



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

- Case references** : **LON/00BG/LVM/2021/0003-4
: LON/00BG/LVM/2021/0010-14**
- Property** : **Canary Riverside Estate,
: Westferry Circus, London E14
(the “Estate”)**
- Applicants** : **(1) Leaseholders represented by
the Residents Association of
Canary Riverside (“RACR”)**
(2) Circus Apartments Limited
(3) Mr Sol Unsdorfer
- Respondents** : **(1) Canary Riverside Estate
Management
Limited(“CREM”)**
**(2) Octagon Overseas Limited
 (“Octagon”)**
**(3) Riverside CREM 3 Limited
 (“Riverside”)**
(4) Mr Sol Unsdorfer
:
(5) RACR
**(6) Circus Apartments Limited
 (“CAL”)**
- Represented by** : **Freeths LLP for Octagon, CREM,
and Riverside**
**RACR for the leaseholder
Applicants**
**Norton Rose Fulbright LLP for
Circus Apartments Limited**

Wallace LLP for Mr Unsдорfer

Type of applications	:	Multiple applications under s.24 Landlord and Tenant Act 1987
Tribunal Judge	:	Judge Amran Vance
Venue	:	10 Alfred Place, London WC1E 7LR
Date of directions	:	1 October 2021
Amended by Judge Vance	:	11 October 2021

DIRECTIONS

BACKGROUND

1. The directions set out below are made following a case management hearing (“CMH”) that took place on 27 September 2021. Present at the CMH were: Mr Rainey QC, counsel for CAL; Mr Bates, Counsel for Octagon, CREM, and Riverside; Mr Upton, counsel instructed by Dr Ashley Steel, the leaseholder of 151 Berkeley Tower, under the Bar’s Public Access Scheme; Ms Jezard, the lay representative for the other leaseholders represented by RACR; and Mr Dovar, counsel for Mr Unsдорfer, the current Manager of the Estate (“the Manager”).
2. Page numbers in bold and in square brackets below refer to page numbers in the CMH hearing bundle prepared by CAL.
3. There were six applications before me at the CMH:
 - (a) RACR’s application for an extension of the current Management Order (“MO”) LON/ooBG/LVM/2021/0003;
 - (b) CAL’s application for a variation of the current MO LON/ooBG/LVM/2021/0004;

- (c) Mr Unsdorfer's application for variation of the current MO LON/00BG/LVM/2021/0010.
 - (d) CAL's application for a new MO - LON/00BG/LVM/2021/0011;
 - (e) RACR's application for a new MO - LON/00BG/LVM/2021/012; and
 - (f) CAL and RACR's joint application for an interim MO LON/00BG/LVM/2021/0014.
4. The directions below were issued at the CMH and discussed with those present. I will address each of the issues considered at the CMH.

RACR's extension application

5. RACR seek an extension of the current MO for a further three years. The application is supported by CAL and the Manager.
6. Mr Bates argued that this application should be stayed generally because CREM has conceded to an extension to 31 March 2023. It accepts that it is important that the Manager remain in post whilst current cladding remediation works are progressed on the Estate. It considers an extension of 18 months to be sufficient time to complete such works, and, if necessary, the extension application can be revived prior to 31 March 2023. This concession has been rejected by all other parties.
7. I do not agree a stay to be appropriate. The evidence before me does not persuade me that the cladding works are likely to be completed within 18 months. Mr Bates points out that Mr Unsdorfer stated in paragraph 8 of his witness statement dated 25 June 2021 [771] that he was "well advanced in the proposed rollout of an extensive £8m cladding remediation project on the Estate, and that in his report to this tribunal in June 2021, he stated that the works are "expected to take 12 months to complete" [787]. However, at the CMH on 27 September 2021, Mr Dovar, on behalf of Mr Unsdorfer, said that the Autumn of 2023 is the current best estimate for completion. Mr Unsdorfer is best placed to know when completion is likely to occur, and I do not consider significant reliance can be placed on the estimate he gave back in June.
8. In addition, as Mr Rainey pointed out, the extension application includes applications to vary the terms of the existing MO, as well as to extend its duration, and those variations need to be determined in any event.

The New Management Order Applications and the Variation Applications

9. The two applications for a new management order have arisen because of Riverside's appeal to the Upper Tribunal regarding my decision of 28 April 2021 to vary the MO to enable Mr Unsdorfer to recover, from Riverside, outstanding sums owed to him by Virgin Active Health Clubs Limited ("Virgin"). Riverside is Virgin's current immediate landlord of the gym and health club situated on the Estate. Prior to assigning its interest to Riverside on 21 November 2018, CREM was Virgin's immediate landlord.
10. Riverside has appealed on the basis that this tribunal had no power to impose such an obligation on it. It argues, relying upon the decision of the Deputy President in *Urwick v Pickard* [2019] UKUT 365 (LC) that it cannot be bound by the MO, as varied by me on 28 April, because it was not a party to the original MO.
11. CAL and RACR have therefore made applications for a new management order, which binds Riverside, to protect and preserve the Manager's ability to manage the Estate, in case Riverside's appeal succeeds. They argue that it is just and equitable to make such an order for the same reasons that it is just and equitable to extend the existing MO against CREM and Octagon and, should its appeal fail, against Riverside itself.
12. I previously directed on 1 May 2020 [50] that the extension application should be heard and determined with the variation application. That remains my view, for the reasons stated in those directions. I also consider those applications should be heard and determined together with the two applications for a new management order. I agree with Mr Rainey that the grounds relied upon in the new management order applications are inextricably bound up with the grounds of the extension application, as the applicants seek that the variations of the Management Order sought in the extension applications, be incorporated into the new management order. Hearing all of these applications together will, in my view, be a proportionate use of the tribunal's time and resources, as well as that of the parties.

Interim Management Order

13. Without prejudice to their contention that Riverside is already bound by the existing Management Order, CAL and RACR seek an interim management order which binds Riverside to its terms. They argue that from the date CREM assigned part of its interest in the Estate to Riverside, up until its appeal against the decision of 28 April 2021, Riverside had consistently accepted that it was bound by the existing MO, and had accepted its liability to pay service charges for shared services to the Manager. It is, say CAL and RACR, necessary for the Estate to be managed by a single manager, especially having regard to the large number of shared services that serve the parts assigned to Riverside, as well as those retained by CREM and Octagon, and which cannot sensibly be managed separately.
14. Their application is supported by Mr Unsorfer, who argues that Riverside's contention, in its appeal, that it is not bound by the MO, will, if correct, have a significant impact on his ability to manage the Estate, including his ability to raise service charges. The potential loss of control over that part of the Estate assigned to Riverside could, said Mr Dovar, result in the possible stalling of the current cladding works, given that part of the area assigned to Riverside is Eaton House, which contains cladding.
15. Mr Bates argued that the application for an interim order is not urgent and should be stayed because Riverside is, by virtue of the 28 April decision, currently bound by the existing Management Order, pending the outcome of the appeal to the Upper Tribunal.
16. In a letter dated 16 August 2021 [61] I queried whether there was anything to be gained by pursuing this application at this stage. Having heard argument on the point at the CMH from Mr Rainey, Mr Upton and Mr Dovar, I am persuaded that the application should proceed to an urgent determination.
17. I accept that the current uncertainty regarding Riverside's position risks undermining Mr Unsorfer's ability to manage the Estate. This is of particular concern with regard to the cladding works, for which Mr Unsorfer says he has applied for Building Safety Fund funding, and also with regard to the need for him to renew the electricity contract for £2 million electricity contract for the Estate, which is due to be renewed on 1 October [1098].
18. Whilst Riverside accepts that, by reason of *res judicata*, it is currently bound by the MO, because of my 28 April decision, if it succeeds in its appeal, it will argue that it was never bound by the MO. The result

would be that Mr Unsдорfer would have no power to manage those parts of the Estate assigned to Riverside, including in respect of the cladding works.

19. I did not, however, accept Mr Rainey, Mr Upton and Mr Dovar's submission that the interim application should be determined summarily, on the papers, at the CMH. The CMH was listed for a directions hearing, and Mr Bates said at the hearing that he did not have instructions to deal with anything other than directions. It is clear, that the application for an interim order is going to be heavily contested. Whilst my preliminary view is that Mr Rainey is correct in arguing that an interim, or interlocutory order, are determined on *American Cyanamid* principles, without the need for oral evidence, I consider that fairness requires that the parties properly set out their case in respect of the interim order application. The application was not, in my view suitable for summary determination.

20.. I therefore make the directions below.

DIRECTIONS

Part 1 - Interim Management Order Application

Response

1. By 4pm on **15 October 2021** ~~Octagon, CREM, Riverside and~~ Mr Unsдорfer must serve on all parties a Statement of Case in response to the Interim Management Order Application, accompanied by any witness statements upon which they seek to rely.
2. By 4pm on ~~15~~ **19 October 2021** Octagon, CREM, and Riverside must serve on all parties a Statement of Case in response to the Interim Management Order Application, accompanied by any witness statements upon which they seek to rely.

Replies

3. By 4pm on ~~22~~ **25 October 2021** ~~Octagon, CREM, Riverside and Mr Unsдорfer~~ CAL and RACR must serve on all parties a Statement of Case in response to the Interim Management Order Application, accompanied by any witness statements upon which they seek to rely.

Hearing

4. The Interim Management Order Application shall be listed before Judge Vance for a one-day hearing to take place by video conferencing on **Wednesday 3 November 2021** at 10 am.
5. The Tribunal will make its determination on the evidence in writing.
6. CAL must provide a paginated and indexed hearing bundle in respect of the Interim Management Order Application in Adobe PDF format, to be provided to the tribunal and all other parties by **29 27 October 2021**.
7. Skeleton arguments shall be filed and exchanged by no later than 5pm on **27 29 October 2021**.

Part 2 – Remaining Applications

Preliminary

1. These directions supersede any previous directions given in respect of any of the applications listed in paragraph 3 below, to the extent that any provision of such earlier directions remains unperformed.

Notice of Applications to all leaseholders

2. By **5 October 2021** Mr Unsдорfer must write to the tribunal with proposals as to how notice of the applications in the next paragraph are to be given to all leaseholders on the Estate. Notice may be by email, with an indication as to where copies of the application and the tribunal's directions can be downloaded. Leaseholders should be notified that they have the opportunity to make representations in respect of the applications by writing to the tribunal requesting permission to do so, and that any residential leaseholder may be represented by RACR.

Case Management of the applications

3. The following applications (together “the Applications”) are to be case managed and heard together as set out below:

LON/ooBG/LVM/2021/0003 – “The Extension Application”

LON/ooBG/LVM/2021/0004 – “The CAL Variation Application”

LON/ooBG/LVM/2021/0010 – “The Unsдорfer Application to Vary”

LON/00BG/LVM/2021/0011 and 0012 – together “the New Management Order Applications”

Further Landlords’ Response

4. By **12 November 2021**, Octagon, CREM and Riverside must serve on all parties a Statement of Case accompanied by any further witness statements relied upon in response to the CAL Variation Application and the New Management Order applications.

Replies from RACR, CAL, Mr Unsdorfer and any additional joined parties

5. By **10 December 2021** RACR, CAL, Mr Unsdorfer and any parties joined to the Applications since 1 May 2021 may serve a Statement of Case and any witness statements in reply **on all issues** in the Applications.

Expert Planning Evidence

6. CAL has permission to rely on expert evidence in the field of planning concerning the planning permission for the use of Circus Apartments as residential serviced apartments and unrestricted C3 residential use (flexible C3 residential use). Such expert evidence shall be limited to a single expert whose report shall be served on all other parties to the CAL Variation Application by **10 December 2021**.
7. Octagon, CREM and Riverside jointly have permission to rely on expert planning evidence in reply (if so advised), limited to one expert for all three landlord parties. Any such election of an expert must be notified to the tribunal and the other parties by **7 January 2022**. The expert’s report shall be served on all other parties to the CAL Variation Application by **28 January 2022**.

Hearing

8. The Applications shall be listed for a **seven-day** hearing to take place in person unless notified to the contrary, commencing on **21 March 2021 2022 and ending on 29 March 2022**.
9. The first day of the hearing shall be set aside for tribunal pre-reading and the parties need not attend until the morning of day 2.

10. CAL must provide a paginated and indexed hearing bundle in respect of the Applications in hard copy and Adobe PDF format, to be provided to the tribunal and all other parties, no later than **7 March 2022**.
11. Skeleton arguments shall be filed and exchanged no later than 5pm on Thursday **16 March 2022**.

Name: Amran Vance

Date: 1 October 2021

Amended by Judge Vance on 11 October 2021

NOTES

- (a) **Whenever you send a letter or email to the tribunal you must also send a copy to the other parties and note this on the letter or email.**
- (b) **If an applicant fails to comply with these directions the tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).**
- (c) **If a respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.**
- (d) **Witness statements should identify the name and reference number of the case, have numbered paragraphs and end with a statement of truth and the signature of the witness. Original witness statements should be brought to the hearing. In addition, witnesses are expected to attend the hearing to be cross-questioned as to their evidence, unless their statement has been agreed by the other party. The tribunal may decline to hear evidence from any witness who has not provided a statement in accordance with the above directions.**