

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Number: CH1/15UB/LAM/2005/0006

Decision on an Application under Section 24 of the Landlord and Tenant Act 1987

Applicant: Mrs E. M. Stafford and others ("The Applicant")

Respondent: Cawsand Fort Management Co. Ltd.

Re: The Fort, Cawsand, Torpoint, Cornwall PL10 1PL

Date of Application: 19th June 2005

Date of Hearing: 13th September 2005

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

Representation: Dr S D Killops, for the Applicant
Mr Guy Adams, Counsel, for the Respondent

Tribunal Members: Mr T E Dickinson, BSc, FRICS, IRRV (Chairman)
Mr T Shobrook BSc FRICS
Ms C Rai, Legal Member LLB

Date of Decision: 5th October 2005

DECISION

The Application and the proceedings

- 1 The Tribunal is asked to exercise its jurisdiction under section 24 of the Landlord and Tenant Act 1987 ("the Act") pursuant to an Application dated 19 June 2005 for the appointment of a Manager of the flats in Cawsand Fort ("the property").
- 2 The Tenants served a preliminary Notice under Section 22 of the Act of their intention to make application to the Southern Leasehold Valuation Tribunal under Section 24 of the Act to appoint a manager in respect of the property, this Notice being dated 11th May 2005 ("the Notice").
- 3 The grounds on which the Tribunal would be asked to make the order are set out in the second schedule to the Notice.
- 4 The matters which would be relied upon by the Tenants for the purposes of establishing the grounds are set out in the third schedule to the Notice.
- 5 The Applicant's Solicitors have received no response to the Notice dated 11th May 2005.
- 6 At the hearing in Plymouth on 13th September 2005, the Tribunal heard oral evidence from Dr Stephen Killops, a resident at Cawsand Fort, representing the Applicant and Mr Guy Adams, Counsel for the Respondent assisted by Mr Boris Kindy.

Background

- 7 Cawsand Fort (the Fort"), also known as Cawsand Battery, is an old Napoleonic fort believed to have been built in about 1867; it is Grade II Listed and a Scheduled Ancient Monument. Within the confines of the Fort, from some time after about 1987, a Mr Michael Joseph Peacock of Peacock Properties ("Peacock") developed a total of 30 residential units. Phase 1 comprised dwellings formed by alterations and extensions to the existing Fort along the southern boundary of the site. Phase 2 comprised dwellings along the eastern boundary of the site and are primarily new build. He also set up the Respondent Company.
- 8 Peacock developed and sold off 11 freehold properties (numbers 3-12 and "The Belvedere") and 19 leasehold properties (numbers 1, 2 and 14-30). Numbers 1-12 were built in Phase 1 and are mostly terraced units on two floors (number 1 is a bungalow extending partly over the ground floor of number 2); all the phase 1 properties are connected to mains sewerage. The Gatehouse (formerly The Belvedere) is an end terraced unit on 3 levels and is on the same septic tank sewerage system as units 14-30 which comprise maisonettes on two floors with single-storey flats above, each spanning the two maisonettes, and which were built in phase 2 of the development. All the properties enjoy access over the common roadways coloured blue on the plans ("the Roadways"), footpaths coloured yellow ("the Footpaths") and common land coloured green ("the Green Land"). The plan in Appendix I of the Applicant's bundle is illustrative of the full extent of those rights. The leasehold properties also have rights to use the sewerage system, either granted expressly under the leases or by necessary implication. The sewerage system comprises a septic tank and soakaways ("the Septic Tank") and a macerator ("the Macerator"). The former is on and under adjoining

land, known as 'the Soldier's Garden'. The Macerator, connected by pipes to the Septic Tank, is located on the Green Land outside the wall of the Fort, on the south-east corner. The sewerage system is shown on the plan in Appendix 5 of the Applicant's bundle. The owners of a property called "The Firs", bought a small parcel of land, outside the wall of the Fort but immediately adjacent to it, from Peacock and acquired an easement over the shared roadway.

- 9 A copy of the lease of Plot 7 between Peacock and Mr and Mrs K W Snailham is annexed at Appendix 2 of the Applicant's bundle as being illustrative of the leases. The property demised is referred to as a plot of land edged red on the annexed plan, "together with the dwelling house and garage erected thereon or on some part thereof being Plot 7 and garage and parking bay..." (the plan does not show a parking bay edged red). The First Schedule at clause (a) grants "a full right in common with others so entitled thereto at all times and for all purposes to pass and repass with or without vehicles over the roads and parking area coloured blue, on foot only over the footpaths coloured yellow and common areas coloured green on plan B annexed thereto forming part of the Estate Subject to the payment from time to time of a rateable proportion of the cost of maintaining and repairing the same." Clause (b) grants rights to drainage and services and also rights of entry "upon adjoining or neighbouring land included in the Estate" for the purpose of maintenance. The Second Schedule reserves like rights to the landlord. The demise includes part of the yellow pathway with rights over it reserved. The first plan appears to be correctly coloured in respect of the property. The second plan shows the full extent of the paths, roadways and common areas in respect of the easements granted in the First Schedule.
- 10 Over the years there has been an apparent lack of care in colouring plans by conveyancers, with the result that instead of the same coloured plan B in respect of shared easements being attached to a "common" lease, there are a number of variations in the colouring, with parts of the green colouring being omitted from some plans.
- 11 Peacock covenanted, inter alia, under clause 4 (e) of the leases that "leases of other units within the Building will be in substantially the same form as this Lease (mutatis mutandis)".
- 12 Some, but not all, of the buyers acquired a share in the Applicant Company. To regulate the management and upkeep of the common areas, 9 of the 11 freeholders and all but 2 of the 19 leaseholders entered into Deeds of Easement and Covenant with the Respondent Company. However to add to confusion the Green Land – referred to as the 'Amenity land' in the Deed at Appendix 3 of the Applicant's bundle does not cover the whole area shown on the lease plans – it excludes the land adjoining the roadway beyond the garaging leading to New Road. However it does extend the rights of way over the Mound into rights of enjoyment.
- 13 Over the years the Respondent had not been active in carrying out management obligations.
- 14 A previous Application was made to the LVT for determination of a single issue namely the extent of appurtenances (Case Number: CH1/15UB/OFR/2004/0002). A decision made by the LVT ("The First Decision") was dated 18th March 2005.

- 15 The Chairman invited both parties to address comments to the Tribunal on Jurisdictional arguments.
- 16 Dr Killops referred the Tribunal to his submission in which he had cited the case of Taylor – v – Blaquiere and the judgement of Lord Justice Aldous. He had nothing else to add.
- 17 Mr Adams for the Respondent argued that the extent of the “premises to which Part II of the Act applied was a mixed question of fact and law. However thereafter his arguments were solely about the legal interpretation of the definition of premises and he did not suggest what the interaction of factual interpretation would add or take away
- 18 The Tribunal accepts that in each part of the Act the definition of Premises is broadly the same:

In Part I s.1.(2)

“they consist of a whole or part of a building; and
they contain two or more flats”

In Part II s. 21 (2)

“..this Part applies to premises consisting of the whole or part of a building if the building contains two or more flats”

In Part III s.25 (2)

“..this part applies to premises if-
they consist of the whole or part of a building; and
they contain two or more flats.....”

Mr Adams also referred to Sections 29 (2) (a) and 29 (4) (a) as evidence of his argument that the entire Act is a scheme for the protection of occupiers of buildings and therefore he maintained that there is no reason to assume that the definition in Part II of the Act should not be interpreted in the same way as in parts I and III.

In response, the Applicant referred to the wider Section 60 definition of Dwelling.

Consideration of the facts and the law and Findings as to the law

- 19 In each part of the Act the definition is qualified by exceptions which apply to the parts of the Act in which the definitions are contained, and limit the ambit of each part of the Act

The purpose of each part of the Act is wholly different.

This application is concerned only with Part II of the Act

The purpose of Part II is the Appointment of Managers by the Court. The Tribunal is now vested with the jurisdiction to appoint a manager and Part II is concerned with the application for an order for the appointment of a manager.

This application is for an order under section 24 of the Act

- 20 Mr Adams argued that because the physical extent of the premises to which Part II applied is identical to the definition in Part I then the first decision of the Tribunal must restrict and limit the definition of premises to which this application could apply.
- 21 The first application to the Tribunal was to determine a single issue arising out of proceedings in the Plymouth County Court in relation to a Notice served under section 12B of the Act ("the section 12B Notice"). That issue related to the identification of the precise extent of the appurtenances the leaseholders of residential buildings at Cawsand Fort are entitled to acquire under the Act. That application was made under Part I of the Act
- 22 The Tribunal found (inter alia) that it was appropriate to enlarge easements into perpetual easements but not to transfer the freehold of the underlying land (over which the easements were enjoyed). Applying Mr Adams argument, the definition of premises under Part I of the Act did not persuade that Tribunal that it could only consider premises which fell within the narrow definition contained within that Part of the Act. Had the Tribunal reached such a conclusion in that case it would not have had (applying Mr Adam's argument) any jurisdiction to consider the appurtenances and indeed the appurtenant rights that were central to that application.
- 23 Section 24 of Part II of the Act gives the Tribunal wide powers to make an order on the grounds set out in:-
- 2(a) (i) and (iii) which must **both** be satisfied or
- 2(ab) (i) and (ii) which must **both** be satisfied or
- 2(ac) (i) and (ii) which must **both** be satisfied or
- 2 (b) a single ground which only requires that [the tribunal] is satisfied that other circumstances exist which make it just and convenient for the order to be made.
- 24 Therefore Part II of the Act confers very wide powers upon the Tribunal and it seems to the Tribunal to be inconsistent with the intention of the Act that the definition of Premises contained in any other Part of the Act should in some way restrict the wider powers contained in this part of the Act. Had the draughtsman intended to provide that a single definition of premises would apply to each part of the Act there would have been no need to define premises separately in each part of the Act; the Tribunal conclude therefore that this cannot have been the intention of Parliament.

Indeed the case law which the Tribunal was asked to consider in the first application and again in this application suggests, and this was in the case of Denetower Ltd v Toop [1991]

3 All ER, that the definition of Building is not confined to bricks and mortar of which a building is constructed

“For the purposes of s 1(2) of the 1987 Act a Building was not confined to the bricks and mortar of which the building was constructed but extended to the garden and other appurtenances which were expressly or impliedly included in the demise of a flat to a tenant. Accordingly, the tenants' right to purchase extended to the gardens and other appurtenances such as the private road but did not include the garages or unused land since the tenants enjoyed no rights over the garages or unused land under or by virtue of their leases and therefore they were not appurtenances”

Sir Nicholas Browne -Wilkinson VC stated

“In the present case, it would be to attribute to Parliament an entirely capricious intention if we were to hold that the tenants' right to purchase did not extend to the gardens and other appurtenances of the flats which are expressly or impliedly included in the demises of the flats to the tenants. In my judgment we are not forced to adopt such an unreasonable construction since it is a perfectly legitimate meaning of the word 'building' that it includes the appurtenances of the building.”

25 The Tribunal accepts that the Denetower decision was about an application under Part I of the Act. Mr Adams contends that the definitions of premises are the same in each part of the Act. The Tribunal does not agree and on that basis quotes the judgement in Denetower as being persuasive without being on “all fours” with what it is being asked to consider under this application.

26 The Applicant asked the Tribunal to consider the case of Taylor and Blaquiére [2002] EWCA Civ 1633. In that case the comments made by Lord Justice Aldous were that [Section 24] “Subsection 2 restricts the ability of the Tribunal to make orders But subsection (2) (b) is of great width in that it enables the Tribunal to appoint a manager when satisfied that circumstances exist which make “it just and convenient” to do so. That also suggest that “the tribunal is concerned to provide a scheme of management , not just a manager of the landlord’s obligations”

27 The Tribunal find it difficult to conceive how it could effectively do this if it was unable to make an order that relates to anything other than the narrow interpretation of the premises that Mr Adams would prefer the Tribunal to adopt as the subject matter of its decision. Having considered the statements and jurisdictional arguments put forward by the Applicant and the Respondent, the Tribunal preferred the statements and arguments of the Applicant.

Hearing

28 The Chairman stated that the Tribunal was minded to proceed with the hearing on the basis of the property as described in paragraph 3 of the Application.

29 The Chairman stated that the Tribunal would inspect the property at a later date and reminded the parties that two of the Tribunal members had inspected the property at the time of the previous hearing.

- 30 Dr Killops specified the grounds for the Application, in particular he sought the Appointment of a Manager without time limit for those parts of the property for which the Residents were liable to pay charges, effectively removing CFMC from any management responsibilities. The Applicants sought Management of the land coloured blue and red on the plan in Appendix 5. The Applicants are cognizant that all the land coloured grey and yellow is not land over which rights are granted. The Applicant leaves to the discretion of the Tribunal whether or not the grey land could be included in an order and referred us to the grounds already set out in the third schedule to the Notice.
- 31 Dr Killops introduced the Manager who gave evidence as to his background, qualifications and suitability for Appointment and also answered questions put to him by Mr Adams.
- 32 Mr Adams repeated all the arguments he had previously put forward when he stated that the Tribunal had limited jurisdiction.

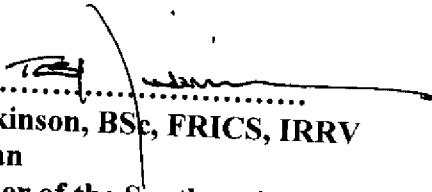
Finding of the Tribunal of the facts of the case

- 33 The freehold of the entirety of "Cawsand Fort" is vested in the Management Company, ("CFMC") as evidenced on the registered titles, except in respect of the freehold properties sold away.
- 34 It is agreed that the Management Company has not carried out any maintenance functions or indeed any maintenance of the common areas. Counsel for the Respondent accepts that the original scheme of management envisaged at the commencement of the development has failed.
- 35 Day to day management is carried out by individuals in occupation collectively.
- 36 The Applicant expressed concern about the accounts for CFMC and the increasing level of debt.
- 37 The only parties who have an interest in or responsibility for the maintenance of the common parts would appear to be the Residents (whether leaseholders or freeholders) the owner of "The Firs" and the Respondent.
- 38 All the Applicants are united in the case for the Appointment of a Manager.
- 39 The Respondents do not object to the Appointment of Manager in relation to the buildings (referred to in the previous Tribunal's decision).
- 40 The Deed of Easement and Covenant places responsibility in the hands of CFMC for all management issues as set out in part I of the First Schedule. It is accepted that all, bar two, of the lessees are party to a Deed of Easement and Covenant.
- 41 Counsel for the Respondent stated that there would be no objection to the Appointment of Mr Woodhead as Manager in relation to the leasehold buildings.
- 42 The electricity supplies for the garages under The Mound on the southwest side of the driveway are contained within the underground passages which run beneath The Mound.

- 43 The location of the Septic tank and the Macerator are correctly defined on the plan in Appendix 5 of the Applicant's bundle.
- 44 The entire site shown in colours blue, yellow, red and grey on the plan at Appendix 5 in the Applicant's bundle is a Scheduled Monument (29617) and dwellings are Grade II listed buildings.
- 45 The Mound is something of an anomaly. The leases grant only access over it, although the Deeds of Easement and Covenant (entered into by most of the leasehold owners and some of the freehold owners) refer to the "enjoyment" of it. Under the Mound lie the former ammunition chambers and some garages.
- 46 Mr Adams sought to persuade the Tribunal that it should exercise its discretion in favour of the Respondent – to the extent that a Manager should only and could only be appointed to manage the buildings.

Decision

- 47 The Tribunal accepts the grounds put forward by the Applicant justify the Appointment of a Manager.
- 48 The Tribunal finds that Mr Woodhead would prove to be a suitable Manager and that the Appointment should be for a period of three years.
- 49 With regard to the extent of property, the Tribunal finds it appropriate having regard to the unique and sensitive nature of the property (being not only a Listed Building but also a Scheduled Ancient Monument) for the Manager to undertake a Scheme of Management which should include the areas coloured red and blue on the plan in Appendix 5 of the Notice.
- 50 An Order for the Appointment of Mr Woodhead as Manager is attached, together with a Programme of Work.
- 51 As to the Respondent's litigation costs, including Tribunal proceedings, the Applicants have applied to the LVT for their exclusion, in effect, from future service charges. Section 20C of the Landlord and Tenant Act 1985 gives the Tribunal power, to make an order preventing the Respondent from taking this step. In all the circumstances, this Tribunal determines that it is fully justified to make an order under Section 20C that the Respondent should recover none of his costs via service charges.

Signed 
T E Dickinson, BSc, FRICS, IRRV
Chairman

**A Member of the Southern Rent Assessment Panel
and Leasehold Valuation Tribunal appointed by the Lord Chancellor**

Dated: 5th October 2005

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

In the matter of Section 24 of the Landlord and Tenant Act 1987

And

In the matter of The Fort, Cawsand, Torpoint, Cornwall PL10 1PL ("The property")

BETWEEN

Applicant:

Mrs E M Stafford and others

and

Respondent:

Cawsand Fort Management Co. Ltd.

ORDER FOR THE APPOINTMENT OF MR MARTIN WOODHEAD AS MANAGER

UPON hearing the evidence

IT IS ORDERED THAT

1. Mr Martin Woodhead FRICS of Messrs Drew Pearce, Chartered Surveyors, 14 Cathedral Close, Exeter, Devon EX1 1HA ("The Manager") be appointed for a period of three years from the date of this Order or such other period as the Tribunal shall direct as the Manager of the Property pursuant to Section 24 of the Landlord and Tenant Act 1987, as amended by the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. The Manager shall manage the Property in accordance with:
 - a) The respective obligations of the Lessor and the Lessees under the Leases by which each of the flats of the Property are demised as supplemented by the Deeds of Easement and Covenant and in particular, without prejudice to the generality of the foregoing, with regard to the repair, decoration, provision of services to and insurance of the Property and
 - b) The duties of a Manager as defined by and set out in the Service Charge Residential Management Code ("the code") published by the Royal Institute of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.
 - c) The Programme set out below ("the Programme") PROVIDED always that the Manager shall be entitled to vary or depart from the Programme should the circumstances reasonably require him to do so.

3. The following powers are, without limitation to the generality of this Order, expressly conferred on the Manager.
- a) the power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his powers and duties
 - b) the power in his own name on behalf of the Landlord to bring, defend, or continue any action or other legal proceedings in connection with the Leases or the Property, but subject to applying for directions as provided for under paragraph 10 of this Order.
 - c) the power to receive, consider, refuse or grant or otherwise deal with application for consents or licences and like matters as the Lessees may require under the terms of their Leases.
 - d) the power to enforce the Landlord's and Lessee's covenants under the Leases as supplemented by the Deeds of Easement and Covenant.

4. The Lessees and their servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his duties and powers under this Order and shall not interfere with the exercise of any of his said duties and powers.

5. Without prejudice to the generality of paragraph 4.

The Lessees shall deliver to the Manager all such books, papers, memoranda, records, bank statements, computer records, contracts, correspondence and all other documents as are necessary or desirable for the management of the Property and as are in its control within 7 days of the date of the Order to Mr Martin Woodhead FRICS of Messrs Drew Pearce, Chartered Surveyors, 14 Cathedral Close, Exeter, Devon EX1 1HA.

Details of the Programme are contained in the attached Programme of Work.

6. The Manager shall receive all sums payable by way of service charges or otherwise arising under the said Leases.
7. The Lessees shall pay into the Manager's client account their proportionate share of any pre-estimate of the costs of the works inclusive of VAT and consultancy fees, as may be demanded by the Manager in writing together with any further costs that the Manager may incur in discharging his functions under this Order. Such sums to be paid within two weeks of the written demand by the Manager.
8. The Manager shall apply the payments of ground rent and other monies receivable by him first in the discharge of such sums as the landlord properly requires in order to meet the expenditure involved in filing its annual return and preparing any documents necessary in connection therewith and shall apply the remaining amounts of ground rent and monies received by him (other than those representing his costs and expenses hereby specified in paragraph 13) towards the costs of the performance of the covenants of the landlord's covenants contained in the said leases for which he is responsible within the terms of this Order.

9. In the event that it is necessary for the Manager to commence legal proceedings for the recovery of sums due under this Order, or in the event that any proceedings are brought against the Manager, the Manager shall be at liberty to apply to the Tribunal for appropriate directions.
10. For the avoidance of doubt it is stated that the Manager shall have no obligation under this Order to enter into any financial obligation unless he has been fully put in funds to discharge the obligation.
11. All the Lessees are ordered to provide the Manager and such contractors, consultants and agents as he may retain, with such access to their respective flats and the Property as may be reasonably be required for the purposes of carrying out the Programme and the major works.
12. The Manager shall maintain appropriate indemnity insurance for the duration of this appointment and shall file with the Tribunal evidence of such insurance within 14 days of the date of the Order.
13. The Manager shall be entitled to the following remuneration (which for the avoidance of doubt shall be recoverable as part of the said service charges) namely:
 - a) a basic annual fee of £120 per leasehold unit per annum and £50 per freehold unit per annum, plus VAT, plus reasonable out of pocket expenses to a maximum of £100 per annum, payable half yearly in arrears at 31 May and 30 November in each year; for performing the duties set out in paragraph 2.5 of the Code and
 - b) in the case of any new works, for the initial inspection and preparation of a maintenance report £1500 plus VAT; for further Building Surveying services, in connection with the maintenance of the buildings and grounds, fees based on the time expended on the work at the rate of £75 per hour plus reasonable out of pocket expenses plus VAT.
 - c) costs and incidental expenses shall be included as an overhead charge in the basic annual fee specified in (a) above.
14. The Manager shall make arrangements for the insurance of the building forthwith upon appointment.
15. The Manager shall seek professional advice where appropriate as is permitted under the terms of the lease.
16. During the period of appointment the Manager shall comply with all statutory requirements, including those included in the Landlord and Tenant Act 1985 and the Landlord and Tenant Act 1987, as amended, and the Code and in particular:
 - a) Reviewing the insurance of the property, obtaining quotations and arranging insurance as necessary.
 - b) Prepare and annual service charge budget, including if required a sinking fund provision.
 - c) Recover the agreed service charge from the Lessees.

- d) Prepare a maintenance plan of the repair and decoration of the exterior and common parts of the property.
 - e) Deal expeditiously with routine repairs.
 - f) Liaise with vendors and purchasers, and their solicitors if applicable, in connection with the sale of the individual flats.
 - g) Maintain current and deposit accounts for any reserve/sinking fund and account to the Lessees periodically for monies raised and expended.
17. This Order shall remain in force for a period of three years from 5 October 2005 or until it is varied or revoked by a further Order of the Tribunal.
18. This Order shall be protected by the entry by the Manager of a restriction in the register at HM land Registry in accordance with Section 24(8) of the Act.
19. The parties and the Manager are at liberty to apply to the Tribunal for such variation of or addition to the powers contained in the Order as they may reasonably require.
20. The Manager shall produce a written progress report for the Tribunal with copies to be sent to the Lessees no later than 5 October 2006 and appear at hearing fixed for 11 October 2006 at The Appeals Service, St Catherines House, Notte Street, Plymouth.
21. All parties may attend this hearing at which the Tribunal will consider giving further instructions.

Signed
T E Dickinson, BSc, FRICS, IRRV
Chairman

**A Member of the Southern Rent Assessment Panel
and Leasehold Valuation Tribunal appointed by the Lord Chancellor**

Dated: 5th October 2005

PROGRAMME OF WORK

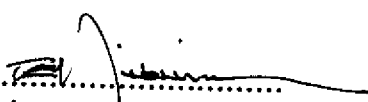
The Fort Cawsand, Torpoint, Cornwall PL10 1PL

Programme of work on appointment of Manager by a Leasehold Valuation Tribunal

1. Scope of Duties
 - 1.1 The Manager will be responsible for advising the Residents on their responsibilities under their tenancies, and for the budgeting for and collection of services charge payable by the Residents. All budgets will be discussed, and be subject to the approval of the Residents, and when collected, the service charges will be paid into a designated clients account of the Manager's firm which will, in due course, be subject to examination and audit by the Royal Institution of Chartered Surveyors.
 - 1.2 The Manager will convene and attend at maximum of 4 Resident's meeting per annum and will prepare agendas for those meeting and minutes of the business transaction.
2. Building Surveying Services
 - 2.1 Within three months of his appointment, the Manager will arrange for a Building Surveying Partner of his firm to carry out an inspection of those parts of the property which are the responsibility of the lessor, to establish their condition and works which are required to be carried out by the lessor under the terms of the leases.
 - 2.2 When the results of that inspection are established and works needed are identified, the Manager will discuss the results with the Residents in order to prepare a Programme of Works necessary to comply with the lessors covenants.
 - 2.3 The Manager will therefore, through his Building Surveyor Partner, arrange for quotations to be obtained for the works required, will obtain the approval of the Residents to such expenditure and will supervise the necessary works.
 - 2.4 In subsequent years, the agent will arrange for inspections of the buildings to be carried out at least every six months to identify any works required.
3. Generally
 - 3.1 The Manager will liaise, where necessary, at all times with the Residents and will be available for consultation on any matters relating to the management of the premises.
 - 3.2 It is agreed that either party may terminate the agreement upon giving the other six months written notice.
 - 3.3 Any dispute between the parties on the interpretation of the agreement shall be referred to an arbitrator appointed by the President of the Devon and Exeter Law Society.
 - 3.4 The responsibilities and duties of the Manager shall incorporate the Service Charge, Residential Management Code of the Royal Institution of Chartered Surveyors.
4. Scheme of Management
 - 4.1 The Manager shall be responsible for preparing a Scheme of Management relating to the maintenance, upkeep and management of the amenity land referred to in the first schedule of the Deed of Easement and Covenant and in particular the maintenance of the trees and shrubs situated therein.

- 4.2 The Manager shall be responsible for the maintenance, repair and renewal (as appropriate) of the walls, fences and railings within the boundaries of the amenity land and any other walls or fences which may be erected within the amenity land.
- 4.3 The Manager shall be responsible for organising the maintenance, repair and renewal of any lamps, footpaths, roads, foul sewers, surface water drains or other facilities on the amenity land which are not adopted by any public authority.
- 4.4 The Manager shall keep insured the land and buildings including all third party claims resulting from the use of the amenity land.
- 4.5 The Manager shall include within the scheme of management all buildings including structures, garages and garden stores.
- 4.6 The occupation of some parts of The Mound by Bats and the preservation of the habitat should also form part of the Manager's functions.
- 4.7 Finally, the Manager shall take into account all Statutory responsibilities regarding Ancient Monument status.

Signed


T E Dickinson, BSc, FRICS, IRRV
Chairman

A Member of the Southern Rent Assessment Panel
and Leasehold Valuation Tribunal appointed by the Lord Chancellor

Dated: 5th October 2005

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD PROPERTY VALUATION TRIBUNAL

In the matter of section 24 of the Landlord & Tenant Act 1987

Case No. CHI/15UB/LAM/2005/0006

Between:

Mrs E M Stafford and others

Applicant

And

Cawsand Fort Management Co Ltd

Respondent

Re: The Fort, Cawsand, Torpoint, Cornwall PL10 1PL

**Decision of the Tribunal upon the application of the directors of
Cawsand Fort Management Co Ltd for leave to appeal**

Date of Issue:

11 November 2005

Tribunal:

Mr T E Dickinson, BSc, FRICS, IRRV (Chairman)
Mr T Shobbrook, BSc, FRICS
Ms. C Rai, Legal Member LLB

Decision

1. The Tribunal refuses the application by the directors of Cawsand Fort Management Co Ltd ("the Company") for leave to appeal in this matter for the reasons set out below. That being the case, it is open to the Directors to renew their application for leave to appeal before the Lands Tribunal within twenty-eight days of the date when this decision is sent to them.

Reasons

2. Three grounds of appeal are specified together with the names and addresses of the Applicant and Respondent and a statement that the Applicant believes that the facts stated in the application are true.
3. The three grounds are stated by the Applicant as follows:
 - a) The Southern Rent Assessment Panel Leasehold Valuation Tribunal ("the Tribunal") exceeded its jurisdiction insofar as it purported to appoint a manager over land other than that comprised by the building containing the leasehold flats and its appurtenant land.
 - b) The Tribunal was wrong not to find that the physical extent of the building containing the leasehold flats and its appurtenant land had been finally decided by a (an earlier) decision of the Tribunal in Case Number CH1/15 UB/OFR/2004/0002
 - c) The Tribunal ought to have found that by pursuing the application the Respondent acted vexatiously, abusively or otherwise unreasonably as the applicants' nominees did not object to the appointment of a manager of the building containing the leasehold flats and its appurtenant land and had offered to convey the freehold of the leasehold flats and its appurtenant land to the leasehold Applicant's nominees.
4. As for the first ground the Tribunal dealt with jurisdictional issues at length both at the hearing and additionally in the written reasons.
5. With regard to the second ground although the Applicant has expressed disagreement as to the findings of the Tribunal, their reasons for rejecting the Applicant's argument are set out at some length in the decision
6. With regard to the third ground, the Applicant's point is considered to be entirely without justification. The LVT decision CHI/15UB/OFR/2004/0002 (Paragraph 25) indicated that it would be possible for the Leaseholders if they so wished to apply to a Tribunal for the appointment of a Manager. Such application was, therefore, not vexatious, abusive or otherwise unreasonable.
7. Nothing in the application as it has been set out is sufficient to satisfy the Tribunal either that a Tribunal acting reasonably might not have reached the decisions that it made upon the evidence before it, or that there has been any error of law, practice or procedure in reaching those decisions.


Tim Dickinson
Chairman