

Residential Property Tribunal Service
Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/00HG/LAM/2005/0010

Property 8, Lockyer Road, Mannamead, Plymouth PL3 7RL.

Applicant Mrs Kay Conner-Methven Flat 3

Respondent 8, Lockyer Road, Mannamead Limited.

Date of application 17th August, 2005

Date of Hearing 29th November, 2005

Venue Appeals Service, St. Catherine's House, Notte Street, Plymouth

Present Applicant Mrs. Conner-Methven, owner of Flat 3

 Respondents Mr. Burley and Miss Houghton, owners of Flat 1
 Mrs. Crawford, owner of Flat 2 and resident
 Mr. Atter, owner of Flat 4 and resident

In Attendance Mr. Mark Postle-Hacon of PHC Management Ltd, proposed Manager

Tribunal Members Mr. D.G. Willis Chairman
 Miss C. Rai LL.B.
 Mr. M.C. Woodrow MRICS

Date of Decision 12th December 2005

Decision The unanimous decision of the Tribunal is that the Application is refused.

The Application

1. The amended second Application dated 17th August 2005 requests the appointment of a manager to manage the property in place of 8, Lockyer Road Mannamead Limited.

Inspection

2. The tribunal inspected the property on 29th November 2005 prior to the hearing. Only the common parts of the interior of the property were inspected, as that was all the Tribunal was concerned with. They were found to be in good condition. The Tribunal was told that they had been decorated some two years ago.

3. The exterior of the property both front and back was in fair to good condition. The metal handrail of the rear external stairs was in need of attention.

4. The gardens owned by the leaseholders were in a tidy condition.

5. The external amenity areas were also in a satisfactory condition.

6. There are no off-road parking facilities.

The Hearing

7. A Hearing took place at Appeals Service, St. Catherine's House, Nottle Street, Plymouth. This was attended by the applicant, Mrs. Conner-Methven (Flat 3); Mr. Postle-Hacon a director of PHC Management Ltd. the proposed management company; Mr. Burley and Mrs. Houghton (Flat 1); Mrs. Crawford (Flat 2) and Mr. Atter (Flat 4)

8. The Chairman introduced the Tribunal to those present.

9. The Chairman then indicated that Mr. Postle-Hacon was known to him socially being a friend of his daughter having been at the same school. Miss Rai also indicated that Mr. Postle-Hacon was known to her. Neither the Chairman nor Miss Rai had any business connection with his company. It was agreed that the hearing could proceed.

10. The Chairman suggested that Mr. Postle-Hacon gave his evidence first. There was no objection to this from the respondent.

11. Mr. Postle-Hacon said that he had been approached by Mrs. Conner-Methven who indicated to him that she was experiencing difficulty with the management company in enforcing the covenants and other terms and conditions of the lease.

12. If he was appointed, Mr. Postle-Hacon would offer two alternative proposals. Either he would manage the work indicated by the applicant as mentioned in the case papers, or he would act as manager for and on behalf of the management company.

13. He would ensure that the management company acted properly and observed current legislation.

14. As an independent manager he hoped he would be able to overcome the frustrations and disagreements between the individual flat owners.

15. As part of the service he would visit the property at least every four weeks.

16. He indicated that if there was an equal vote of shareholders on a particular issue he would endeavour to resolve the differences and trust that his independent view would be accepted.
17. Mr. Postle-Hacon indicated that he had professional indemnity insurance cover for £250,000 for each and every claim in any insurance year.
18. He also confirmed that he kept individual accounts for each of his clients in accordance with RICS guidelines.
19. He stated that he had a good relationship with local builders and other tradespeople.
20. Mr. Burley expressed concern that the schedule of works put forward by Mrs. Conner-Methven had not been accepted by the other flat owners and questioned if they would be automatically carried out if PHC Management Ltd. was appointed. He indicated that such works had not been accepted as necessary by the other leaseholders and indicated that he could not afford to contribute to all of the works at one and the same time.
21. Mr. Postle-Hacon confirmed that if he was appointed he would prepare budgets of annual expenditure to include anticipated work, building insurance, cost of utilities, and contributions to a reserve/sinking fund as well as his charges of £1000 + V.A.T. per annum.
22. He would also prioritise any items requiring attention.
23. He would try to limit the total cost of any qualifying work so that no leaseholder would be obliged to contribute more than £250 and so avoid having to implement the consultation requirements under Section 20 of Landlord and Tenant Act 1985.
24. Mr. Atter and Mrs. Crawford indicated that they cannot afford to pay management fees in addition to the usual service charges.
25. Mrs. Conner-Methven thought that a figure of less than £1 a day, which she would be required to pay, was a sum worth paying to ensure the property was well maintained and the management company complied with current legislation.
26. Mr. Postle-Hacon said that having seen the property for the first time today, whilst the handrail at the rear was in need of attention, the property was otherwise in a reasonable condition.
27. Mrs. Conner-Methven was concerned that the management company was failing to enforce various covenants, terms and conditions contained in the lease which had not been complied with. Particular information is contained in the case papers.
28. Mrs. Conner-Methven mentioned that Mr. Atter had not cleansed the outside of the windows of Flat 4 on the second floor of the building. Mr. Atter indicated that it was physically impossible for him to clean all the outside of all of the windows of his flat from the inside. He said that he had cleaned as much as he could.
29. Mrs. Conner-Methven, the owner of Flat 3 on the first floor, stated that she employed window cleaners to clean the windows of her flat so as to comply with the terms of the lease.

30. Mrs. Conner-Methven said that she was concerned that the perceived lack of maintenance could affect the value of her flat.
31. Mrs. Conner-Methven complained that Mr. Atter had left personal belongings outside his flat obstructing the common parts of the property contrary to the terms of the lease. She produced two photographs as evidence of her allegation. Mrs. Conner-Methven expressed concern over the possibility of any public liability claim if common parts and amenity areas are obstructed.
32. Mrs. Conner-Methven indicated that Mrs. Houghton had recently resigned as company secretary and as far as she was aware there was now no secretary. This was another reason to appoint a manager.
33. For all these reasons Mrs. Conner-Methven wanted to appoint PHC Management Ltd. to manage 8, Lockyer Road, Mannamead Ltd.
34. Mrs. Crawford indicated that she had used her personal bank account for cash contributions towards the cost of decorating the common parts. She accepts that she made a mistake and had previously apologised.
35. Mrs. Houghton expressed the wish that a line could be drawn and the company proceed with looking to the future. However she doubted if Mrs. Conner-Methven would agree to such a wish. Mr. Atter and Mrs. Crawford agreed.
36. Mr. Atter once again confirmed his windows were cleaned as far as he was able from within his flat. They were double glazed and he considered them to be in good condition.
37. He had recently had his kitchen and bathroom refitted which he explained was the reason for some of his belongings being outside his flat on the common parts.
38. Mr. Atter agreed that the handrail outside the rear entrance needs attention.
39. Mr. Atter finds Mrs. Conner-Methven difficult to deal with.
40. Mr. Burley reiterated that he would also like to draw a line now. He was concerned that the list of works given by Mrs. Conner-Methven to Mr. Postle-Hacon would be implemented if PHC Management Ltd. were appointed. He considered that some of these works were not necessary.
41. Mr. Burley considered that the appointment of PHC Management Ltd. at a cost of £1000+V.A.T. was unnecessary and wasteful.

Decision

42. The Tribunal considered the evidence contained in the case papers, the numerous allegations of breaches of the terms and conditions in the lease, and the condition of the property on inspection.
43. The Tribunal found the common parts of the property to be in good condition.
44. The Tribunal found the exterior of the property to be in fair to good condition.

45. It was apparent to the Tribunal that different leaseholders had different expectations as to the standard of maintenance. None of the leaseholders wished to see the property deteriorate through neglect or lack of maintenance.
46. Whilst benefits may accrue by appointing an independent manager to manage the property on behalf of the management company, given the size of the property and the extent of the common parts, the Tribunal considered the level of expenditure was disproportionate to the benefit of such an appointment.
47. The Tribunal noted that under the terms of the lease the service charge was to be paid by equal half yearly instalments on the 1st January and 1st July in every year. The Tribunal understands that the instalments are paid monthly.
48. Whilst there may be continuing breaches of the lease, such as monthly payments of the service charge rather than six monthly contrary to Clause 4, and bicycles kept on an outside path contrary to Clause 12 Fourth Schedule, the Tribunal considers that these and other breaches alleged in the case papers are of a minor nature and do not by themselves warrant the appointment of a manager.
49. The Tribunal considers it is in the best interests of the leaseholders to reach an amicable arrangement for the management of the property.
50. Before the Tribunal could appoint a manager it must be satisfied that the criteria for an appointment specified in Section 24(2) Landlord and Tenant Act 1987 are met, **and** that it is just and convenient to make the order in all the circumstances of the case.
51. In all the circumstances of the case, the Tribunal does not consider the appointment of a manager should be made.
52. The Tribunal considered the applicant's request for orders under Sections 20C and 31B and decided against making such an order as the Tribunal did not consider such order was just and reasonable in the circumstances.
53. The other three leaseholders did not wish to make any claim for costs.

Date 12th December 2005

Signed 

D.G. Willis Chairman