



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

Case reference : LON/00AN/LAM/2020/0022

**HMCTS code
(paper,
video, audio)** : V: CVPREMOTE

Property : 94 Barons Court Road, London W14 9DX

Applicants : Mr and Mrs M Fuchs

Representative :

Respondents : (1) Mr D Clancy
(2) Ms R Platford
(3) Mr S Bassi

Representative :

Type of application : Appointment of Manager

**Tribunal
member(s)** : Judge S Brilliant
Mrs A Flynn MRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 05 March 2021

Date of decision : 08 March 2021

DECISION

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Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The order made is described at the end of these reasons.

Decision of the tribunal

In accordance with section 24(1) Landlord and Tenant Act 1987 Mr N Cross BSc MRICS of TPS Estates (Management) Ltd ('the Manager') is appointed as manager of the property at 94 Barons Court Road, London W14 9DX ('the Property').

- 1 The order shall continue for a period of 5 years from [4 weeks after the decision]. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
- 2 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.
- 3 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.
- 4 An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.

The background

1. The Property is a converted mid terrace building comprising four flats.
2. All four flats are let on long leases. Each of the long lessees has a one quarter share in the freehold.
3. The Applicants' flat is on the second floor. Mr Clancy's flat is in the basement. Ms Platford's flat is on the ground floor. Mr Bassi's flat is on the first floor.
4. In their documents for the application, the Applicants say that Ms

Platford and Mr Bassi are broadly supportive of the application. Mr Clancy opposes it.

5. In the notice of application the Applicants state that the Property is not in a good day state of repair. They identify a leaking roof, damage to brickwork, failing guttering and other matters. They rely upon a 60 page defects report by a chartered surveyor employed by Marshall Land and Property Associates (May 2020) that was sent to the Respondents. The conclusions of this report are set out as an appendix to this decision. Suffice to say the Property is considerably out of repair.

6. The Applicants says that they have tried on numerous occasions to get the other lessees to agree to a project budget and the way forward. They have tried to be as accommodating and sensitive as possible to everyone's views and priorities.

7. They admit that they has so far failed in this endeavour. The parties have not yet been able to agree on a way forward. They feel that there needs to be an objective, independent person assisting with the decision-making process and, if necessary, taking the decisions himself or herself, with the best interests of the Property and the lessees in mind.

8. It is for this reason that they have applied to the Tribunal to have a manager appointed with a clear mandate to carry out the necessary repairs and improvements.

9. At present there is no financial management of the Property. Building insurance is the only repairing common expense. The Applicants usually have to pay that upfront and then chase the other lessees to pay their respective shares. The Applicants hope that a manager will be able to introduce sound financial management, including a sinking fund for cyclical maintenance in order to prevent the Property from falling into disrepair. Again, it would be beneficial if the manager had the power to raise service charges outside the constraints of the existing provisions in the lease, if necessary.

10. The Applicants have vetted a number of managers, most of them previously appointed by the Tribunal, and they feel that Mr Cross is a competent and experienced manager who can earn the trust of the other lessees.

11. The Applicants have had some preliminary discussions with Mr Cross on his proposed way forward which has given the Applicants reassurance and he is happy to put his name forward.

The hearing

12. The First Applicant attended the hearing. So too did Ms Platford who welcomed the application but with some reservations which she was able to discuss with Mr Cross during the course of the proceedings.

13. Mr Bassi did not attend the hearing, and provided no written evidence.

14. The Applicants' case is that it is Mr Clancy who is the least cooperative lessee in matters relating to the repairs and maintenance of the Property and the payment of the service charge.

15. Mr Clancy, who had not put in any written evidence, chose not to taking part in the proceedings. He sent the following emails to the Tribunal shortly before hearing:

Sorry Jenny [the case officer], but all of this message and instructions [joining instructions] are totally beyond my comprehension. I have absolutely no idea what's happening. I am 73 years old and have no knowledge on any of those matters. So I won't be joining anything like this.

I wish to remain autonomous in the basement, as under previous property management companies I derived absolutely no benefit from fees paid by me. All of the fees were used solely in the common areas upstairs in the main house. Of course I will fulfil my obligations to pay a quarter of the cost of any building works to the main structure of the building

The lease

16. We were shown a sample lease, being that of the second floor flat dated 27 November 1987.

17. The lease is somewhat clumsily drafted, but contains provisions for the payment of a service charge to cover the landlord's obligations relating to matters of repair and maintenance. There are provisions for the landlord to recover administration charges, and there is also provision for a reserve fund. Each lessee pays a one quarter share of the total service charge.

The statutory gateway

18. We are entirely satisfied from the evidence before us that the Applicants have shown that the Tribunal has jurisdiction under s.24(2)(a) Landlord and Tenant Act 1987 to appoint a manager.

Mr Cross

19. Mr Cross answer detailed questions from both members of the Tribunal and from Ms Platford. He had provided the Tribunal with a management plan dated 05 January 2021.

20. We were impressed by his CV, management plan, his knowledge and experience of management in the close vicinity to the Property, and to his previous successful experience of acting as a Tribunal appointed manager.

21. He explained to Ms Platford that the works he proposed fell into two sections. First, works to alleviate immediate dangers such as repairs to the railings, any blocked drains, and asbestos, electricity and fire checks.

22. Secondly, he wishes to put in a plan for major works at spread over 2 to 3 years. He readily understood that considerable expenditure would have to be incurred by the lessees, and he was anxious to work with them and to stagger the

works so as to keep the yearly payments as low as he could.

23. In view of the amount of work being required, he asked to be appointed for at least three years although probably five years was more realistic.

24. Mr Cross told us that he was managing very similar houses in Barons Court Road. He had seven members of staff. They were allocated to specific jobs, rather than to specific properties.

25. We are satisfied that Mr Cross is an appropriately qualified person to act as the manager, and we will make the appointment for five years. The relevant directions and schedule of functions and services are set out below.

Name: Simon Brilliant

Date: 08 March 2021

Appendix: Surveyors' Report

“The building shows numerous, relatively minor defects all of which will increase in severity if not dealt with. Our opinion is that the main roof to the building is now life expired and will continue to perform badly until such time as it is replaced. This will require replacement to include compliance with modern standards of insulation.

Piecemeal repairs have been carried out with old replacement windows in the ground floor and new and satisfactory replacement windows in the first and second floor flats. Acoustic treatment is obviously important due to the proximity of the underground railway in the cutting behind the building.

The rainwater gear to the building requires a thorough overhaul and we recommend that this be fully replaced as repair will only lead to more repair.

Patch pointing is required. More particularly, to the rear of the building there are redundant pipes that should be removed and making good is required around newer pipework. The rear elevation is in poor decorative order and the sills require repainting in particular.

The porch to the front of the building requires complete overhaul and in particular, there are sections of rotten timberwork and damaged glazing to the front door. The drainage to the front porch is suspect and there has been previous leakage. Proper drainage need installing here. The front bay roof is now in poor conditions with the tiling in a deteriorated state. We recommend this be replaced together with the gutter and shared downpipe.

The subsequent survey of the basement flat confirmed our previous report on the state of the exterior as far as the rear elevation is concerned. It added repair work required to the front concrete staircase. An immediate requirement was also revealed in the form of a blocked interceptor manhole in the front area. The drains require jetting/rodding and the interceptor rodding eye properly reinstating. The current blockage without an interceptor rodding eye will allow rats to get out of the drains and this must be dealt with. Numerous drain

companies can carry this work out.

The front runway to the front door is damaged and has been over felted to asphalt with some quarry tiles placed. This area is generally in poor condition and we would recommend that a full refurbishment of the building would include properly waterproofing and finishing this front entranceway”.

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).

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 and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the

Property shall upon a date four weeks after the date of this order become rights and liabilities 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. By no later than one year, the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date, providing a copy to the lessees of the Property and the Respondent at the same time.
7. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
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 to the lessees.
- (ii) Demand and collect ground rents, service charges (including contributions to a sinking fund or reserve fund), insurance premiums and any other payment due from the lessees.
- (iii) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (iv) 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 auditor, 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.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

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.
- (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.

Fees

Will be as per the fee sheet below.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

Standard Fee Rates

Residential Property Management:	£280 + VAT per flat per annum
Project coordination works:	9.00% + VAT
<i>Company Secretarial work:</i>	
(A) Where TPS appointed Company Secretary :	£250 + VAT per annum
(B) Plus out of pocket expenses:	E.g. Companies House fees
<i>Where TPS is not Company Secretary</i>	
(A) Annual Return submission:	£125 + VAT
(B) Acting as Registered Address:	£125 + VAT
(C) Submission of Dormant Accounts:	£75 + VAT
(B) Plus out of pocket expenses:	E.g. Companies House fees
<i>Insurance work</i>	

(A) Where insurance premium placed via broker and commission earned:	Included
(B) Where insurance placed via Lessee/Freeholder:	£300 + 7.75% of claims handled
Answering Solicitor enquiries for flat sales:	£95 + VAT
Receipting notices for remortgage purposes:	£80 + VAT
Receipting notices of charges/assignment:	£120 + VAT
Receipting notices of charge/assignment AND issuing new share certificate:	£160 + VAT
Land Registry – Certificate of ID:	£100 + VAT + Solicitors fee
Service Charge Accounts:	£300 + VAT
All other work not covered by general management work in our Terms and Conditions. Please note this includes work involved in preparation and attendance of any legal proceedings:	£100 + VAT per hour