

**RESIDENTIAL PROPERTY TRIBUNAL SERVICES
LEASEHOLD VALUATION TRIBUNAL**

ORDER AND DIRECTIONS

Case No: CHI/29UE/LVM/2004/0001

Property: VICTORIA LODGE, 11 WELLINGTON ROAD, DEAL, KENT

Applicant: MR ANDREW WYBORN

Respondent: RESHAM SINGH (ABSENTEE LANDLORD)

ON HEARING the Applicant, Mr Wyborn and Mr Kirby, one of the leaseholders, upon Mr Wyborn's application to be discharged from his appointment

IT IS ORDERED that:-

The Order of 4th November 1997 be varied and the following terms to be substituted:-

1. Mr Andrew Wyborn do cease to be Receiver and Manager of Victoria Lodge, 11 Wellington Road, Deal, Kent (the Premises) on 24th January 2005, provided that:-
 - (a) He shall have prepared and handed over to his successor completed Final Accounts for the year ending December 2004 and interim accounts for the period 1st January 2005 to 24th January 2005, and
 - (b) He shall have handed over to his successor all relevant papers relating to the management of the Premises.
2. Mr L Cudmore FRICS be appointed Receiver and Manager of the Premises with effect from 24th January 2005 for a fixed period of two years. His appointment is subject to compliance with the following conditions:-
 - (a) He shall on or before 24th December 2004 notify each of the Lessees of the premises, Mr Andrew Wyborn and the Tribunal of his willingness to accept the appointment.
 - (b) He shall on or before 24th December 2004 serve on the Tribunal a copy of his Professional Indemnity Policy and any Schedule showing the amount for which cover has been effected.
 - (c) He shall on or before 24th December 2004 serve on the Tribunal a summary of the services he will provide, in consideration of the annual management fee that the Tribunal have determined that he may charge, of £100 per flat per annum. Any additional fees should be on an appropriate basis and details of these should be set out within the summary of services.

**RESIDENTIAL PROPERTY TRIBUNAL SERVICES
LEASEHOLD VALUATION TRIBUNAL**

LANDLORD AND TENANT ACT 1987: SECTION 24 (9)

**REASONS FOR THE DECISION OF THE
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/29UE/LVM/2004/0001

Property: Victoria Lodge, 11 Wellington Road, Deal, Kent

Applicant: Mr Andrew Wyborn

Respondent: Resham Singh (Absentee Landlord)

Date of Application: 26th June 2004

Members of the Tribunal: Mrs H C Bowers BSc (Econ) MSc MRICS
Mr M Marshall FRICS

1. Background to the Application

On 4th November 1997, Canterbury County Court appointed Mr A Wyborn to be the Receiver and Manager for Victoria Lodge, 11 Wellington Road, Deal. On 26th June 2004, Mr Wyborn made an application to the Tribunal under Section 24(9) of the Landlord and Tenant Act 1987 for his appointment to be varied or discharged. Since that time there had been two hearings before the Tribunal – on 19th August 2004 and 14th October 2004. On each occasion the Tribunal had required further information about the prospective candidate for taking over the management from Mr Wyborn and had given further directions for the future conduct of the matter. This had resulted in Mr Wyborn remaining as Receiver and Manager.

2. Inspection

Prior to the first hearing the Tribunal made an inspection of the subject property. Victoria Lodge is semi-detached house dating from approximately the 1890's. The main part of the house has been converted into four flats. At the rear of the main house there are two further flats. At the front of the house is a communal hallway providing access to flats 1,2 5 and 6. Flats 3 and 4 are accessed from the rear of the property with their own entrance doors. There are communal grounds to the front and rear of the property. There is parking provided for approximately 5 to 6 cars. In general the property is in quite good order and some items of repair have been carried out in the previous few months. However, there are still some small items of repair that are outstanding.

3. The Hearing

The Tribunal gave further consideration to Mr Wyborn's application at a hearing held in Deal Town Hall on 10th December 2004. Mr Wyborn did not attend the hearing, but Mr John Kirby, the partner of Mrs Jacqueline Kirby, the leaseholder of 2 Victoria Lodge and Mr Leslie Cudmore a Chartered Surveyor based in Dover did attend the hearing.

4. At the first hearing Mr Wyborn confirmed points that had already been made in written representations, in particular he felt that he was no longer in a position to continue as duties as Receiver and Manager and required to be relieved of those duties. Originally Mr Wyborn's mother was a leaseholder of one of the flats at Victoria Lodge, there had been a history of poor maintenance to the property due to an absentee landlord and consequently he had been appointed Receiver and Manager. Mr Wyborn's mother is now deceased and he has no financial or legal interest in the property. As Mr Wyborn is based in London and his personal and business circumstances have changed significantly, he felt that he was no longer in a position to effectively act as Receiver and Manager.

5. It was initially suggested that Mr Dave Tubb and Mrs Jacqueline Kirby should be appointed as joint Receiver and Manager of the property. At the first hearing it became apparent that as neither party had any experience of property management, it would be inappropriate for them to take over the management of the building. Subsequently Mr John Kirby was suggested as

Receiver and Manager. Mr Kirby lived close to the subject property and his wife is a leaseholder of one of the flats. Additionally Mr Kirby was an owner of other residential properties in Deal and had commercial business interest in the town. Mr Kirby would rely upon Mr Cudmore to provide professional assistance in the management of Victoria Lodge. However, it was acknowledged that Mr Kirby had no actual professional property management experience and that he was unable to obtain any professional indemnity cover should a claim be made against him if there was any issues arising from his management of the building.

6. At the current hearing Mr Cudmore indicated that he was willing to act as Receiver and Manager for the property. Mr Cudmore is a Fellow of the Royal Institution of Chartered Surveyors and qualified as a Building Surveyor in 1966. He has been in practise in East Kent since 1970 and has had his own practice since 1979. Mr Cudmore's experience is in surveys, valuations and management of residential properties. He stated that he was currently managing three properties of a very similar nature to the subject property and situated in Dover and St Margaret's. Mr Cudmore is a single practitioner and with some part time secretarial support and that he had support from Mr Stephan Hogben FRICS, in periods of absence. Mr Hogben is familiar with the property and has previously provided advice to Mr Wyborn on maintenance issues. Mr Cudmore confirmed that he has indemnity cover of £300,000. It was expressed that he was familiar with the Royal Institution of Chartered Surveyors, Service Charge, Residential Management Code and that he was happy to collect both the ground rent and service charge in accordance with the lease. There are separate client accounts to deal with the receipts of such monies.
7. As for the remuneration that Mr Cudmore required for dealing with the management of the property he felt that a rate of £50 per hour was appropriate. It was estimated that he would spend in the region of 5 to 6 hours each year on the management of the property.
8. Mr Kirby indicated that the current leaseholders were very happy for Mr Cudmore to take over the management of the property. Additionally they were happy with the fee basis that had been proposed.
9. **Consideration**
We felt that the Tribunal had now allowed more than adequate time for the leaseholders to find a replacement for Mr Wyborn. Mr Wyborn had indicated the circumstances that he felt made it impossible for him to perform his duties satisfactorily. It was certainly not in the interests of the lessees that they should be served by a manager who did not have the time available to undertake his duties properly.
10. Mr Cudmore as a Fellow of the Royal Institution of Chartered Surveyors would seem to satisfy the Tribunal that he is a suitable person to take over as Receiver and Manager of the property. Whilst Mr Cudmore's background is as a Building Surveyor he has indicated that he has some experience of residential property management. Additionally as Victoria Lodge is a

relatively modest development of six flats the Tribunal did not envisage that there would be any issues that would be beyond his level of experience. There are some small items of repairs and maintenance and we are of the opinion that Mr Cudmore's background would be of great assistance in dealing with these aspects of the property's management. The initial appointment should be for a fixed term of two years and then subject to review at that time.

11. As to the terms of Mr Cudmore's appointment, we felt that his fee based on £50 per hour on a basis of 5 to 6 hours expended in total on the annual management of the building was not realistic. We consider that an appropriate rate of remuneration should be £100 per flat per annum for the basic management of the building. This level of remuneration is in line with the management fee charged by most residential agents in the area. Any additional fees should be on an appropriate basis and details of these should be set out within the summary of services.
12. Mr Wyborn's appointment will cease on 24th January 2005 and on this same date Mr Cudmore will be appointed as Receiver and Manager. Mr Wyborn will need to prepare the Final Accounts to the end of December 2004 and for the period 1st January 2005 to 24th January 2005. Mr Wyborn will also need to hand over to Mr Cudmore any relevant papers to ensure the smooth transfer between the managers.

Dated 10th January 2005

H C BOWERS (Chairman)