

# LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/26UD/LVM/2004/0003



**The Property :** Willowdene, Mill Lane, Watton at Stone, Herts SG14 3TT  
(Title No HD215219)

**Applicants :** Angela Garrard, 9 Willowdene  
Mr & Mrs Lord, 10 Willowdene  
Jane Cracknell, 11 Willowdene  
Mr & Mrs Reid, 12 Willowdene

**Respondent :** Mr S Kitching, GBS Estates, Lemsford House, Lemsford, Herts  
AL8 7TT

**Manager :** Mrs Janet Trinnaman, of GEM Estate Management Limited,  
CPM House, Works Road, Letchworth, Herts SG6 1LB

## **ORDER VARYING AN ORDER FOR THE APPOINTMENT OF A RECEIVER AND MANAGER**

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Before the Leasehold Valuation Tribunal sitting at Ware, Hertfordshire on 11<sup>th</sup> February 2005

### **IT IS ORDERED THAT :**

1. Paragraph 8 of the Order dated 17<sup>th</sup> October 2003 (ref. CAM/26UD/NAM/2003/0001) appointing Mrs Janet Trinnaman, of GEM Estate Management Limited, CPM House, Works Road, Letchworth, Herts SG6 1LB as Receiver and Manager of the estate and premises known as Willowdene, Mill Lane, Watton at Stone, Herts SG14 3TT (Title No HD215219) is hereby varied by substituting for the date "31<sup>st</sup> December 2004" the later date "31<sup>st</sup> December 2007".
2. A copy of this Order shall be served by the tribunal office forthwith upon the Crown Estate.

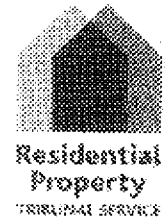
Dated 17<sup>th</sup> February 2005

A handwritten signature in black ink, appearing to read "GK Sinclair".

.....  
Graham K Sinclair – Chairman  
for the Leasehold Valuation Tribunal

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### **THE DECISION OF THE TRIBUNAL**

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Handed down : 17<sup>th</sup> February 2005

**Tribunal :** Mr G K Sinclair (Chairman), Miss M Krisko BSc (Est Man)  
FRICS, & Mr G J Dinwiddy FRICS

**For the Applicants :** Jane Cracknell  
Barry Catling (representing Mr & Mrs Reid)

**For the Respondent :** no appearance

**The Manager in person**

**Also in attendance :** Mr & Mrs Reid (12) and Mrs Lord (10)

**Hearing date :** Friday 11<sup>th</sup> February 2005

On 10<sup>th</sup> November 2004 the Applicant tenants sought a variation of the Management Order made in respect of the above property on 17<sup>th</sup> October 2003, viz by extending the Receiver & Manager's term of office for a further 3 years.

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### **Background & Summary**

1. In September 2000 GBS Estates Limited, the registered proprietor of the freehold estate and premises known as Willowdene, Mill Lane, Watton at Stone, Herts SG14 3TT (Title No HD215219) ("the property") was struck off the Companies Register for failing to file its annual returns. Services required to be provided by the landlord under the leases were desultory, or largely ignored. Evidence that insurance for the property had been satisfactorily arranged and paid for was never forthcoming, despite many enquiries. Service charge demands were not submitted regularly or in accordance with the leases, and when three years' demands were served at once in 2003 they were served not by the company but by Mr Stefan Kitching t/a GBS Estates. The situation was extremely unsatisfactory.
2. By an Order dated 17<sup>th</sup> October 2003 (case reference CAM/26UD/NAM/2003/0001) following a tribunal hearing on 1<sup>st</sup> October 2003 Mrs Janet Trinnaman of GEM Estate Management Limited, CPM House, Works Road, Letchworth, Herts SG6 1LB ("the Manager") was appointed as Receiver and Manager of the property with effect from 1<sup>st</sup> October 2003 for a term expiring on 31<sup>st</sup> December 2004 ("the existing management order").
3. By this application the continuing leaseholder Applicants sought to extend the term of the Manager's appointment for a further 3 years, and she consented to do so. As the hearing could not take place prior to the expiry of the present management term a temporary extension was granted by the tribunal, expiring at the end of the month following that in which the hearing was to take place.

4. For the reasons which follow the Tribunal is satisfied that :
- a. Subject to one or two minor accounting queries, the management of the subject property exercised by the present Manager & Receiver, Mrs Trinnaman, has been more than satisfactory
  - b. She commands the confidence of the majority of the leaseholders
  - c. The freehold estate remains *bona vacantia* and escheat to the Crown Estate, so that there is no obvious alternative party to manage the property
  - d. No contrary proposal was advanced by the Respondent or any other interested party
  - e. If the variation by extension of the existing management order is not made the circumstances which led to the order being made will recur
  - f. It is just and convenient in all the circumstances of the case to vary the order.
5. The Management Order dated 17<sup>th</sup> October 2003 shall therefore be permitted to remain in force until 31<sup>st</sup> December 2007 unless varied, extended or revoked by further Order of the Tribunal.

**The leases & relevant law**

6. The relevant service charge provisions in the leases are referred to at paragraphs 24 to 28 of the Decision dated 17<sup>th</sup> October 2003 and need not be repeated here.
7. The law concerning applications to vary or discharge an existing management order appears in section 24(9) & (9A) of the Landlord and Tenant Act 1987, as amended :
- (9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, the tribunal may by order direct that the entry shall be cancelled.
  - (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied-
    - (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
    - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

### **The inspection and evidence**

8. The tribunal inspected the property at 10:00 on the morning of the hearing. The weather was warm (for February) and dry. Also present were Ms Cracknell and Mr Barry Catling (representing Mr & Mrs Reid). The tribunal noted that the damage to the car park and the boundary walls had been repaired, and the fence protecting part of the rear path where it was close to the river had been replaced by something more sturdy. The external concrete steps giving access to some of the flats had been resurfaced with some bolt-on non-slip panels which had the appearance of heavy duty roofing felt. The edges of each step were clearly marked in high visibility yellow. The leaseholders seemed happy with the result. The grounds looked well tended.
9. The hearing was due to commence at 11:00. Mr Kitching (who had declined to allow the application to be determined on paper and had insisted upon an oral hearing, had informed the tribunal office of his dates to avoid, and been duly notified by fax of the hearing date) was not present. At the tribunal chairman's request the clerk attempted to contact Mr Kitching by telephone. Having obtained his telephone number a message was left on Mr Kitching's answering machine. The hearing commenced at 11:30, in Mr Kitching's absence, but was interrupted part-way through by a telephone call to the tribunal clerk by a person purporting to be Mrs Kitching. The caller stated that Mr Kitching had been suffering that week from food poisoning, that he was unable to attend the hearing, but that he would like to make some representations. It is unfortunate that Mr Kitching felt unable to give the tribunal advance notice of his inability to attend.
10. Despite Mr Kitching's complete failure to comply with any of the directions issued on 7<sup>th</sup> December 2004 the tribunal agreed to receive such representations by telephone, allowing the Applicants and the Manager the opportunity to comment upon them.
11. The tribunal was then informed that Mr Kitching :
  - a. Did **not** oppose the re-appointment of Mrs Trinnaman as manager
  - b. Felt that the management provided should be for all 12 flats, not just for the 4 Applicants
  - c. Requested that where GEM hold meetings with tenants he would like to be invited, and with more than just scant notice.

12. In answer to these last two points Mrs Trinnaman and Ms Cracknell believed that his concern that the property was not being managed in the interests of all the tenants may be linked to the decision not to prioritise the cleaning of internal common parts, and to leave that to the relevant tenants themselves while more major items of work were dealt with. This affected the common parts outside his flats. However, this decision was reached at one of the two meetings arranged with all of the leaseholders (not with Mr Kitching's sub-tenants), to which all including Mr Kitching had been invited. The tribunal was told by Mrs Trinnaman that she always gave proper written notice of at least 2 weeks prior to each meeting but she had never heard from him that he could not attend. Mr Catling added that before Mrs Trinnaman took over there were many requests to have meetings with Mr Kitching, but he always refused to have any.
13. In evidence Ms Cracknell said :
- I have been in the property 6 yrs and I have seen more in this last year than in the previous 5. I have received a bill, and expected to do so, have also seen quotations and been consulted on which to go with. If I have wanted to get hold of the management company I can do so, and they do get back to you if the person is not there. I am happy with what has been done : there are still things to be done, eg the paving round the back and side of the properties, which is uneven.
14. Asked what form the consultation took, she said that first written quotations were sent, then meetings in the building to which everyone has been invited. Mrs Trinnaman confirmed that there had been 2 such meetings, where 6 leaseholders (representing 5 flats out of the 12) have attended, plus herself. There have been 2 meetings to do with the list of tasks drawn up in a report dated 7<sup>th</sup> January 2004 commissioned by her from Bancroft and Associates, a firm of chartered surveyors. She had obtained quotes for the work from several companies, including some local ones, but that most local to Watton at Stone was also the most expensive.
15. Mrs Trinnaman had previously supplied the tribunal, at its request, with a written report of her term in office. The chartered surveyors' report was annexed to this. Her report identified all the items mentioned by Bancroft and Associates which the leaseholders had approved, all of which had since been completed.

16. In evidence Mrs Trinnaman discussed the service charge demands raised by her, including a supplementary one of £300 per flat (not in accordance with the percentage shares mentioned in the leases, but since adjusted in her latest demand for 2005). These were based upon her firm's original budget, described by the tribunal at the last hearing as being a little light, and upon a new budget for 2005. Service charge accounts for the 14 month period of her appointment up to 31<sup>st</sup> December 2004 had been produced by a firm called Pure Accounting, which GEM uses for a number of its properties. A copy was provided to the tribunal.

17. It was observed that :

- a. Recorded amongst the income was "ground rent receivable" of £1,300. Ground rent is due to the freeholder; it does not form part of the income to be applied towards the service charge expenditure, and should not feature in the trust account set up for such purpose. Further, the management order expressly states, at the foot of paragraph 4 :

For the avoidance of doubt, while the freehold title to the property remains *bona vacantia* and vested in the Crown all sums recovered by way of ground rent shall be held to the order of the Treasury Solicitor and applied at his direction.<sup>1</sup>

- b. Although the accounts include a certificate to the effect that they comply with the provisions of the Landlord and Tenant Act 1985, as amended, they are not expressed to be audited. This is a requirement of the lease, and where the lease imposes a stricter or higher obligation than statute law then it must prevail
- c. The accounts are simply signed "Pure Accounting". The requirement of the Act is that the accounts must be certified by a "qualified accountant", defined in section 28 as being a person with the necessary qualification and not disqualified from acting. The "necessary qualification" test is passed if that person is eligible for appointment as a company auditor under section 25 of the Companies Act 1989, viz he is a member of a recognised supervisory body, and is eligible for the appointment under the rules of that body. In this case no person is identified, nor are his or her qualifications declared.

<sup>1</sup> Following correspondence with the Treasury Solicitor, this should now be read as referring to the Crown Estate

18. Mrs Trinnaman stated that the ground rent had been included at the suggestion of the accountants, but she agreed to have the accounts redrawn properly. She also stated that her principal problem was cashflow, arising from Mr Kitching's refusal to pay the service charges already demanded or to respond to any reminders. She said that when she was writing to him about a key to a communal cupboard he responded, saying that he would refer back later about other matters, but he has not – save when he has asked on several occasions for copies of insurance details, which she had always provided to his solicitor at his request. Court proceedings to recover these sums had been issued and an amended Defence filed by Mr Kitching, with a hearing due soon.

### **Decision**

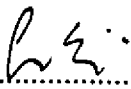
19. Having read and listened to the evidence presented by the Applicants and the manager and their responses to the points made by telephone, ostensibly on Mr Kitching's behalf, the tribunal was satisfied that this property has benefited considerably from the active management provided by Mrs Trinniman. There having been no steps taken to restore the freeholder company to the register, and no alternative proposals advanced for the efficient management of this property, the tribunal is satisfied that it is in the interests of all the leaseholders that her term of office be extended as sought.
20. Despite his stating in writing on 3<sup>rd</sup> December 2004 that he wished to oppose the application and that he refused to agree to the case being decided in writing after receipt of any written representations by him Mr Kitching declined (as before) to comply with any of the directions issued and failed to attend the hearing arranged at considerable expense, and on a date to suit his convenience. It was therefore a surprise to discover that the representations eventually made on his behalf by telephone were that he did not oppose the reappointment of the present manager.
21. The tribunal regards Mr Kitching's conduct as unreasonable and vexatious, and as an abuse of its procedure. Despite this, it is a tribute to their magnanimity that neither the manager nor any of the Applicants sought an order that Mr Kitching pay anything towards their costs, pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.



**Service on the Crown Estate**

22. As the interest of the landlord company is currently *bona vacantia* and escheat to the Crown the tribunal directs that a copy of this Decision and Management Order be served by the tribunal office upon the Crown Estate.

Dated 17<sup>th</sup> February 2005

  
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Graham K Sinclair, Chairman  
for the Leasehold Valuation Tribunal