



HM Courts
& Tribunals
Service

**Property Chamber
London Residential Property
First-tier Tribunal**

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Residents' Association of Canary Riverside
Berkeley Tower Canary Riverside
48 Westferry Circus
London
E14 8RP

Your ref:
Our ref: LON/00BG/LVM/2016/0020

Date: 31 July 2018

Dear Sirs

RE: Landlord & Tenant Act 1987 - Section 24(9)

PREMISES: Canary Riverside Estate, Westferry Circus, London, E14

The Tribunal has considered the application for permission to appeal and it has been refused.

A copy of the document recording the Tribunal's decision is enclosed.

Yours faithfully


**Ms Jacqueline Benjamin
Case Officer**



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

Case reference : **LON/00BG/LVM/2016/0020**

Property : **Canary Riverside Estate, Westferry
Circus, London E14**

Applicants : **Octagon Overseas Ltd (1)
CREM Ltd (2)
Palace Church 3 Ltd (3)
YFSCR Ltd (4)
Yianis Hotels Ltd (5)**

Representative : **Trowers & Hamlins LLP**

Respondent : **Mr A Coates – Tribunal appointed
manager**

Representative : **Downs, LLP**

Interested Persons : **s.24 Applicant Leaseholders**

Representative : **In Person**

Type of application : **Application for permission to
appeal**

Tribunal members : **Judge Amran Vance
Luis Jarero BSc FRICS**

**Date and venue of
hearing** : **N/A**

Date of decision : **27 July 2018**

DECISION ON AN APPLICATION FOR PERMISSION TO APPEAL

DECISION OF THE TRIBUNAL

1. We have considered the request for permission to appeal the tribunal's decision dated 25 May 2018 made by the s.24 applicant leaseholders on 22 June 2018. Having considered the application we determine that:
 - (a) we will not review our decision; and
 - (b) permission to appeal is refused.
2. The s.24 applicant leaseholders initially sought a stay of the tribunal's decision pending determination of any appeal by the Upper Tribunal. However, at a hearing on 16 July 2018, they confirmed that the request for a stay was not being pursued given the Manager's position that: (a) someone must deal with assignments and applications for consent under the lease; (b) the landlord is currently dealing with them; and (c) the Manager is not seeking to appeal the tribunal's decision of 25 May 2018.
3. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the s.24 applicant leaseholders may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

REASON FOR THE DECISION

4. The original tribunal's decision was based on the evidence before it and the respondents have raised no legal arguments that justify the grant of permission to appeal.

ADDITIONAL COMMENTS

5. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (if further application for permission to appeal is made), the tribunal has set out its comments on the specific points raised by the respondents in the application for permission to appeal, in the appendix attached.

Name: Amran Vance

Date 27 July 2018

APPENDIX TO THE DECISION
REFUSING PERMISSION TO APPEAL

For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the tribunal records below its comments on the grounds of appeal, adopting the paragraph numbering of the original application for permission.

Specific comments on the grounds of appeal

Ground 1 - the tribunal wrongly applied or interpreted the law

1. Whilst the decision in *Blaquiere* supports the contention that the tribunal is entitled to grant management functions to a manager that go beyond the landlord's responsibilities under the terms of a residential lease, that does not, in our determination, extend to dealing with assignments and applications for consent under the residential leases *unless* there is specific provision to that effect in the management order.
2. We do not consider we erred in concluding that dealing with assignments and applications for consent are the exercise of a proprietary interest enjoyed by the landlord rather than the exercise of a management function. We stopped short of determining that it is impossible as a matter of law for a court or tribunal to ever confer such functions on a manager, but that if it was permissible, then specific provision to that effect was needed in the management order and compelling evidence would be required before a tribunal should make such provision as it would deprive a landlord of its' proprietary interest. In our view this is likely to require persuasive evidence as to substantial problems arising from the exercise of these functions by the landlord. No such evidence appears to have been before the tribunal who made the decision dated 29 September 2017 and none was before us on the review of that decision (see our comments to ground 2 below).
3. We do not agree that the fact that the residential flats are let on long leases means that the landlord's proprietary interest is limited to the proper management of the residential flats in accordance with the terms of the residential lease and legislation. Firstly, it is the manager who has sole responsibility for the management of the residential flats in accordance with the terms set out in the management order. Secondly, the landlord's proprietary interest includes important matters such as responsibility for the granting of written consent to alterations to the residential flats, which is a matter that could impact directly on the value of its asset in the building.
4. No mention of the RICS code was made by the s.24 applicant leaseholders in their written submissions in respect of this review and that is why it was not referred to in our decision. In any event, whilst the Code provides important guidance to managing agents appointed by landlords regarding the management of residential leasehold

property, its provisions do not override the terms of the residential leases for these buildings or the management order which did not provide for these functions to be dealt with by the Manager.

5. Whilst we recognise that our decision may result in some practical issues for the s.24 leaseholders, such as the possible obligation to pay costs incurred by both the Manager and the landlord when dealing with consents, that is the unavoidable consequence of the operation of the management order currently in force. If the s.24 leaseholders consider these practical issues warrant a variation of the management order so as to deprive the landlord of its proprietary interest then it is open to them to make such an application supported by evidence justifying such variation.

Ground 2 - Substantial Procedural Defect

6. It is the evidence that was before the tribunal who made the 29 September 2017 decision to vary the management order, and evidence that was before us on review, that is relevant to our determination and not evidence that was exclusively before the tribunal who made the original management order. In any event, the evidence now referred to by the s.24 leaseholders, for the first time in this request for permission to appeal, concerns the level of fees sought by the landlord for dealing matters including the grant of consents compared to the Manager's proposed fees. It does not appear to constitute evidence that the arrangements in force at that time were resulting in difficulties to the leaseholders or the Manager that would warrant interference with the landlord's proprietary interest.
7. We did not consider the 20-page closing submission prepared by the s.24 leaseholders dated 19 June 2017 before reaching our decision as:
 - (a) we were not referred to it by the s.24 leaseholders in their submissions in respect of the review; and
 - (b) it was not included in the hearing bundle that was before the tribunal who made the decision of 29 September 2017.
8. Having reviewed it now we see no reason to alter or set aside our decision. Paragraphs 91 – 104 of the closing submission are primarily concerned with the suitability of Mr Coates to carry out these functions and the lessees' assumption that the functions were vested in him. The document contains the s.24 applicant leaseholder's written submissions and does not amount to evidence.
9. Whilst paragraph 91 to item 17 of the Scott Schedule that was before the tribunal identified lessees' concerns regarding the landlords' administration of various tenant's covenants per the lease, item 17 only contains very brief assertions as to:
 - (a) tenants registering a change of details of rental tenants being charged an administration fee of £95 plus VAT;

- (b) tenants seeking approvals being charged fees of £750 plus VAT for landlord's approval to make alterations to their flats plus a £2,500 deposit retained during the period of works);
 - (c) administration charges not being demanded in proper format; and
 - (d) tenant's claiming against building insurance being charged a £500 excess in advance of the claim proceeding.
10. These assertions were opposed by the landlord. In our view even if the assertions contained in the Scott Schedule constitute evidence they fall well short of the type of persuasive evidence required to vary the management order to vest dealing with assignments and applications for consent with the Manager.

Ground 3 – Issue of potentially wide implication

11. We do not accept that the issue is of potentially wider significance so as to warrant the grant of permission to appeal. We did not, as is asserted, reject a broad and practical definition of the management responsibilities of a tribunal-appointed manager and we do not accept that the decision means that the landlord is able to claim it retains responsibility for any function in the lease unless explicitly listed in the management order.
12. Rather, our decision is that compelling evidence is required before a tribunal should interfere with these specific proprietary interests enjoyed by the landlord and that if that evidential hurdle is overcome, specific provision vesting these functions in the Manager must be made in the management order.