



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

Case reference : **LON/00AH/LVM/2020/0002**

HMCTS code : **V: CVPREMOTE**

Property : **Dagnall Court, Dagnall Park, London
SE25 5PJ**

Applicant(s) : **Caroline Maxwell (lessee, Flat 2)**

Respondent(s) : **E King Limited (freeholder)**

Type of application : **Variation of order for appointment of a
manager (to extend that order)**

Tribunal judge : **Judge Timothy Powell**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **23 July 2020**

DECISION

To extend the existing management order

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable in the current pandemic and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 66 pages, together with the application form, a condition report dated 6 September 2019, the witness statement of Mr Justin Toohig, director of the respondent freehold company, and the response by the applicant lessee, Ms Caroline Maxwell, to Mr Toohig's statement. I have noted the contents of all these documents. The order made and my reasons are set out below. The parties expressed satisfaction with the process and the applicant

said it was very convenient that she had been able to dial-in to the hearing by telephone, when problems with her video connection arose.

DECISION OF THE TRIBUNAL

The existing management order is extended by 5 years and will now expire on 30 June 2025. The extended period will be on the same terms as the previous order, with those changes in the Amended Management Order annexed.

REASONS

Background

1. The applicant is the lessee of one of four flats in a detached, purpose-built block known as Dagnall Court, Dagnall Park, London SE25 5PJ (“the Property”). She seeks the variation of an order appointing a manager under section 24(9) of the Landlord and Tenant Act 1987 (the “Act”), by extending that order for a further five years. The respondent is the freehold company.
2. Mr Paul Cleaver of Urang Property Management Limited is the current tribunal-appointed manager, his original order of appointment running for a period of three years from 1 July 2017. On 30 April 2020, I made an Interim Order extending the existing management order and Mr Cleaver’s appointment, until this application had been finally determined, or until further order of this tribunal.

Hearing

3. The hearing of this matter took place by video conferencing on 23 July 2020. Mr Cleaver joined by video and, due to connection problems, Ms Maxwell joined by telephone. Both gave evidence in support of the application.
4. At the start of the hearing, it became apparent that the tribunal had not given formal notice of the application and hearing to Ms Jill Maher (or Parks-Maher), the lessee of the other three maisonettes in the Property, all of which were sub-let. Mr Cleaver explained that Ms Maher paid her service charges but, beyond that, neither he nor Ms Maxwell had any relationship with her and she took no active involvement in the management of the Property. Notwithstanding this, Mr Cleaver had sent Ms Maher copies of the tribunal application, the Interim Order & Directions, which notified the parties of today’s hearing, and a copy of the hearing bundle. Having heard this explanation, and noting that Ms Maher had received full notice of the original appointment of manager application but had not participated in it, I took the view that Ms Maher had had sufficient notice of the current application and hearing, so that I could proceed with it. I will, however, direct that the tribunal and Mr Cleaver must send a copy of this decision Ms Maher, who may,

if she wishes, apply to the tribunal for a different order, within 14 days of the decision being sent to her.

5. In her application form, Ms Maxwell sought to extend the order because, she said, “the existing management order has proved a success so we would like for it to keep going.” In an email of 21 May 2020, Mr Justin Toohig, a director of the respondent company, confirmed that the freeholder had “no objection to the management continuing for a further 3 year period”, though in his witness statement of 19 June 2020, he suggested that a 2 year period was more appropriate.
6. In her response of 10 July 2020, Ms Maxwell welcomed the freeholder’s reply, but proposed “the length of the appointment for 5 years instead of 2 years to ensure continuity of management cover, sufficient time to build a sinking fund and time to complete major repair work particularly on the roof as identified by the surveyor’s report in 2019”, a copy of which was attached.
7. Mr Cleaver explained that a management order was needed at this Property because of deficiencies in the original leases, which lacked: standard service charge provisions; an obligation on the part of the freeholder to maintain and repair the structure of the building or to arrange works; or powers to levy service charges or to appoint a managing agent.
8. Since his appointment three years ago, Mr Cleaver has been successful in establishing a functional management set-up at the Property, including setting an appropriate budget, procuring a suitable buildings insurance policy, commissioning of the necessary health and safety arrangements, preparation for major works and ongoing maintenance of the building. However, Mr Cleaver said that three years had not proved enough to progress external works needed at the Property, evidenced by the condition survey of 6 September 2019, and he provided a future management plan if his appointment were to be extended. The cost of works was likely to be in the region of £25,000 and over the past three years he had raised a sinking fund of about £6,500.
9. I questioned Mr Cleaver and Ms Maxwell about the proposal from the freeholder that the order should only be extended for two years, putting to them the points made by Mr Toohig that there did not appear to be ongoing major works of repair or maintenance being undertaken at the Property and that an extension of five years appeared excessive. Having done so, I am satisfied not only that the management order should be extended, but that five years is a reasonable period for such extension. I reached this conclusion on the grounds that:
 - (i) The deficiencies in the leases, as mentioned, make the extended appointment of an independent manager desirable, if not necessary, for the proper management and maintenance of the Property;

- (ii) This is more so, given the apparent non-communication by and lack of involvement of the lessee of three of the four flats in the Property;
 - (iii) The existing manager has been successful in managing the Property to date and has the support of both parties;
 - (iv) There is evidence of the Property needing maintenance and repair in the short- to medium-term, both externally and internally, and a need to implement recommended health and safety improvements; and a manager will be best-placed to progress such works;
 - (v) A five-year extension will give all parties certainty about the framework for the future management and maintenance of the Property;
 - (vi) It will also enable the manager to collect monies gradually to build up the sinking fund to pay for the proposed major works. This means that the cost will be spread over time and leaseholders will not be met by sudden and steep bills for the work. It also means that the works will not be rushed; and
 - (vii) It will be more economical for leaseholders to apply to extend the appointment once in every five years, compared to once in every two years.
10. The appointment will be for a further five years, to expire on 30 June 2025, being the end of the service charge year. It will be on the same terms as the previous order, but with those changes marked in the Amended Management Order attached.

Name: Timothy Powell

Date: 23 July 2020

Annexed: Amended Management Order

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).



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Applicant(s) : **Caroline Maxwell (lessee, Flat 2)**

Respondent(s) : **E King Limited (freeholder)**

AMENDED MANAGEMENT ORDER

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Paul Cleaver of Urang Property Management Ltd ('the Manager') is appointed as manager of the property at Dagnall Court, Dagnall Park, London SE25 5PJ ("the Property").
2. The order shall continue for a period of ~~3~~ 5 years from 1 July 2020 ~~1 July 2017, to be extendable by a further two years following approval by the Tribunal.~~ If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.
3. The Manager shall manage the Property in accordance with:
 - (a) The Directions and Schedule of functions and services attached to this order;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager 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 section 87 Leasehold Reform Housing and Urban Development Act 1993.
4. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. ~~That no later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).~~
3. The rights of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 1 July 2020 ~~2017~~ become rights of the Manager.
4. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
5. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
6. The Manager shall be entitled to collect a sinking fund for the property in order to be able to carry out necessary repair works across several years if appropriate. The Manager shall be entitled to collect funds from lessees and arrange major works directly rather than carrying them out jointly with the lessees as specified in the leases, and to pay collect funds to cover all professional fees related to such works or to assist its management functions.
7. The percentages payable by each flat/maisonette for all works shall be set at 25% each on the understanding that each unit is roughly the same size (the lease says to use rateable value or due proportion). Service charges will be payable yearly in advance on the 1st July.
8. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts at year end to the lessees.
- (ii) Set demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Set demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Manager.
- (v) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external accountant, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest-bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property. Comply with all relevant health and safety law and regulations from time to time.
- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.

- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.
- (iv) Appoint Surveyors as soon as practicable after the appointment, to (a) provide a full survey of the building, (b) identify any structural or other damage or issues to the building.

Fees

- (i) Fees for the above-mentioned management services will be a basic fee of ~~£350~~ ~~325~~ per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS. Such fee may increase year to year based on inflation.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the cost (subject to a minimum fee of £500), excluding the cost of the specification. This is in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis. Time will be charged at £125 per hour for a property manager, £150 per hour for a senior property manager or head of finance or legal and ~~£250~~ ~~200~~ per hour for the director of Urang. This will include for time spent on any issues that do not constitute normal day to day management and/or that pre-date this appointment, including fees charged to the Applicant for preparing for this appointment

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Association of Residential Managing Agents.