courtesy of making a submission, told us that he owned Flat 246A and the shop beneath at 246. He accepted that from today's date, that is to say the 27th July 2016, Mr Hills could charge management fees and other matters relating to the commercial premises but he did not think they should be backdated. He did not consider the Property was being managed as it should have been. We were told that Mr Hills had not been recovering service charge funds or other monies from the commercial properties since October 2015 and that there were also a small number of residential tenants who were in arrears. He told us that Mr Webb and the freeholder had the largest arrears. After discussions with those present an agreement was reached that the residential lessees would each contribute £280 and the commercial lessees £420 each towards the insurance premium, which was we were told payable from 1st August.

26. Miss Wiltshire, who was standing in the shoes of Mr Chavda told us that she did wish the order to be backdated. The Property was old with significant issues and that arguments being put forward at this hearing were not enabling the Property to move forward and to be looked after.

27. Mr Dixon asked that an order be made under Section 20C, although it does not seem that a formal application had been made, and also asked for reimbursement of the application and hearing fee which would be payable by the Respondent.

THE LAW

28. The law applicable to this matter is set out in the attached appendix.

FINDINGS

29. Before we set out our reasons for reaching our decision it is appropriate to set out certain rules that are applicable in our finding to this case. It seems to us that the first matter to consider is Rule 50 which says as follows:

50. The Tribunal may at any time correct any clerical mistake or accidental slip or omission in a decision, direction or any document produced by it, by –
(a) sending notification of the amended decision or direction or copy of the amended document to each party; and
(b) making any necessary amendment to any information published in relation to the decision, direction or document.

30. The other rule we need to consider is Rule 51 which says as follows:

51. (1) The Tribunal may set aside a decision which disposes of proceedings or part of such a decision and remake the decision or relevant part of it, if
(a) the Tribunal considers that it is in the interests of justice so to do; and
(b) one or more of the conditions in paragraph (2) are satisfied.
(2) The conditions are
(a) a document relating to the proceedings was not sent to or not received at an appropriate time by, a party or party's representative;
(b) a document relating to the proceedings was sent to or was not received by the Tribunal at an appropriate time;
(c) a part or a party's representative was not present at a hearing related to the proceedings; or
(d) there has been some other procedural irregularity in the proceedings.
(3) A party applying for a decision or part of a decision to be set aside under paragraph (1) must make a written application to the Tribunal so it is received
(a) within 28 days after the date on which the Tribunal sent notice of the decision to the party; or
(b) if later within 28 days after the date on which the Tribunal sent notice of the reasons for the decision to the party.

31. In reaching our decision we bear in mind the following which we find to be the facts in this case. The leases provide for the eight residential units to contribute 5% each towards service charge costs, and the eight shop units 7.5% each – ie totalling the 100%. In 2006 an application was made for the appointment of a manager and subsequently an order was made by this Tribunal on 24th January 2007 clearly intending that the then appointed manager, Mr Cleaver, should have power to manage both the residential and the commercial elements of the Property. This is clearly set out under paragraph 23 of that decision, which says that Mr Cleaver "*shall manage the premises in accordance with (a) the*

respective obligations of the Respondent landlord and the tenants under the leases of the flats and the commercial units respectively ..."

32. On 30th November 2011 a further order was made, this time appointing Mr Hills and again clearly at paragraph 1 under the heading 'Introduction' it refers to the premises being of mixed business and residential accommodation and refers to residential and commercial leaseholders together as tenants. As we have indicated above the order that is attached to the decision and also dated 30th November 2011 clearly refers to the Property at Church Lane, Kingsbury.

33. We find that the decision of 18th September 2014 was intended to be a continuance of the previous management orders that had been made. That decision also says at paragraph 10 *"Having heard the Applicants and Mr Hill we are satisfied that the appointment of a manager is appropriate that Mr Hill should be appointed for a further term of three years with effect from the date of that decision."* As we have indicated above that agreement refers to the management of the common parts and areas of a residential estate and describes the Property as 244 – 258 Church Lane, Kingsbury. Taking these matters, into consideration we find that it was clearly the intention of the Applicants that the Manager should manage both residential and commercial premises, as had been the case with both the Order made in 2007 and that made in 2001 and that this is what they had gained on the Order made on 18th September 2014. Mr Hills then proceeded to manage the Property on that basis.

34. For reasons that are not wholly clear, other than Mr Webb's dissatisfaction with Mr Hills, a letter was sent to the Tribunal questioning his authority. It appears that the Correction was issued as a result of that letter, it presumably being accepted as an application to apply the provisions of Rule 50, without reference to any other party and indeed, so far as is available to us, without the Correction being sent to the Applicants or other interested parties. They appear not to have found out about this change until October of 2015.

35. The first thing we need to consider is whether it was appropriate for a Correction to have been used in this case. The wording of Rule 50 is that it is to deal with clerical mistakes and accidental slips or omissions. Consideration of CPR Rule 40.12(1), which seems to us to have similar powers to Rule 50, limits the rule as follows:- *"The rule only applies to accidental slip or omission in a judgment or order. Essentially it is there to do no more than correct typographical errors (eg where the order says Claimant when it means Defendant) ...The slip rule cannot be used to enable the Court to have second thoughts or to add to its original order."* We consider this is applicable to Rule 50. The issue of a Correction which appears to have changed the management provisions from dealing with the totality of the Property to dealing only with the residential element is, we would venture to suggest, a fundamental change to the terms of the Order. If earlier orders had been made on the basis that the residential and commercial were separate, then we could understand the change that might have been made by the Correction . However, it seems quite clear to us that it was the Applicant's intention that the management should apply to both residential and commercial and was a continuance of the original arrangements that had been in place since 2007. It is also noted that Mr Webb raised no issue on this until he

wrote to the Tribunal in July of 2015, many years after the management arrangements had been put in place.

36. Our concern in this case is that if we deal with the matter on the basis of the application to vary the Order, such variation, it seems to us, should not be backdated but should be effective from the date of the hearing, namely 27th July 2016. If we are wrong on this then we consider and find, for the reasons set out above, that the application to vary made by the applicants should be allowed and back dated to 18th September 2014. If that is not the case then this leaves a lacuna in the management arrangement. It means that in effect from July of 2015 to July 2016 there is no management applicable to the commercial premises and monies that may have been collected by Mr Hills all in good faith under the terms of the September 2014 order, could be the subject of a claim by those commercial lessees who are so minded. Indeed, we noted Mr Webb's response that he did not think the amendment should be backdated so that he would have no obligation to make any payments in respect of the commercial premises from July of 2015 to July of this year. The question we therefore need to consider is how do we resolve this potential problem if it is not possible to back date the variation. Mr Dixon in his submissions after considering the Rules did draw our attention to the provisions of Rules 50 and 51. In respect of Rule 51 he considered that it would be in the interest of justice for us to set aside the Correction and that the conditions set out in sub-paragraph (2) (a) and (d) had been met. He suggested that also parties had not been present at a hearing. However, we do not consider that a hearing was required for a Correction to be issued.

37. We find that we can rely on the provisions of Rule 51 to set aside the Correction . We consider it to be in the interests of justice so to do and are satisfied that although Rule 50 makes no requirement for the amendment to be considered by the parties but by the Tribunal alone, it does seem to us that it was not correct that the parties were not provided with a copy of Mr Webb's letter and given the opportunity to respond. In addition, we consider that the use of the Correction under Rule 50 was a 'procedural irregularity' in that it went well beyond merely correcting an accidental slip or omission. It fundamentally changed the terms of the order, an order which continued from earlier orders made in 2007 onwards.

38. Accordingly, if a variation cannot be back dated, then our finding is that the Correction should be set aside and that the order made on the 18th September 2014 be reinstated.

39. The application for variation it seems to us gives the opportunity on this occasion to make provision for there to be payments on account within the next 14 days to put Mr Hills in funds to cover the costs of the insurance renewal. As we indicated above, a contribution of £280 is required from each maisonette owner and £420 from each commercial premises owner. In some cases they are one and the same which means that there would be a total contribution payable from that leaseholder of £700. Mr Webb agreed that he would do this but did asked that he be provided with full details of the insurance so that he could make his own enquiries to see if cover could be obtained at a lower premium elsewhere. Mr Hills was happy for him to make those enquiries and said that he would provide that information as soon as possible.

40. We confirm for the avoidance of doubt that Mr Hills is entitled to manage both the residential and commercial premises until his appointment expires which was three years from 18th September 2014. It may well be that Mr Webb would like to consider delaying any application for the appointment of replacement manager until that period has come to an end as there will need to be a renewal and at that time he could make his own application to appoint a manager of his choosing which the Tribunal could then consider.

41. On the question of costs, we have accepted Mr Dixon's application that the hearing to be a request for an order under Section 20C. The Respondent Criterion Estates Limited has taken no part in these proceedings. We do not consider that it would be appropriate for the landlord in those circumstances to recover any costs by way of a service charge although how he would do so given that the management now vests in Mr Hills is unclear. However, for the sake of completeness considering it just and equitable so to do we make an order under Section 20C.

42. We were also asked to give consideration as to repayment of the application and hearing fee. The application has been brought about solely as a result of Criterion's failure to adhere to their obligations as landlord. They have not engaged in the proceedings either now or in the past and it does seem to us, therefore, reasonable that they should be required to reimburse the Applicants with the application fee of £315 we were told and the hearing fee of £190. Such reimbursement should be take place within the next 28 days.

Andrew Dutton

Judge: A A Dutton

Date: 16th August 2016

<u>Schedule of Applicants</u>:
<u>Residential</u>:
Hitesh Chavda; Liana Wiltshire; Suresh Mistry and Narenda Mistry

<u>Commercial:</u>
Ilhan Arslan; Surria Jabeen Rahman; Linda Spackman; Kiltip Gill; Suresh and Marenda Mistry

Interested persons in addition to Mr Webb, Atul Mahta; Marcia Podd; Natsha Kamamal; Olakitam Rotimi

Section 24 Landlord and Tenant Act 1987 Appointment of manager by the court.

(1)A leasehold valuation 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.

Harry, Kim

From: Andrew Dutton [andrewduttonlvt@gmail.com]
Sent: 16 August 2016 13:59
To: Harry, Kim
Subject: Church Lane, Kingsbury
Attachments: FTT Church Lane.docx; FTT Members Discretionary Fees 16.8.16.docx

Hi Kim, please find attached the decision agreed with Mrs Redmond and Mr Packer. I also enclose an application for discretionary fees which I would be most grateful if you would pass on to the powers that be, kind regards

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For more information please visit http://www.symanteccloud.com

(2) A leasehold valuation 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;

(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).

(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 1925 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) A leasehold valuation 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 1925, the tribunal may by order direct that the entry shall be cancelled.

(9A) the court 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 a leasehold valuation 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 or insurance of those premises.

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.