

CASE REF:

IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

IN THE MATTER OF S.24(1) OF THE LANDLORD AND TENANT ACT 1987

AND IN THE MATTER OF FROGNAL ESTATE, FINCHLEY ROAD, LONDON NW3

BETWEEN:

**DR MICHAEL ANSON (1)
MISS MARIE GARSIDE (2)**

Applicants

-and-

**RFYC LIMITED (1)
FROGNAL GROUND RENTS LIMITED (2)**

Respondents

**Grounds of Application to extend the Manager's appointment
and to vary the terms of the Order of Appointment**

INTRODUCTION AND BACKGROUND

1. This Application is made under Section 24(9) of the Landlord and Tenant Act 1987 ("the 1987 Act"). It concerns the management of Frogнал Estate, Finchley Road, London NW3 ("Frogнал Estate") by the Tribunal appointed Manager, Mr Martin Kingsley ("the Manager"). The Applicants seek an extension of the Manager's appointment, together with various amendments to the terms of the Management Order.

THE PREMISES

2. Frogнал Estate consists of five brick-built apartment blocks erected in the 1930s around a central parking area with rear access by metal fire-escapes: 1 – 12 Frogнал

Court NW3 5HL; 1 – 6 Warwick House NW3 5HN; 1 – 4 Midland Court NW3 5HP front on the Finchley Road with Commercial Premises (shops) on the ground floor and two blocks; 14 – 29 Frognal Court NW3 5HG and 30 – 45 Frognal Court NW3 5HG fronting the 'garden' area; Frognal Court Wood to the North East with commercial garages underneath 14 – 29 Frognal Court which are leased to the Holiday Inn Express adjacent to the Frognal Estate; 30 – 45 Frognal Court has no associated commercial premises. All blocks are arranged around a central car park with access from their rears by metal fire-escapes. Frognal Court Wood is a protected SNCI. Recently Mansard Roof extensions have been erected with four flats over 14 – 29 and four over 30 – 45 a total of eight. A plan is included for clarity.

3. There are commercial shop units on the ground floor of 1-12 Frognal Court, 1-4 Midland Court and 1-6 Warwick House and garages beneath 14-29 Frognal Court. However, this Application does not concern the commercial units or the garages.
4. More recently, a company known as Imperial Development Management Ltd. carried out a rooftop development of the rear blocks 14-45 Frognal Court (consisting of two buildings 14-29 and 30-45 Frognal Court) by constructing four flats on each a total number of eight penthouse flats on top of two of the blocks of flats on the Frognal Estate. Commencement of the roof development came as a surprise to leaseholders, residents and we believe, The Manager/Receiver, in September 2016 when scaffolding was erected on both 14 – 29 and 30 – 45 with the contractors, Oakland Building Services commandeering much of the Car Park area.
5. The Freehold interest in Frognal Estate is retained by Network Rail who have two mainline tunnels running below the Estate: the Belsize Tunnel St Pancras to the Midlands and the New Belsize Tunnel St Pancras Thameslink. A 999 year lease was issued by Railtrack (In Administration) in 2001 and currently is held by F & M

Holdings (Virgin Islands) Ltd controlled by Norman Freed. The Lease immediately below is the 'Mobax' Lease that runs until 2089 including all property at Frogmal Estate including the commercial elements; it is currently owned by Metropolitan and County Holdings Ltd. The ownership of the freehold and leasehold interests in the Frogmal Estate is complex and changes frequently. Currently, we believe, it is as illustrated in the document "Frogmal Estate: Lease Structure" attached hereto marked "A".

6. The freehold title of Frogmal Estate is held by Network Rail Infrastructure Ltd and below it is a network of leases, subleases, sub-underleases, sub-sub-underleases, etc. in relation to different parts of the estate. Many flat leases have been extended to 2179 under the provisions of the 2002 Act.

THE RESPONDENTS' INTERESTS IN THE ESTATE

7. The First Respondent, RFYC Limited ("RFYC") owns a leasehold of the residential flats on the Frogmal Estate pursuant to a sub-underlease dated 18 July 2005 made between Long Acre Securities Limited (1) and RFYC Limited (2). Its leasehold interest is registered with HM Land Registry under title NGL856825.
8. The Second Respondent, Frogmal Ground Rents Limited ("Frogmal Ground Rents") owns a leasehold interest in 1-12 Frogmal Court (first, second and third floors), 14-45 Frogmal Court (first, second and third floors), 1-6 Warwick House (first, second and third floors) and 1-4 Midland Court (first and second floors) pursuant to a sub-sub-underlease dated 21 May 2015 made between RFYC Limited (1) and Frogmal Ground Rents Limited (2). Its leasehold interest is registered with HM Land Registry under title number NGL951560.

THE MANAGER

9. The Manager was appointed by Order of the Tribunal on 13 February 2015 pursuant to Section 24 of the Landlord and Tenant Act 1987 in substitution to Mr Roger Southam. However the Order was not formally signed, owing to administrative errors, until April 2016.
10. His appointment was extended to 29 August 2019 by order of the Tribunal dated 30 August 2016.
11. The Manager has the support of the majority of the long leaseholders of flats at the Frogmal Estate and they are pleased with the manner in which he is managing the Estate and that he realises the enormity of the task.
12. The Manager now has a good understanding of the size and complexities of Management and the ownership of leasehold interests of the Frogmal Estate and which entities have control over the various buildings and central car parking area. He undertook the task at short notice following Mr Roger Southam's resignation and so was saddled with KMP Solutions as Managing Agents engaged by Roger Southam shortly before he resigned. Many leaseholders consider this to be an inefficient, expensive duplication of Management as originally it was expected that the functions of Managing Agent would be undertaken by the Manager's own company. We would like the Manager to take over the functions of Managing Agent in his Company and be paid the fees currently levied for this service by KMP Solutions.
13. The Manager this year managed to get back control of the car park as directed in the Management Order and recently entered into a contract with a company known as

Creative Car Park Limited to control the use of the car park in order to preserve leaseholders' rights to use the car park or their rights of access over the car park and also to prevent any uninvited persons using it.

14. In addition, an arrangement has been made with Imperial Limited, the developer of the rooftop developments at 14 to 29 and 30 to 45 Frogna Court to install lifts which would stop on all floors. These buildings have existing lifts but they have been out of action since 1991. As part of the development of the rooftops the developer was going to install new lifts but these would only stop at the top floor. The Manager has agreed that in order for the lifts to stop on all floors each block would contribute a fair proportion and this was approved by the First Tier Tribunal on May 19th 2017.
15. Many of the leaseholders are not happy with the situation regarding the service charges. Under the Management Order the long leaseholders have taken responsibility for paying 100% of them in advance (most leases require them to be paid in arrears after a fixed interim payment is made in advance). Leaseholders are not consulted about the budget, just billed. This is resented, especially as they are considered to be excessive. We are not happy with the way the managing agents are treating us. The leaseholders are paying 100% of the costs and their fees and we should be kept fully informed about what they are doing with our money. We also know that at least one leaseholder is seriously in arrears and it has also been noted that an item appears in the accounts about 'loans to other buildings'. At the end of the year there is no sign of a balance to be carried forward. We are not happy with this situation with the managing agents. Without them the manager would have more control if this role was performed by his company.

GROUNDINGS FOR THE APPOINTMENT OF THE MANAGER TO BE EXTENDED

16. The Frogmal Estate has been subjected to a long-standing dispute between the long leasehold owners and RFYC, in relation to the demands of service charges, the lack of maintenance to the buildings and the central car park and the ticketing of vehicles parked in the car park. When the Tribunal appointed a manager pursuant to the 1987 Act in 2009, RFYC showed no inclination to incur any costs to comply with notices served by the London Borough of Camden Environmental Health team under the Environmental Health Act 1990.
17. Much of the dispute has been caused by the conduct of the Director of RFYC, Mr Norman Freed, who remains the sole Director appointed by the First Respondent and remains in control of F & M Holdings (Virgin Islands) the current Head Lease (Satco Lease) holders
18. The management of Frogmal Estate is further complicated due to inconsistencies in the leases granted to the owners of flats on the estate in relation to service charge provisions (in particular the apportionment of service charge contributions).
19. A table of service charge liabilities based on historic rateable values was drawn up by the Applicants and approved by the Tribunal in 2009 and is part of all Management Orders approved since. It is anticipated that in the event the Management Order is not extended that the management of Frogmal Estate will become chaotic and unmanageable. The incorporation of the eight Mansard Roof development flats will impose a difficult problem since rateable values no longer pertain.
20. On 21 May 2015, RFYC granted Frogmal Ground Rents a lease in relation to parts of 1 - 12 Frogmal Court; 14 - 29 Frogmal Court; 30 - 45 Frogmal Court; 1 - 6 Warwick

House; 1 - 4 Midland Court. However, this lease excludes the structural and external parts of the buildings in question and it excludes all other parts of the Frogna! Estate such as the central car parking area and other external areas, including Frogna! Estate Wood.. This means that RFYC still controls large parts of the Frogna! Estate.

21. The Applicants understand from conversations with Metropolitan & County, RFYC's immediate landlord, that RFYC has not requested consent to grant the sub-sub-lease to Frogna! Ground Rents. There is therefore a risk of a dispute between RFYC and Metropolitan & County regarding Frogna! Ground Rent's interests in the Frogna! Estate. This dispute could potentially disrupt the management of Frogna! Estate.

22. There seems therefore to be, in all likelihood, a reasonable chance that the reasons for the Tribunal to originally appoint a Manager pursuant to provisions under Section 24 of the Landlord and Tenant Act 1987 will continue. In addition, as will be explained below, Imperial Limited/RFYC recently developed the rooftops of 14 - 29 and 30 - 45 Frogna! Court. There appears to be a dispute between Imperial Limited/RFYC and Metropolitan and County, who owns the airspace above 14 - 29 and 30 - 45 Frogna! Court in relation to the rooftop development and the granting of leases for these units. 14 - 29 and 30 - 45 Frogna! Court are separate cost centres and four new apartments have been built on the top of each and there appears to be a problem on the terms and content of the leases particularly in regard to service charges. The lifts to which the leaseholders made a considerable financial contribution (without consultation) have only been installed in 14 - 21 and there is no sign of them or redecoration in the other three hallways. We understand that all the planning conditions imposed by Camden have not been fulfilled.

RECENT ROOFTOP DEVELOPMENT OF 14 – 45 FROGNAL COURT

23. Imperial Limited last year appear to have completed the construction of eight penthouse flats at the top of 14 - 29 and 30 - 45 Frognal Court but three lifts still have to be installed and the serious damage done to halls and stairways rectified.
24. The Applicants are aware that there has been a dispute as to the ownership of the airspace above 14 - 45 Frognal Court which has been determined by the High Court in *Ralph Kline Limited v Metropolitan and County Holdings Limited* [2018] EWHC 64 where the High Court determined that Metropolitan and County Holdings Limited owns the airspace above the blocks of flats in question.
25. According to Metropolitan & County, it has not had any constructive correspondence with Imperial Limited/RFYC in relation to the grant of any leases and has had some difficulty in corresponding with them.
26. In addition, the Applicants understand that there is currently an ongoing dispute between Imperial Limited and the contractors who were contracted to construct the eight penthouse flats and some of the top floor leaseholders have considerable claims for damage and disruption to their property caused by water ingress when the roof was removed without adequate protection for the existing flats.
27. It is therefore anticipated that there might be a significant delay in the dispute being resolved regarding the rooftop development of 14 - 29 and 30 - 45 Frognal Court and this will cause a delay in leases being granted for the new penthouse flats and their contributions to the service charges.

28. At this stage, the immediate impact of the development of 14 - 29 and 30 - 45 Frogmal Court on the owners of flats is the increase in insurance premiums payable for the blocks. However, questions arise as to (i) the liability to insure the structural additions to 14 - 29 and 30 - 45 Frogmal Court, (ii) the entity with liability to maintain and repair the structural and other additions and (iii) who should pay for the maintenance and upkeep of these additions.

PLANNED ROOFTOP DEVELOPMENT OF 1-12 FROGMAL COURT, 1-6 WARWICK HOUSE AND 1-4 MIDLAND COURT

29. It has very recently come to our attention that RFYC is applying for planning permission to construct single storey mansard roof extensions to create 8 residential flats at the top of 1-12 Frogmal Court, 1-6 Warwick House and 1-4 Midland Court.
30. The Applicants are concerned that the problems which plagued the rooftop development of 14 - 29 and 30 - 45 Frogmal Court will be repeated with the latest planned development. During the construction works a significant number of flats suffered from water ingress due to the removal of the existing roof structures of 14 - 29 and 30 - 45 Frogmal Court which left these flats exposed to the elements. In addition, the heavy vehicles, cranes and machinery operated by the contractors caused damage to the central car parking areas and other communal areas.

VARIATION OF THE EXISTING MANAGEMENT ORDER

Development of 14 - 29 and 30 - 45 Frogmal Court

31. Pursuant to the planning permission granted by the London Borough of Camden (Ref: 2014/0342/P and 2016/0471/P), planning permission was granted subject to the installation of a number of items including CCTV, cycle storage, solar panels, entry

phone systems extension of existing chimneys and flues and elevation of water tanks on the roof. These items are new additions to the Frogmal Estate and the leases for the flats on the estate do not make provision for these items to be maintained and repaired at the expense of lessees.

32. In addition, the insurance premiums for 14 - 45 Frogmal Court increased by £8,119.14 due to the addition of the eight penthouse flats and a number of significant water ingress claims to a number of flats following the poor regard by Imperial Limited and its contractors to protect the existing flats below. It is likely that insurance premiums are going to rise for the foreseeable future as a result and it is wholly unfair that leaseholders should have to meet these costs.

33. Due to development of the airspace above 14 - 45 Frogmal Court and the installation of additional fixtures and fittings such as solar panels, fire alarms and door entry systems, it is anticipated that in the event the appointment of the Manager is extended by the Tribunal, that further orders are needed in order to:

- i) determine the liability of the owner(s) of the penthouse flats' obligations to contribute to service charges (including the insurance for the relevant blocks) in relation to the additional fixtures and fittings and structural parts added to 14 - 29 and 30 - 45 Frogmal Court; and
- ii) what proportion of service charges the relevant person(s) would contribute to expenses incurred in relation to the Frogmal Estate?

Development of 1 - 12 Frogmal Court, 1 - 6 Warwick House and 1 - 4 Midland Court

34. Due to the potential damage to be caused by the proposed rooftop development of 1 - 12 Frogmal Court, 1-6 Warwick House and 1-4 Midland Court, it is proposed that the Manager's powers are extended to:

- i) determine the need for the developer/RFYC to serve notices under the Party Wall etc. Act 1996 ("the 1996 Act");
- ii) to appoint a Party Wall Surveyor to negotiate a Party Wall award under the 1996 Act;
- iii) to take legal action if required to enforce any breaches of the 1996 Act;
- iv) to require RFYC to commission a schedule of condition of the communal areas of the buildings in question and surrounding external areas prior to commencement of the rooftop development;
- v) to take legal action (if so advised) in relation to any damage caused to the fabric of the buildings in question or damage to any of the communal areas including the central car parking area; and
- vi) to enter into a licence agreement with the contractors to use the central car parking area and other external areas during construction works.

Planning permission may not be granted and the Manager needs authority to employ Planning consultants if necessary.

35. It is anticipated that this Application will have to be re-listed for a possible variation to the Management Order once the rooftop development of the above buildings have been completed in order to resolve any issues regarding (i) insurance, (ii) repairing and maintenance obligations and (iii) service charge contributions and apportionments. At present the ownership of the rooftop development above 14 - 29 and 30 - 45 Frogna Court is unclear to the Applicants and in time it is likely that the Management Order will need to be extended to include those properties.

36. A draft order for the continuation of the Manager's appointment will be submitted to the Tribunal in good time before the final hearing of this application.

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37. A list of the names and addresses of long leaseholders affected by this application is attached marked "B".

Statement of Truth

We believe that the facts stated herein are true

Michael Anson

Dr Michael Anson

Marie Garside

Ms Marie Garside

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(PROPERTY CHAMBER)**

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Grounds of Application

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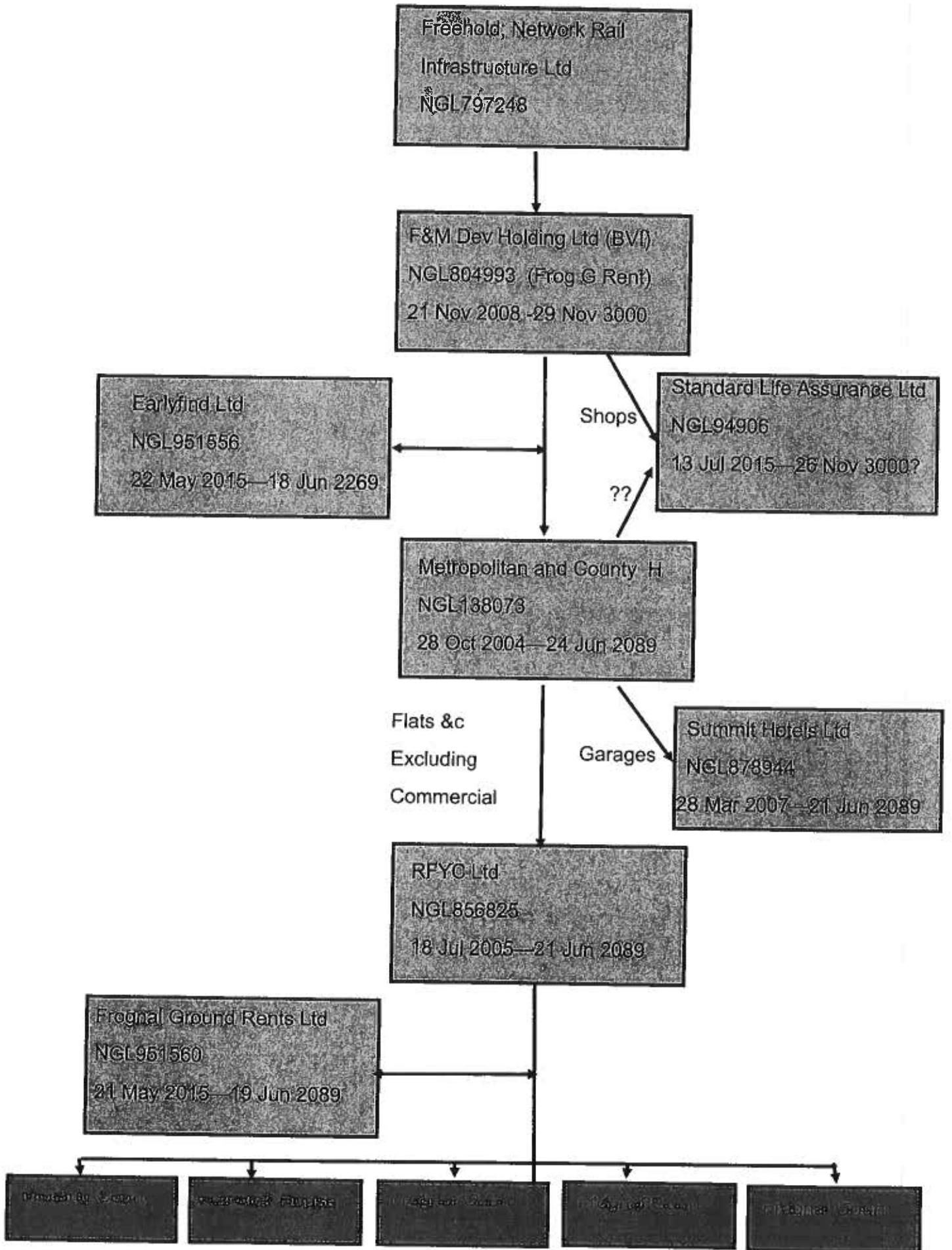
-and-

**RFYC LIMITED (1)
FROGNAL GROUND RENTS LIMITED (2)**

Respondents

This is the Exhibit marked "A" referred to in paragraph 5 of the Grounds of Application to extend the Manager's appointment

Frogna! Estate: Lease Structure



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BETWEEN:

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Applicants

-and-

**RFYC LIMITED (1)
FROGNAL GROUND RENTS LIMITED (2)**

Respondents

This is the Exhibit marked "B" being the list of tenants affected by this Application referred to in paragraph 37 of the Grounds of Application.

**Names and addresses of
Leaseholders on Frogmal Estate**

<u>Address</u>	<u>Leaseholder</u>
Flat 1 Frogmal Court Finchley Road London NW3	Natasha Brown and Mr Laco Perez
Flat 2 Frogmal Court Finchley Road London NW3	Mr. L. M. Brassey
Flat 3 Frogmal Court Finchley Road London NW3	Phillip and Louise Rahmanou
Flat 4 Frogmal Court Finchley Road London NW3	Mr. and Mrs. D. Gilnert
Flat 5 Frogmal Court Finchley Road London NW3	Mr. I. Mani
Flat 6 Frogmal Court Finchley Road London NW3	Ms Agnes Kory
Flat 7 Frogmal Court Finchley Road London NW3	Ms Lina Basu
Flat 8 Frogmal Court Finchley Road London NW3	Dr. S. Nag-Chaudhury
Flat 9 Frogmal Court Finchley Road London NW3	Mr. and Mrs. Diamond
Flat 10 Frogmal Court Finchley Road London NW3	Mr. Aditya Suchde
Flat 11 Frogmal Court Finchley Road London NW3	Mr. R. Di Blasi
Flat 12 Frogmal Court Finchley Road London NW3	Mr. Martin Pitt
Flat 14 Frogmal Court Finchley Road London NW3	Mr. T. R. Farooqui
Flat 15 Frogmal Court Finchley Road London NW3	Miss Marie Garside
Flat 16 Frogmal Court Finchley Road London NW3	Mr. I. Stamatis
Flat 17 Frogmal Court Finchley Road London NW3	Krishna Jagdish Hathi
Flat 18 Frogmal Court Finchley Road London NW3	Convoke Property Limited

Flat 19 Frognal Court Finchley Road London NW3	Convoke Property Limited
Flat 20 Frognal Court Finchley Road London NW3	Miss Marie Garside
Flat 21 Frognal Court Finchley Road London NW3	Mr. Stephen Cole
Flat 22 Frognal Court Finchley Road London NW3	Convoke Property Limited
Flat 23 Frognal Court Finchley Road London NW3	Ms Pauline Elizabeth Auerbach
Flat 24 Frognal Court Finchley Road London NW3	Mr. R. Di Blasi, Ms N. Di Blasi
Flat 25 Frognal Court Finchley Road London NW3	Mr. John Curry
Flat 26 Frognal Court Finchley Road London NW3	Ms Pauline Elizabeth Auerbach
Flat 27 Frognal Court Finchley Road London NW3	The Estate of Mrs. Joyce Burgess
Flat 28, Frognal Court Finchley Road London NW3	Mr. Mark Wass
Flat 29 Frognal Court Finchley Road London NW3	Mr. D. and Mrs. B. Glinert
Flat 30 Frognal Court Finchley Road London NW3	Dr. Carson
Flat 31 Frognal Court Finchley Road London NW3	Convoke Property Limited
Flat 32 Frognal Court Finchley Road London NW3	Parthasarathi Basi
Flat 33 Frognal Court Finchley Road London NW3	Cane Developments
Flat 34 Frognal Court Finchley Road London NW3	Mr. John Curry
Flat 35 Frognal Court Finchley Road London NW3	Messrs. S.M., A.S., N.M. & P.N. Mehta
Flat 36 Frognal Court Finchley Road London NW3	Dr. Michael Anson

Flat 37 Frogmal Court Finchley Road London NW3	Convoke Property Limited
Flat 38 Frogmal Court Finchley Road London NW3	Dr. N. Yaddahige
Flat 39 Frogmal Court Finchley Road London NW3	Mr. David Cohen
Flat 40 Frogmal Court Finchley Road	Mrs. J. L. Oppenheimer
Flat 41 Frogmal Court Finchley Road London NW3	Mr. and Mrs. B. A. Babikir
Flat 42 Frogmal Court Finchley Road London NW3	Ms Bagheri and Mr. Byrne
Flat 43 Frogmal Court Finchley Road London NW3	Mr. Norman Michael Freed
Flat 44 Frogmal Court Finchley Road London NW3	Mrs. Joanna Douglas
Flat 45 Frogmal Court Finchley Road London NW3	Mr. Norman Michael Freed
Flat 1 Warwick House Finchley Road London NW3	Ms Hannah Spungin
Flat 2 Warwick House Finchley Road London NW3	Mr. Daniel Richard Reza Katanchian
Flat 3 Warwick House Finchley Road London NW3	Mark and Aviva Brassey
Flat 4 Warwick House Finchley Road London NW3	Mrs. S. Davies
Flat 5 Warwick House Finchley Road London NW3	Romesh Marino Navaratnam and Penelope Candice Navaratnam
Flat 6 Warwick House Finchley Road London NW3	Professor J. K. Mackinnon
Flat 1 Midland Court Finchley Road London NW3	Ms Amy MacDonald
Flat 2 Midland Court Finchley Road London NW3	Mrs. Barbara Stimpson
Flat 3 Midland Court Finchley Road London NW3	JNSS Investments Limited
Flat 4 Midland Court Finchley Road London NW3	Midland Court Limited