

12694



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

**Case Reference** : **MAN/00CG/LVM/2017/0001**

**Property** : **Whitecroft Works,  
69 Furnace Hill, Sheffield S3 7AH**

<b>Applicants</b>	<b>:</b>	<b>Stephen and Marjorie Hayes</b>	<b><u>Flat/interest</u></b>
		<b>Rowen Wilde</b>	<b>33, 36, 49, 68</b>
		<b>J and S Moon</b>	<b>60</b>
		<b>L Outhan and I Hart</b>	<b>17</b>
		<b>Alan J Markham</b>	<b>40</b>
		<b>G and C Stocks</b>	<b>19</b>
		<b>I J and L Andrews</b>	<b>31, 18A</b>
		<b>Andrew Pike</b>	<b>25</b>
		<b>Peter Fitzgerald</b>	<b>10</b>
		<b>Kevin and Annie Potter</b>	<b>69</b>
			<b>18D</b>

**Respondent** : **PAS Property Services Limited**

**Type of Application** : **Variation of order appointing a manager,  
section 24, Landlord and Tenant Act 1987**

**Tribunal Members** : **A M Davies, LLB  
C Evans, FRICS**

**Venue of Hearing** : **Paper determination**

**Date of Determination** : **12 February 2018**

**Date of Decision** : **15 March 2018**

**ORDER**

## **DETERMINATION**

1. The Management Order dated 8 December 2014 is varied as follows:
  - 1.1 Peter William Bigge, AIRPM, shall be substituted for Michael Willans as manager of Whitecroft Works (“the Property”).
  - 1.2 The Management Order shall continue, as varied by this Order, for a period of 3 years from 1 February 2018.
  - 1.3 The manager’s annual remuneration shall be increased to £165 per apartment (currently 73 apartments) plus VAT with effect from 1 February 2018. In addition he shall be paid an administration charge for any major works at the Property at 10% of the contractors’ net charges plus VAT.
  - 1.4 Within 14 days after receipt of this Order the Respondent shall forward to the manager sufficient information to enable the manager to insure the Property including the retail unit that forms part of it. The manager shall insure the Property on behalf of the Respondent in accordance with paragraph 2 of the Sixth Schedule of the Applicants’ leases with power to obtain any revaluations, and shall invoice for the apportioned Insurance Cost and receive payment as part of the service charge account of each leaseholder.
  - 1.5 The manager shall notify the Respondent of the date on which his insurers are to start cover, and the Respondent shall terminate its insurance cover for the Property on that date.
  - 1.6 The manager shall supply the Respondent from time to time with sufficient evidence that the retail unit is insured. The manager shall invoice the proportion of insurance costs payable in respect of the retail unit to the Respondent, which shall pay within 7 days after receipt of invoice.
  - 1.7 Reference in Schedule 6 to the Lease to the Surveyor shall mean a surveyor instructed for the purpose by the manager.
  - 1.8 Paragraph 6 of the Management Order is varied accordingly.
2. Pursuant to section 20C of the Landlord and Tenant Act 1985 the Respondent’s costs of this application may not be included in the service charge account.

## **REASONS**

### **THE APPLICATION**

1. The application relates to Whitecroft Works, Furnace Hill, Sheffield (“the Property”) consisting of one retail unit, 47 new-build residential flats of which 43 are connected to a system (“the Switch2 system”) for heating space and water, 26 flats located in an older building, and common parts.

2. On 8 October 2017 Mr and Mrs Hayes on behalf of themselves and the other Applicants, applied to the Tribunal as leaseholders of flats at the Property for a variation of the Management Order made on 8 December 2014. The variations sought were
- a) That the Management Order should be extended for a period of 3 years
  - b) That the manager's fee should be increased, and
  - c) That responsibility for insuring the Property (under Schedule 6 of the leases) should be transferred from the Respondent to the manager.

Subsequently the Applicants added a further request:

- d) That Mr Peter Bigge should replace Mr Michael Willans as manager.
3. The reasons given by the Applicants for the requested variations were as follows:
- a) That contrary to paragraph 9 of the Management Order, the Respondent had not given the manager
    - information about the division of costs between the retail unit and the residential parts of the Property as required at paragraph 9 of the Management Order, or
    - written confirmation of the varied rate at which each of the long leaseholders were required to contribute to the service charge costs;
  - b) That the Respondent had demanded payment of "Insurance Rent" (as defined by the lease) from the leaseholders of the residential units, contrary to paragraph 6 of the Management Order, and had not provided the manager with insurance certificates and details of insurance costs, as required by paragraph 7 of the Management Order;
  - c) That the Respondent had not arranged for a fair apportionment of the gas used to heat the common parts of the Property, as envisaged at paragraph 16 of the Management Order; and
  - d) That the Respondent had not arranged for invoices to be sent to 43 leaseholders of the new-build part of the Property for the cost of space and water heating in their individual flats, the manager being tasked with "ensuring that this new system works" as proposed at paragraph 17 of the Management Order.

#### THE RESPONSE

4. The Respondents instructed solicitors, and indicated their consent to a), extension of the Management order from 1 February 2018 to 31 January 2021 and b) and d), the appointment of Mr Bigge at an increased fee.
5. The Respondent objected to the proposed transfer to the manager of its insurance responsibilities at the Property, and contested the reasons given by the Applicants for making the application.

6. The Respondent also sought from the Tribunal a declaration “*as to the split in the charge of Switch2*”, or in other words, whether and how the Switch2 invoices for supplying gas to the 43 new-build apartments should be divided (pursuant to paragraph 2.2 of the Fourth Schedule to the leases) between those 43 leaseholders, or between the 73 residential leaseholders, or between the 74 units at the Property including the retail unit.

#### TRIBUNAL’S PROCEDURE

7. The parties agreed that no inspection of the property or hearing was necessary, and the matter was dealt with by the Tribunal on the basis of written representations.
8. The Tribunal read the various documents and statements put forward by each of the parties, as well as the Tribunal decisions of November and December 2014, the Management Order, and the decision of Her Honour Judge Alice Robinson in the Upper Tribunal (LC) dated 9 January 2014 (“the UT Decision”).

#### EXTENSION OF THE MANAGEMENT ORDER

9. The parties agree that an extension is appropriate.
10. The Tribunal is mindful that the object of a Management Order is to allow for problems to be rectified, and for management to be removed from the supervision of the Tribunal once it is reasonable to return to reliance on the provision for management contained in the lease. At this Property there are unresolved issues regarding service charges and failures to manage the Property in accordance with the lease, as is evidenced by the conflicting statements of the parties. In the circumstances it is appropriate, with the consent of all parties, to continue the Management Order for a second 3 year period.

#### THE MANAGER; REMUNERATION

11. The Tribunal is told that Mr Willans has left the employment of Town & City Management Limited. The appointment of manager is a personal one, and termination of Mr Willans’ employment should not in itself have prevented him continuing as manager of the Property. However it appears that latterly the work has been retained at Town & City Management Limited, and is done by or under the supervision of Mr Bigge. The Tribunal has seen Mr Bigge’s curriculum vitae, and accepts that he is a suitably qualified person to manage the Property.
12. A manager’s fee of £150 per flat plus VAT was provided for in the Management Order. The Tribunal considers it reasonable to increase this partly due to passage of time and partly because of the increased responsibilities given to the manager by this decision. A 10% increase to £165 per flat plus VAT is appropriate in the circumstances.

## INSURANCE

13. The Tribunal finds that the Respondent was asked by the manager to invoice the leaseholders directly for that part of the service charges that represented insurance costs.
14. However, the Tribunal notes that, despite the issues raised in this application, the Respondent has not provided any detail of its insurance cover, insurance costs, the division of insurance costs between the retail and residential areas of the Property, or the apportionment of insurance costs between the residential units. The Tribunal is not reassured that the Respondent's lease obligations relating to insurance are being properly undertaken, and therefore determines not only to re-state the original requirement that the manager should invoice leaseholders for insurance costs, but to assist him in doing so orders that he should arrange the insurance cover for the Property on behalf of the Respondent and in accordance with the Sixth Schedule to the lease, paragraph 2.
15. The Tribunal does not consider that there is any reason to suppose that on termination of the manager's appointment a smooth transfer of management functions, including those relating to insurance, cannot be achieved.

## GAS SUPPLY TO 43 FLATS IN THE NEW BUILD AREA

16. At paragraphs 40 and 41 of the UT Decision HHJ Robinson made it clear that the cost to the Respondent of providing gas to 43 flats using the Switch2 system was not recoverable under the service charge provisions of the lease:  
*"....the lessee would not normally expect to pay for the costs of services supplied to individual occupiers as opposed to services supplied for the benefit of more than one lessee.....The Part I [Eighth Schedule] Services relate exclusively to the Estate, and the Part II Services relate exclusively to the Building and the Common Parts.....it is clear that the Part II Services are not intended to include services provided within individual apartments."*
17. It follows that the manager, who was appointed by the Tribunal to manage the common parts and to oversee the operation of the service charges at the Property, has no powers to manage or operate the Switch2 system insofar as it relates to the supply of gas to individual flats, for which the Respondent is charging or should be able to charge the leaseholders of those flats by virtue of the direct covenant at paragraph 2 of the Fourth Schedule to the leases.
18. The Tribunal's jurisdiction in this application relates to the terms of the manager's appointment; the Tribunal is not seised of the issue as to how the costs of the Switch2 system are to be apportioned. The UT Decision concludes that this is a matter to be determined by the Landlord's surveyor.

## COSTS

19. On 9 October 2017 the Applicants applied for an order under section 20C of the Landlord and Tenant Act 1985 preventing the Respondent from adding its costs of this application to the service charge account.
20. Although 3 of the 4 requested variations have been dealt with by consent and the Tribunal has found that the Respondent did not flout the Management Order by invoicing leaseholders directly for insurance costs, the Respondent has increased the work required of the parties and the Tribunal by failing to explain how the buildings insurance arrangements work, and by requesting a declaration that the Tribunal is unable to make. The Management Order was required in the first place because of management failures on the part of the Respondent, and so the Section 20C order in relation to costs is made as requested.

Judge AM Davies  
15 March 2018