



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

Case Reference : **CAM/OOKA/LVM/2016/0002**

Property : **74 flats at Startpoint, Downs Road,
Luton, Bedfordshire LU1 1XW**

Applicant : **Mr DAP Abbott of Prime Lettings
appointed manager**

Representative :

Respondent : **Lessees of the 74 flats at Startpoint,
Downs Road, Luton, Beds and
Startpoint Management Company
Limited**

Representative :

Type of Application : **S24 (9) Landlord and Tenant Act
1987 (appointment of a manager,
variation to order)**

Tribunal Members : **Tribunal Judge Dutton
Mr D Barnden MRICS
Mr N Maloney FRICS FIRPM MEWI**

Date of Decision : **4th April 2016**

DECISION

DECISION

The Tribunal agrees to the variation to the management order dated 21st October 2015 as requested by Mr Abbott. The amended order is attached.

REASONS

BACKGROUND

1. Following an application to the Tribunal a management order under s24 Landlord and Tenant Act 1987 (the Act) was made on 21st October 2015 (the Order)
2. By a request seeking further directions under s24(4) of the Act dated 23rd February 2016 Mr Abbot sought amendments to the leases of the residential premises at Startpoint Downs Road, Luton, Bedfordshire LU1 1XW (the Premises) as set out below
 - To amend clause 3(d)(iv) to remove the word 'Auditors' and substitute that with the word 'Accountants'
 - To amend Fifth Schedule clause 2 to delete the wording 'and audited'
 - To add to the Fifth Schedule of the lease a new clause reading 'To pay all costs charges and expenses incurred by the Company provided these are reasonable and incurred to comply with the Articles of the Company.'
3. We were told that all lessees were sent details of these proposed amendments on 4th March 2016, both by post and where known by email. So far as the Tribunal is aware no responses have been received from any leaseholder

FINDINGS

4. We have considered the application made, reviewed a specimen lease and the Order and the Manager's interim report sent under cover of a letter dated 12th February 2016. We do not consider that formal amendments to the leases of the residential premises can be made except under the provisions of s35 or 37 of the Act.
5. However, we are willing to vary the Order under the provisions of s24(9) having considered the provisions s24(9A) and finding that the variation will not result in any recurrence of circumstances which led to the appointment of Mr Abbott under the Order and that it is just and convenient to make the variations. The variations are set out in the attached amended Order.

Andrew Dutton

Tribunal Judge Dutton

4th April 2016

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 Tribunal 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 for 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 (i.e. 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.

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

CASE REFERENCE: CAM/OOKA/LVM/2016/0002

**IN THE MATTER OF SECTION 24 (1) OF THE LANDLORD AND TENANT ACT
1987**

AND IN THE MATTER OF

**Flats at 1 -54 and 55 -74 Startpoint, Downs Road, Luton, Bedfordshire LU1
1XW**

B E T W E E N:

Mrs Jacqueline Anne Davey

Applicant

AND

Startpoint Management Company Limited

Respondent

MANAGEMENT ORDER (as varied on 4th April 2016)

Interpretation:

In this Order:

- (a) "Common Parts" means, as defined in the Leases, the areas and amenities in the Estate available for use in common by the lessees and occupiers of the Building and all persons expressly or by implication authorised by them, including the pedestrian ways, forecourts, landscaped areas and gardens, entrance halls, landings, staircases, passages, car parking and areas designated for the keeping and collecting of refuse but not limited to them.
- (b) "Leases" means the long leases vested in the Lessees of the Flats.
- (c) "Lessee" means a tenant of a dwelling holding under a long lease as defined by Section 59(3) of the Landlord and Tenant Act 1987 ("the Act").

- (d) "the Manager" means Mr David Adrian Phillip Abbott (Mr Abbott) of Prime Lettings Limited, trading as Prime Management of 57 Leaf Road, Houghton Regis, Dunstable, Bedfordshire LU5 5JG.
- (e) "the Premises" all that property known as Startpoint, Downs Road, Luton and the 74 flats, common parts and garages situated therein

Preamble

UPON the Applicant having applied for the appointment of a Manager under Part II, Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal being satisfied that the Applicant is entitled to so apply and that the jurisdiction to appoint a Manager is exercisable in the present case

AND UPON the First-Tier Tribunal being satisfied that the conditions specified in S.24 Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a Manager

IT IS ORDERED THAT

The Manager

1. The appointment of Mr Abbott as Manager of the Premises pursuant to S.24 of the Act for a period commencing 1st November 2015 shall continue, initially for one year until 31st October 2016 and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Respondent and in particular:
 - (a) To receive all service charges, interest and any other monies payable under the Leases from 1st November 2015. Any arrears due for the period prior to 1st November 2015 shall be recoverable by the Respondent but any funds so recovered shall be deposited with The Manager, who shall be responsible for the recovery of future service charge payments during the currency of this Order and any extension hereto, the recovery of which shall be at the discretion of the Manager.

- (b) For the avoidance of doubt, the current service charge financial year shall continue to 31 October 2015 and thereafter as running from 1st November to 31st October in each year this Order is in place.
- (c) The power and duty to carry out the obligations of the Respondent contained in the Leases and in particular and without prejudice to the foregoing:
 - (i) The Respondent's obligations to provide services;
 - (ii) The Respondent's repair and maintenance obligations; and
 - (iii) The Respondent's power to grant consent.
 - (iv) The obligation to provide notices under the Leases shall be met if such Notices are sent to the Manager and not to the Respondent
- (d) The power to delegate to other employees of Prime Management, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions, and pay the reasonable fees of those appointed.
- (e) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- (f) The power in his own name or on behalf of the Respondent to bring any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee in respect of arrears of service charges accruing from 1st November 2015 or other monies falling due under the Leases from 1st November 2015 and to make any arrangement or compromise on behalf of the Respondent. The Manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account.
- (g) The power to commence proceedings or such other enforcement action as is necessary to recover sums due from the Respondent pursuant to Paragraph 1 (f) of this Order.

- (h) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- (i) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 or any replacement and to hold those funds pursuant to S.42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the lease (if any) or to power given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.
- (j) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent or any Lessee owing sums of money under his Lease.
- (k) The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e., on the leasehold interest of any Lessee, and the freehold of the Premises in respect of the Respondent).
- (l) The power to insure the whole building as a cost to the service charge account.
- (m) The power to raise a reserve fund.
- (n) To forthwith demand from each lessee the sum of £1,000 on account of service charges for the year commencing November 2015 and to make a further demand of £1,000 from each lessee on 1st May 2016. Such sums are payable in lieu of the monthly standing order currently being paid by the

lessees and are recoverable as a debt to the Manager in respect of service charges for the year commencing 1st November 2015. Immediately upon receipt of sufficient funds the Manager is to ensure that insurance is in place for the Premises, unless such insurance has already been placed by the Manager, in which case he shall be entitled to recover the premium paid as a priority from the funds recovered under this clause

2. The Manager shall manage the Premises in accordance with:
 - (a) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;
 - (b) the respective obligations of all parties – landlord and tenant – under the Leases and Transfers and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and
 - (c) the duties of managers set out in the Service Charge Residential Management Code (the “Code”) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to S.87 of the Leasehold Reform, Housing and Urban Development Act 1993.
3. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.
4. From the date of this Order, the Respondent shall not, whether by any agent, servant or employee, demand any further payments of future services charges, administration charges or any other monies from the Lessees at the Premises, such functions having been transferred to the Manager from 1st November 2015. For the avoidance of doubt the Respondent may seek to recover service charge arrears up to 31st October 2015 provided any monies so recovered are deposited with the Manager.
5. The Respondent and the Lessees and any agents or servants thereof shall give all reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.

6. Without prejudice to the generality of the foregoing hereof:
- (a) The Respondent shall permit the Manager and assist him as he shall reasonably require to serve upon Lessees any Notices under S.146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.
 - (b) The Respondent shall deliver to the Manager any contract relating to the caretaker and cleaners at the Premises including all PAYE slips and P46, if applicable. If the Respondent fails to deliver such documentation, the Manager shall be entitled to terminate the employment contract(s) of those persons and arrange such other similar services as, in his absolute direction, he thinks fit.
 - (c) It is the obligation of the Respondent, through Mr Stubbs, to provide the Manager with all information necessary to deal with the management of the Premises. This shall include, but it not limited to, up to date details of each leaseholder, full details of any employment contracts, full details of any ongoing contracts relating to the Premises, full details of all funds held by the Respondent with copies of all bank accounts relating thereto, the transfer of such funds to the Manager shall be undertaken by the Respondent without delay and without set off, together with the depositing of any monies recovered from lessees in respect of service charges accruing prior to 1st November 2015
 - (d) The Respondent shall deliver to the Manager all keys, fobs and other access/entry cards to the Premises, including keys to services and the meter cupboards and safety equipment. If the Respondent fails to deliver such keys etc, the Manager shall be entitled to remove the existing locks and other security systems currently installed at the Premises and install such locks and other security as, in his absolute direction, he thinks fit.
 - (e) The rights and liabilities of the Respondent arising under any contracts of insurance to the Premises shall continue as rights and liabilities of the Manager.

- (f) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.
7. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure they have appropriate professional indemnity cover in the sum of at least £2,000,000 providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.
8. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
9. The Manager's appointment shall continue from the date of this Order and the duration of his appointment shall be limited to an initial period of one year until 31st October 2016 and shall be subject to review before the year has expired
10. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leaseholder interest (whether by assignment or fresh grant) or freehold.

Liberty to apply

11. The Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with S.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
- a. Any failure by any party to comply with an obligation imposed by this Order;
 - b. For directions generally;
 - c. Directions in the event that there are insufficient sums held by them to discharge their obligations under this Order and/or to pay their remuneration.

Andrew Dutton

Signed Tribunal Judge Dutton

Dated 21st October 2015 as varied by Order dated 4th April 2016

SCHEDULE

FUNCTIONS AND SERVICES

Financial Management:

1. Administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the proportions under the terms of the Leases at year end.
2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees in the proportions set out in paragraph 1 above and in accordance with the provisions of 1(n) above. Instruct solicitors to recover any unpaid service charges and any other monies due to the Respondent.
3. Create a form of reserve fund.
4. Produce for inspection (but not more than once in each year) within a reasonable time following a written demand by the Lessees or the Respondent, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills and in particular in respect of the following matters, which are to be undertaken as soon as funds allow:
 - Arrange for a Health and Safety, Fire prevention and asbestos report to be commissioned
 - Arrange for a condition survey of the Premises to be undertaken by a qualified chartered surveyor
 - Arrange for an electrical survey to be conducted by a suitably qualified electrical contractor
 - Arrange for a survey of the lift to be undertaken which complies with LOLER regulations
 - Arrange for the entrance gates to the Premises to be inspected and a report with costings is to be produced

- Undertake such works as are advised as being of an emergency nature, if any, arising from the above reports as soon as possible
 - Provide a written report to the Tribunal by 15th February 2016 to confirm what (a) steps have been taken to comply with the above and the works and costs associated therewith (b) what further steps are required (c) any further powers that the Manager may require
 - Before the expiration of the one year period, that is to say at least one month before 31st October 2016 attend before the Tribunal to provide a full report and, if required to seek an extension of his appointment, which the Tribunal will consider, taking into account all representations received.
6. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises and within the next 28 days to call for and attend a meeting with Lessees to explain his appointment under this Order and to explore the possibility of lessees joining the Respondent management company as directors.

Insurance:

7. As a matter of extreme urgency to take out in accordance with the terms of this Order an insurance policy in the Manager's own names in relation to the buildings and the contents of the common parts of the Premises with a reputable insurer, and provide a copy of the cover note/schedule to all Lessees and the Respondent.
8. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

Repairs and Maintenance

9. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary, subject to the priorities given at paragraph 5 above.
10. Administer contracts in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.

11. Manage the Common Parts and service areas of the Premises, including the arrangement and supervision of maintenance.
12. Carry out regular inspections (at the Manager's discretion but not less than fortnightly) without use of equipment, to such of the Common Parts of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

Administration and Communication

14. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquires from the Lessees or their solicitors.
15. Provide the Lessees with telephone, fax, postal and email contact details and complaints procedure.
16. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

Fees

17. Fees for the above mentioned management services (with the exception of supervision of major works) would be a setting up fee of £3,700 together with a fixed management fee of £14,800, payable quarterly (payable as to £200 per flat) for the Premises for the first year of management under the Order.
18. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £200 payable by the outgoing Lessee.
19. The undertaking of further tasks which fall outside those duties described above are to be charged separately at a present maximum hourly rate of £70 up to a maximum total sum of £500

Variations dated 30th March 2016

- Henceforth during the continuance of the Order there is no requirement to obtain audited accounts, the certificate of a qualified accountant being sufficient to meet the requirements contained at clauses 3(d)(iv) and clause 2 of the Fifth Schedule of the Leases

- During the existence of the Order to include a provision requiring all lessees to pay all costs charges and expenses incurred by the Company provided these are reasonable and incurred to comply with the Memorandum and Articles of Association of the Company. For the avoidance of doubt such expenses shall be considered Landlords expenses within the provisions of s18 of the Landlord and Tenant Act 1985 and as a consequence subject to the provisions of sections 19 to 37 of the Landlord and Tenant Act 1985 (as appropriate)