

**PRELIMINARY NOTICE
APPLICATION FOR THE APPOINTMENT OF A MANAGER AND DISCLOSURE OF
INFORMATION TO MEMBERS.**

(Section 22. Landlord and Tenant Act 1987)

To: 1) Enfield Island Village Trust

Copies Sent to: Enfield Island Village Trust, Warwick Management Limited, PDC Law, Veale Wasbrough Vizards LLP, The Charities Commission and Officers of Enfield Island Village Trust.

Address of the property: The Infrastructure of the Enfield Island Village

We, the persons whose names and addresses are set out in the First Schedule attached, GIVE YOU NOTICE as follows:

1. This notice is served under Section 22 of the Landlord and Tenant Act 1987 by the tenants of properties at Enfield Island Village (The Property).
2. The tenants/members intend to make an application for an order under Section 24 of the Act to be made by the First-Tier Tribunal (Property Chamber London) to appoint a manager in respect of the property but will not do so if you comply with the requirements specified in paragraph 5 below.
3. The grounds on which the Tribunal will be asked to make the order are set out in the Second Schedule attached.
4. The matters which will be relied upon by the tenants for the purposes of establishing the grounds are set out in the Third Schedule attached.
5. The matters which are capable of being remedied by you and the steps to do so are set out in the Fourth Schedule PART A attached; the tenants require you to take steps specified to remedying those matters within a period of 21 days from the date of this notice. Remedial Actions Set out in the Fourth Schedule Part B attached; the members require you to take steps specified for remedying those matters within a period of 30 days from the date of this notice, by appointing an independent interim manager chosen by the members, in accordance with Schedule IV paragraph 12 of the lease. Remedial Actions as set out in the Fourth Schedule Part C, are matters which can only be resolved by the courts.
6. If your interest in any of the property is subject to a mortgage, Section 22(4) of the Act requires you to serve a copy of this notice on the mortgagee as soon as is reasonably practicable.

Address for the service of notices in connection with Part II of the Act and in proceedings: 40-42 Island Centre Way, Enfield EN3 6GS

Date: 02/05/2018

FIRST SCHEDULE

APPLICATION FOR THE APPOINTMENT OF A MANAGER

Names and addresses of tenants/members

(Simply list the names and addresses of the tenants serving the notice; signatures are not necessary.)

We anticipate 30 applicants on this document to date , however we invite you to join in this action, so we can obtain justice for the entire Enfield Island Village.

SECOND SCHEDULE

GROUNDS FOR THE APPOINTMENT OF A MANAGER

The Enfield Island Village Trust has made unreasonable service charges, from the period March 2016 to date, without consultation and in Breach of the Memorandum and Articles relating to:

1. The Rentcharge document Breaches
2. Breaches of Code of Practice Section 87 Leasehold Reform and Urban Development Act 1993 by Enfield Island Village Trust, Warwick Estates Limited and Veale Wasbrough Vizards LLP.
3. The Election of the Trustees was incorrect therefore they cannot replace the old Trustees
4. The Articles of Association were incorrectly amended therefore the previous version should be reinstated
5. Indiscriminate spending
6. Dismantling Transparency to members
7. Poor maintenance
8. Other matters that are relevant to appoint a new Managing Agent and reinstate the democratically elected Trustees or in the alternative hold independently monitored elections in accordance to the rules laid down by the Governing document.

THIRD SCHEDULE

MATTERS RELIED ON BY THE TENANTS

1. Unreasonableness of service charges:

- 1.1 On the 30 March 2016 the Rentcharge was increased from £150 per property as it was charged for the previous 3 years to £200 per property in 2016/2017, £250.00 in 2017/2018 and £246.66 in 2018/2019 per property (33% increase and 66% increase the consecutive 2 years).
- 1.2 In September 2015 EIVT Management (EIVTM), the previous managing agent, prepared management accounts to present the current state of affairs to assist the Interim Manager (IM) perform their task as instructed by the Charities Commission. The accounts showed that the assets of the Trust as at 30 September 2015 were £919,069.
- 1.3 By 31 March 2016 (6 months after the IM's appointment) the Trust's reserves were depleted by £272,410 down to £646,659 without any plausible explanation in the accounts which the Trust prepared and approved by the Trustees for examination by the independent examiner of the Trust.
- 1.4 The following figures are extracts of the accounts prepared by yourselves or Warwick Estates (the current managing agents) who the Trustees and/or the Interim manager appointed. Compared with the previous results when managed by EIVTM Ltd, the previous managing agents, as approved by the previous Trustees.
- 1.5 Since the village was built 20 years ago, the expenditure for maintain the infrastructure has been constant other than the times when the managing agents were overspending. As there are no material variations other than the adoption last year of the cost and maintenance the pumping stations by Thames Water which has in fact reduced the Trust's expenditure by £28,000, we cannot see a plausible explanation to the increase in costs since you took over which has almost doubled within your first 6 months.

	<u>Warwick Est.</u> <u>31.03.2017</u>	<u>Warwick Est.</u> <u>31.03.2016</u>	<u>EIVTM</u> <u>31.03.2015</u>
Income for the Year	£ 325,410	£ 318,722	£269,096
Expenditure for the Year	£427, 611	£445,858	£269,284
<u>Expenditure breakdown for the periods</u>			
01 Apr 2015 to 30 Sep 2015 (6 months)	£154,178	EIVTM	
01 Oct 2015 to 31 Mar 2016 (6 months)	<u>£291,680</u>	Warwick Est.	
	£445,858		

Most of the expenditure of the Trust is incurred during the first half of the year therefore the expenditure for the second half should have been less than that of the first half of the year and not increased to £291,680.

Your involvement resulted in costs to increase by £176,574 even though the Trust no longer had to pay £28,000 for maintaining the pumping stations.

Considering the total expenditure for 2014/2015 when EIVTM managed the Trust was just £269,284

and given that the maintenance functions are constant each year, we submit that the Trust have failed in their duty of care and as such the Trust is not entitled to any additional Rentcharge from members.

The financial irregularities since the appointment of the Interim Managers, the current Trustees and current Managing Agents:

Year 2016/2017 results

The Income as per the accounts of 2016/2017 is	£325,410
The Expenditure as per the accounts of 2016/2017 is	£427,611
Deficit	(£102,201)

Since taking control of the Trust you increased owners Rentcharge from £150 as it was for the previous 3 years to £200 in 2016/2017, £250 for 2017/2018 and £246.66 in 2018/2019, an additional £50 and £100 per property consecutively. This produced additional funds for the Trust of £65,700 in 2016/2017 and £131,400 in 2017/2018 and £127,011 in 2018/2019.

In addition to these extra amounts the Trust saved £28,000 for each of the three years by default due to the saving of the cost of the pumping stations.

The total additional financial income you charged owners since you took over was £324,111. In the accounts for 2017 you also restated the asset value of the two properties owned by the Trust by £179,088. Furthermore, the pumping stations savings for the previous 2 years plus the savings for the current year (3 years @ £28,000) is £84,000.

Therefore, total additional benefit enjoyed by the Trust as stated above was (£324,111 + £179,088 + £84,000) = £587,068 which in simple terms the Trusts would have had in addition to the net asset of £919,000 as at 30 September 2015 which would have made a total of £1,506,199 yet you managed to reduce the Trusts reserves from £1,506,099 to £689,000 a depletion of £817,000 since September 2015.

Note that we cannot see a logical reason why a not-for-profit organization should restate the value its leasehold assets to the maximum possible value it could possibly achieve in a booming market when in fact we are in a down trending market.

To support the above, we offer the following analysis:

1.6 The breakdown offered in the accounts was as follows:

	<u>Warwick Est.</u> <u>31.03.2017</u>	<u>Warwick Est.</u> <u>31.03.2016</u>	<u>EIVTM</u> <u>31.03.2015</u>
<i>Unrestricted funds</i>			
Charitable activities	£306,302	£375,738	£239,009
Other expenditure	<u>£121,309</u>	<u>£ 70,115</u>	<u>£ 30,275</u>
TOTAL	£424,611	£445,853	£269,084

Costs of charitable activities by activity type

	<u>Warwick Est.</u> <u>31.03.2017</u>	<u>Warwick Est.</u> <u>31.03.2016</u>	<u>EIVTM</u> <u>31.03.2015</u>
<u>Governance Costs</u>			
Accountancy fees	£200	£3,588	£1,631
Audit / examiners fees	£1,500	£3,000	£0.00
Legal fees	£6,355	£2,810	£14,021
Premises costs	£26,038	£19,926	£9,443
Professional fess	£578	£2,437	-
Management fees	Not Declared	£14,710	£48,750
Management and Administration	Not Declared	£56,000	-
Elections costs	£0.00	£8,191	-
Governance Costs	£12,181	£0.00	£0.00
Interim Management (Veale Wasbrough Vizards LLP)	<u>£83,816</u>	<u>£68,412</u>	<u>£0.00</u>
	<u>£130,668</u>	<u>£179,074</u>	<u>£73,843</u>

	<u>Warwick Est.</u> <u>31.03.2017</u>	<u>Warwick Est.</u> <u>31.03.2016</u>	<u>EIVTM</u> <u>31.03.201</u>
<u>Management</u>	-	£21,678	£43,384
<u>Human Resources</u>	£0.00	<u>£1,435</u>	<u>£2,986</u>
		<u>£23,113</u>	<u>£46,370</u>

	<u>Warwick Est.</u> <u>31.03.2017</u>	<u>Warwick Est.</u> <u>31.03.2016</u>	<u>EIVTM</u> <u>31.03.201</u>
<u>Staff costs</u>	£10,811	£44,121	£31,459
<u>Social security costs</u>	£430	<u>£4,936</u>	<u>£146</u>
	<u>£11,241</u>	<u>£49,057</u>	<u>£31,605</u>

1.7 Since Veale Wasbrough Vizards LLP (VWV) the interim manager and eventually the Trust's appointment of Warwick Estates as to manage the village and or the Trust affairs, we the owners have not been given a detailed or even a plausible budget nor have you published any explanation or analysis detailing expenditure as EIVTM had done when they were managing the Trust. The tables in this document detailing expenditure as extracted from your financial statements are completely devoid of any empirical knowledge and clearly lacking actual knowledge of the expenditure needed to maintain the infrastructure of the village.

1.8 In terms of the qualifications for this undertaking, you were complaining of the lack of the same of the previous Managing Agent, yet the current managing agent you appointed has tasked this rather complex position for an entire year to an unqualified person, from what we understand has only been in the country for 12 months, which leads us to believe on the balance of probability, that this person would not possess the necessary knowledge or experience of rules and regulations of the UK. To be clear, the person was an affiliate of the Institute of Residential Property Management (IRPM) and who has now been replaced by another, who is an associate of the IRPM; both appointments in our opinion lack the level of knowledge and experience for the task in hand. This is reflected in the apparent deterioration of the estate.

ABANDONING THE ACCOUNTING CONCEPTS

- 1.9 One of the current Trustees, Mr Andrew College, is a qualified member of the Institute of Management Accountants and as such he should have been aware of the Basic Principles of Accounting detailed in paragraph 1.10 below, yet it would seem that he either lacks this most crucial knowledge, or he has been negligent in discharging his duties and obligations as Trustee or he purposely omitted to follow these principals in order to mislead the owners and Trust members to conceal the dire financial state of the Trust. To this point we wish an explanation as why he did not advise the Trust on these principals of accounting and furthermore why did the Trustees not seek proper advice on SORP accounting.
- 1.10 **Principles of Accounting** – Materiality, Consistency, Comparability. None of which were followed and or observed in 2016/17.

1.10.1 Materiality – The **materiality concept** is the principle in accounting that trivial matters are to be disregarded, and all-important matters are to be disclosed. Items that are important enough to matter are **material items**. Financial statement items are material if they could influence the economic decisions of the stakeholders. The materiality concept is the universally accepted accounting principle that all material matters are to be disclosed.

1.10.2 Consistency - The consistency principle requires accountants to apply the same methods and procedures from period to period. When they change a method from one period to another they must explain the change clearly on the financial statements. The readers of financial statements have the right to assume that consistency has been applied if there is no statement to the contrary.

The consistency principle prevents people from changing methods for the sole purpose of manipulating figures on the financial statements.

1.10.3 Comparability - Comparability is one of the key qualities which accounting information must possess. Accounting information is comparable when accounting standards and policies are applied consistently from one period to another and from one region to another. The characteristic of comparability of financial statements is important because it allows us to compare a set of financial statements with those of prior periods and those of other companies.

It is evident that none of the above Accounting Principles have been applied for the period 2015/16 and 2016/2017.

Explanations required appertain to the above tables:

1. Increase in accountancy fees from £1,631 to £6,589. This includes £3,000 for auditing. These accounts have not been audited nor is an audit required for the Trust. Why did the Trust make such a false declaration in the accounts?

2. Veale Wasbrough Vizards LLP fees (the interim managers) for the first 6 months to 31 March 2016 were £68,412 and for the next 9 months to 31 December 2016 £83,816. In the accounts for 2015/2016 these fees were shown under the heading of Governance yet the following year VWV's fees were shown under the heading "Expenditure Other." As the amount paid to the IM totals £152,128 is not only significant but also material we submit that you have failed to offer a materiality note with an explanation. Furthermore, there was Consistency in declaring the cost in the accounts as previously and no Comparability so that owners can compare what the charges were from one year to the next. We submit that the only plausible explanation for your action in this case was to conceal this extraordinary yet pointless expense which only benefited VWV financially to produce nothing other than havoc in a well-run organisation and feed the current Trustees ego by gaining control finally resulting in the now apparent decimation of the funds of the Trust.
3. IM's appointment was stated by the Charities Commission to be for circa £42,000 to investigate (1) mismanagement (2) the validity of our elections & (3) current litigation.
 - a. No report was published for the mismanagement you falsely accused the previous Trustees.
 - b. You have carried out improper elections without first properly removing the previous Trustees.
 - c. You have changed the Articles of Association without achieving 75% of the votes.
 - d. The Trust appointed VWV as solicitors to the Trust going forward, a clear conflict of interest as
 - e. The Trust funds have been diminished within 30 months.
 - f. Owners are now paying £250 as opposed to £150.
 - g. There is clearly lack of transparency
4. Premises costs increased from £9,443 to £19,926 in 2016 and in 2017 you seem to have hidden this expense somewhere. The Trust has no premises other than the Community Centre for which there is no rent, other than the service charges of around £5,000 and utility bills. We would like to ask what the addition £10,000 in 2016 is for and where the costs for 2017 were hidden and why the Consistency and Comparability concepts were not followed.
5. The gardener who was paid £25,000p.a. to maintain the gardens was dismissed and a new contract has been handed out (mainly to cut the grass at the back of the village) for £87,250.

Please explain this increase?

6. Litter picking had previously been done by a litter picker in 3 hours each day, 3 days a week at a cost of £3,500p.a. This would also include the litter picking in EIV Phase 1 and EIV Phase II (Blocks P, Q & R) which is now not done, even though the roads are part of the infrastructure of the village. You are now paying the same person £12,500 for a full-time job to perform the same duty.

Why?

7. Administration fee is now £18,500 – This expenditure was previously part of the management fees paid to previous Managing Agent. Why pay £18,000 more now?
8. There has also been a Bridge survey which cost £4,000 – The Bridge is and has always been the responsibility of Enfield Council and not the Trust.

Why would you spend these moneys for a third party's property and responsibility?

9. Clay cap inspection £4,500 – When the previous Managing Agents managed the Trust it was agreed with Enfield Council that this is no longer required. So why spend these monies every year again? Why have you not made enquiries with Enfield Council before spending these monies?
10. Electricity cost is now £26,000, this had been previously £18,000 which is a 30% increase in electricity. This is rather strange as the Trust electricity is on contract. Please explain.
11. Water rates £6,000 – This was previously £4,000 - 30% increase in water. Please explain.
12. We are now paying Professional fees of £5,000, we have no idea who these Professional people are and have no idea why we would need them. Please explain.
13. The Investment Income is £10,550. The Trust owns two properties outright which are now worth over £500,000. The income from these properties was a constant £26,520. The budget we were now given states that the investment income from these properties is expected to be £10,550.
Both properties are still owned by the Trust, so where is the balance of £15,970 receivables going?
14. The total expenditure of the Trust should have now reduced by £28,000 because the Trust is no longer responsible for maintaining the pumping station at that cost. By law this responsibility has now been adopted by the water authority. Yet the budget increased from the expenditure of £236,835 (excluding the pumping station expenditure) to over £300,000 budgeted for the coming year.

Why?
15. We also want to know Management and Administration fee for £56,000. The Trust does not employ anyone so why do they need to charge this fee?
16. The other issue we would like to ask about is the HR fees. As the Trust has no staff what HR costs are and as there are no staff why have Social Security costs gone up from £146 in 2015 to £4,936 in 2016?
17. With all the costs added by the Trust the Governance costs have gone up from £31,605 in 2015 to £49,057 in 2016.

1.11 In contract we submit the accounts prepared for the past 3 years by the previous managing agent, which offers explicit explanations to members of all expenditure. Below is a table of what they did;

	Previous Managing Agents 01April 2014 To 31March 2015 (12 months)	Previous Managing Agents 01April 2015 To 30September 2015 (6 months)
Trust income	£269,096	£299,458
Expenditure	-£269,282	-£154,178
Surplus /-deficit	-£186	£145,280
Net Assets	£773,789	£919,069

1.12 We also believe that the examiner is the same person who previously examined the accounts, it therefore appears that the current Trustees may have intentionally concealed information as we do not believe that any examiner would suddenly change the format and the presentation of the accounts without been instructed to do so.

1.13 In accordance to service charge accounting which the Rentcharge falls within in Section 20B of the Landlord and Tenant Act 1985 these rules that accounts must be submitted by no later than 6 months after year end. This is because of the limits on the recovery of expenditure incurred more than 18 months before the costs are demanded from lessees you were outside of the limits, so you cannot claim the Rentcharge from owners. The accounts for the year to 31 March 2017 should have been prepared by 30 September 2017 and this has not been done.

COMPARING EXPENDITURE

Expenditure	<u>EIVTM</u> <u>2015</u>	<u>WARWICK</u> <u>2016</u>	<u>INCREASE</u> <u>2016</u>	<u>WARWICK</u> <u>2017</u>	<u>INCREASE</u> <u>2017</u>
1. Accountancy fees	£1,631	£6,589	£4,958		
2. VVW fees 6 months to 31.03.2016	£0.00	£68,412	£68,412		
3. VVW fees 12 months to 31.03.2017 (estimated)	£0	£135,000	£135,000		
4. Premises costs	£9,443	£19,926	£10,483		
5. Gardener	£25,000	£87,250	£62,250		
6. Litter picking	£3,500	£12,500	£9,000		
7. Administration	£0.00	£18,500	£18,500		
8. Bridge survey	£0.00	£4,000	£4,000		
9. Clay cap inspection	£0.00	£4,500	£4,500		
10. Electricity	£18,000	£26,000	£8,000		
11. Water rates	£4,000	£6,000	£2,000		
12. Professional fees	£0.00	£5,000	£5,000		
Rental Income	EIVTM	Warwick		Decrease	
1. Investment Income	£26,500	£10,550		£15,950	
2. The total expenditure of the Trust reduced by (<i>Because the Trust is no</i>				£28,000	

longer responsible for maintaining the pumping stations)

2 The Rentcharge Document

- 2.1 In respect to recovery costs there is no provision in the Rentcharge document to recover these from the member. Indeed, the costs of recovery should be borne by the Trust itself and not condoned exorbitant recovery costs of over a thousand pounds for the recovery of the Rentcharge of £250.

Please explain.

- 2.2 Further and in addition having read the Deed of Grant of Estate Rentcharge we submit that the Claimant cannot make this claim for the following reasons:

The Operative Provision clause 1 sub clause 1.1 states that any charge must be of the fixed sum of £1 and sub clause says 1.2 says that the variable sum on the 31 March 2017 must be calculated and paid under the terms of the First Schedule.

In accordance to the accounts as examined by the independent examiner for the year to 31 March 2016 the Trust has over £646,659 in reserves.

Although the accounts for 31 March 2017 have not been published as yet, it should be noted that the Trust has charged the 1314 properties an additional £50 than the previous years for 2016/2017 (a total of £65,700)

Furthermore, the Trust no longer has to pay £28,000 on a contract for the maintenance of the pumping stations due to the water authority having adopted the maintenance of same pumping station see paragraph 1.8. The reason being the IM is no longer an expense to the Trust as they have now discharged themselves therefore this cost is no longer exists.

- 2.3 The accounts submitted by the Trust for the year to 31 March 2016 were prepared and examined by the same examiner engaged by the previous manager to carry out the examination of the Trust, yet these do not contain a breakdown of the expenditure (See accounts for 31 March 2015) This is a requirement of SORP accounting yet the Trustees and/or the Interim Manager seem to have intentionally omitted this crucial information.
- 2.4 The savings and additional funds in 2016/2017 are £102,500 and in 2017/2018 £168,000. Considering the reserves are £646,659 it is unreasonable for a not for profit organisation to hoard cash unless the intention is to defraud its members by negating economical expenditure and replacing it with exorbitant spending.
- 2.5 We except that the Trust should have reserves for unforeseen circumstances. A report by the previous Managing Agent stated that the reserves should not be more than £350,000 as there is no contingency of any type or eventuality which might occur to exceed £350,000 the repair.

- 2.6 In addition, Rentcharge is paid in advance therefore the Trust will always have at least 50% of the Rentcharge levied for the following year paid to them in advance therefore reinforcing the reserves further by at least £164,000 (1314 properties @ £250/2)
- 2.7 The Trustees currently in office have a duty of care towards the members, therefore proper instructions should have been given to the recovery agents not to pass on charges over £1,200 to recover amounts as small as £200 and £250. This is disproportionate and not recoverable in a Small Claims Court and certainly detrimental to poor people who mostly have gone into arrears because of hardship.
- 2.8 On 30 March 2017 one of us received a letter and statements from Warwick Estates claiming two Rentcharges. One was for 2016/17 Rentcharge of £199.00 the other Rentcharge for 2013/2014 for £85.92 where they claimed the balance was £284.92.
- 2.9 On the 30 August 2017 the same person received a letter from (PDC) Property Debt Collection Ltd (Debt Collectors) who were appointed by the Trust claiming £863.92. They then gave fourteen days to reply to the letter.
- 2.10 Instead of been offered any explanations to the representations made by this owner, PDC issued proceedings immediately without even an offer for mediation. The proceedings were issued for £1,720.92 an amount which is made up as follows:

Claiming costs for a small claim. These are known as "Fixed Costs". They include any court fee you have paid, but not your solicitor's charges.

Further on the 13 October 2017 the person in question received their Particulars of Claim which are now claiming £1915.92 which includes amount claimed £1,720.92, Court fee £115.00 and Legal representative's costs £80.

Increase in Costs

The amount of money the Residents Association is spending has grown from £269,284 to £445,853. We therefore suggest that you the Trustees do not have the authority to enforce the Rentcharge as you have not been properly elected and/or appointed. In the alternative you are failing to ensure you understand the charity's purposes as set out in its Governing Document. This includes what the charity does and what they plan to achieve. We also believe you do not understand how the charity activities are intended to further or support its purposes regarding the Village. The fact of the matter is that this is a Residents Association and not a charity.

- 2.11 We would like to state that in our view the spending of the charity funds has been for the wrong purposes. As the Court would understand this is a very serious matter; in some cases, Trustees may have to reimburse the charity personally which is yet another reason we refuse to pay the current Rentcharge.

2.12 This is a Residents Association and it does not perform any Charitable acts. We believe that the status was wrongly changed to become a Charity as it produced the following detrimental effects.

2.12.1 The funds no longer belong to the members to use as they elect but vest in the decision of the Charities Commission to do as they wish. To this end they appointed an Interim Manager to report on mismanagement at an exorbitant fee of £152,228 which the members must now pay because you the Trustees have falsely accused the previous Trustees for mismanagement.

2.12.2 To this end we suggest that you in fact are mismanaging the Trust and it would seem because the drastic increase in costs overnight you are either incompetent to hold the position of Trustees or possibly are embroiled in fraudulent activity.

2.12.3 You maliciously misled the Charities Commission who with the power they have over Charitable organisations appointed an Interim Manager at the exorbitant fee of £152,228 to produce a report on mismanagement which as it is now obvious never materialised. We suggest that there was no mismanagement; on the contrary the Trust was managed meticulously.

2.12.4 What was perceived by the previous Trust, as gross misconduct in the administration of funds by a previous employee and the eventual refusal of the local authority to grant further funds to the Trust, the IM did not pursue the recovery of these funds, nor did they see fit to pursue any due diligence investigation to ascertain merits of such an action. Instead the action was abandoned at a loss of over £30k , a significant sum to say the least.

2.13 We therefore suggest that the Trust be deregistered as a Charity and turned back to a Residents Associations as it was in its inception.

3. Breaches of Residential Managers Code of Practice - Section 87 Leasehold Reform, and Urban Development Act 1993

Source: Service Charge Residential Management Code, 3rd Edition. RICS Code of practice. 27 May 2016

We believe under Section 2.2 and 2.3 Enfield, Warwick Management Limited and Veale Wasbrough Vizards LLP have also failed. They have failed in respect to the Core principles laid down in 2.2 of the Service Charge Residential Management Code;

2.2 Core Principles to be adhered

1. To conduct business in an honest, fair, transparent and professional manner.
2. To carry out work with due skill, care and diligence, and ensure that any staff employed have the necessary skills to carry out their tasks.

3. To ensure that clients are provided with terms of engagement which are fair and clear. These should meet all legal requirements and relevant codes of practice, including reference to complaints-handling procedures and, where it exists, an appropriate redress scheme.
4. To do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
5. Not to discriminate unfairly in any dealings.
6. In all dealings with clients, to ensure that all communications (both financial and non-financial subject matters) are fair, clear, timely and transparent.
7. To ensure that all advertising and marketing material is honest, decent and truthful.
8. To ensure that all client money is held separately from other monies in appropriately designated accounts and is covered by adequate insurance.
9. To have adequate and appropriate professional indemnity insurance, or equivalent, in place that complies with RICS Rules of Conduct. Having proper cover is a key part of managing your risk.
10. To ensure that it is made clear, to all parties with whom you are dealing, the scope of your obligations to each party.
11. Where provided as part of the service, to give a realistic assessment of the likely selling, buying or rental price, associated cost of occupancy or the likely financial outcome of any issues, using best professional judgment.
12. To ensure that all meetings, inspections and viewings are carried out in accordance with the client's lawful and reasonable wishes, having due regard for the security and personal safety of all parties.

Further we believe that VWV are in breach of Para 2.3 as there is a conflict of interest in respect of Warwick Management relationship with the Enfield Island Village Trust trustees and Veale Wasbrough Vizards LLP. As a result, they have taken advantage of their relationship and charged the Trust more money than they should.

2.3 DEALING WITH CONFLICTS OF INTEREST

A conflict of interest is anything that impedes your ability to focus on the best interests of the client. This is a matter for your judgment – not the client's. You must make every attempt to avoid a conflict of interest. In the interests of best practice, you should disclose all interests but, in all cases, you should consult your client, take the client's instructions and keep full notes.

We also believe that Warwick Estates relationship with the Enfield Island Village Trust, the trustees and Veale Wasbrough Vizards LLP has failed so to be appropriately responsible and transparent. Members are predominantly lay people and possibly do not understand their rights as such you have not given anyone a Statement of Rights & Obligations in respect to the Rentcharge;

2.7 If you employ staff, you may be responsible for their actions as well as your own. You should:

- 2.7.1 train staff initially and on a continuous basis, and keep records of that training and who received it
- 2.7.2 maintain awareness of the legislation and relevant codes of practice
- 2.7.3 supervise staff adequately
- 2.7.4 be aware of who your related parties are and satisfy yourself they are aware of any legal and ethical requirements and can be relied up to comply with them; and
- 2.7.5 ensure that there is documentary evidence showing that all staff have been given proper instructions and training about complying with relevant laws and best practice.

We believe Warwick Management should have ensured that the people instructing them were correctly appointed Trustees in this case Enfield Island Village Trust;

3.1 Prior to accepting an instruction (commencing work), you should clarify for whom you will be working and how you will be paid, thereby spelling out unequivocally whose interests you will be representing. There may be a chain of leasehold interests for which you may be managing a landlord/tenant relationship on behalf of a freeholder, head landlord or an intermediate landlord. Section 30 of the Landlord and Tenant Act 1985 however, extends the definition of a landlord to 'include any person who has a right to enforce payment of a service charge'. The landlord and tenant structure is not easily understood by many leaseholders or members of RMC/RTM companies so it is imperative that you understand the structure to correctly advise your clients (i.e. the Statement of Rights and Obligations).

Warwick Estates have not communicated any clear procedures of handling complaints;

5.1 Introduction - You should have clear procedures in place for handling complaints and dealing with disputes. As you already belong to one of the government approved redress schemes this should be communicated clearly to all owners; procedures should include a series of steps that clients, leaseholders and neighbors can take to help resolve problems and misunderstandings. Complaints and disputes are time consuming and often arise out of a lack of information; they can often be avoided if information is provided in a timely manner and there is transparency. In dealing with disputes in particular, you should be careful that, by your actions, you do not assume a responsibility you do not have.

Owners have been taken to court for failure to pay Rentcharge when the code says the following;

5.5 Alternative dispute resolution and mediation The Ministry of Justice Practice Direction – Pre-Action Conduct aims to:

- enable parties settle the issues between them without the need to start proceedings (that is a Court or tribunal claim); and
- support the efficient management by the court and the parties of proceedings that cannot be avoided. Increasingly, courts and tribunals are recommending that disputing parties seek alternative

dispute resolution (ADR) including mediation before cases are heard and you should encourage all parties to seek alternative ways of resolving their issues as this can prove a more cost-effective way of resolving disputes.

There are different forms of ADR:

Mediation

Independent expert determination

Early neutral evaluation

Arbitrate

therefore, Warwick Management, the Enfield Island Village Trust and Veale Wasbrough Vizards LLP should be have considered the above procedures before engaging in costly court recovery actions against members.

We also believe under Section 6.1 all parties served by this notice have also failed to be transparent.

7.7 Demanding service charges:

The Rentcharge document provides for individual apportionments of the overall service charge expenditure and the method and frequency of payments. Owners are only obliged to pay the Rentcharge, where reasonably incurred and where the works or services have been carried out to a reasonable standard.

Warwick Management, Enfield Island Village Trust and PDC are charging large administration and legal fees not permitted by the county court recovery rules.

7.15 We believe as shown in Para 1.4 and 1.5 that Warwick Management, Enfield Island Village Trust and Veale Wasbrough Vizards LLP have not consulted owners on the work and contracts they have been entering into in which case they are in breach of clause 9.9 below which states;

9.9 Consultation:

The Trust should aim to achieve good and effective communication with clients, leaseholders, residents, occupiers and any RTAs. In addition to any statutory consultation requirements you should consult with leaseholders on management matters that are likely to have a significant effect on the level, quality or cost of services provided. When managing on behalf of RMCs or, RTM companies, you should distinguish between seeking the views of shareholders/guarantors, clients ('landlords') and consulting with leaseholders. You will frequently need to do both. You should also be aware of the importance of the lease regarding the landlord's obligations and right to recover costs as service charges. Obtaining majority support from leaseholders does not override the terms of the lease. You should ensure your clients are able to make fully informed decisions regarding any proposed works or services and the cost recovery implications thereof. In addition, consultation with clients, leaseholders, residents, occupiers and any RTAs may be required under section 20 of the Landlord and Tenant Act 1985 (as amended) before any contractors are selected or tendering

is commenced. You should allow adequate time to complete the consultation process and collect any additional funds required to undertake the works. In addition, reasonable allowance should be made in the program of works for leaseholder's absence; for example, when they are away from the property when the works are being undertaken and access is required. (See Part 9.10 Section 20 consultation).

We believe as shown in Para 1.4 and 1.5 that Warwick Management, Enfield Island Village Trust and Veale Wasbrough Vizards LLP have been charging and spending far more than they should therefore you are in breach of Clause 9.10 of the code.

- 9.10 **Section 20 Consultation** - You should be aware that there is considerable case law in connection with section 20 of the Landlord and Tenant Act 1985 (as amended) and you should keep yourself up to date with case decisions. The most notable decision is "Daejan Investments Ltd v Benson & Ors [2013] UKSC 14". You should be fully aware of the consultation requirements of section 20 of the Landlord and Tenant Act 1985 (as amended). Your clients must fully comply with the consultation requirements and take further advice where necessary. Non-compliance can have serious financial consequences for landlords and, potentially, Managing Agents. There are five different consultation routes depending on the circumstances, and their requirements are prescribed by law. When undertaking consultations, you may need to refer to the specific detail contained within the Service Charges (Consultation Requirements). You have never carried out consultation on anything.

Warwick Management, Enfield Island Village Trust and Veale Wasbrough Vizards LLP have not employed people on contract however they are paying wages for which the code states;

- 10.1 **Introduction** - The landlord or manager under the lease should normally be the employer under any contract, not the managing agent. All persons, including managing agents and landlords, should only undertake property-related services or repairs where they are competent to do so. Where you have a connection with any proposed company, individual, contractor or supplier, whether financial or otherwise, this should be declared to your client and the leaseholders as a note with the yearend service charge accounts. The statutory consultation requirements (s.20 Landlord and Tenant Act 1985) also require any connections to be identified). Any charges for specifying, tendering and monitoring contracts should be pre-agreed with your clients and proportional to the tasks involved.

In 13.1 the code says the Managing Agent needs to give information out to the members, Warwick Management, Enfield Island Village Trust and Veale Wasbrough Vizards LLP have so far shown, in the reports, a lack of openness.

- 13.1 **Introduction** - Many other sections within this Code refer to legislation which requires specific information to be given to leaseholders. In certain circumstances the following information must be provided. Where reasonable information and/or copies of documents are requested you should provide them within reasonable timescales. This does not apply to commercially sensitive documents nor documents protected by the Data Protection Act 1998. Any charge that can be made should be reasonable, and you should be aware that you may be liable to your client, and a wide range of parties for the accuracy of the information you

supply. You should publish a list of proposed charges where possible (see subsection 3.5, Menu of charges) and indicate what the timescales are likely to be for providing the information. It is recommended that a response to an enquiry should be sent no more than 10 working days from receipt of the request. This information should be made available on request and be available online where possible. You have failed to follow this.

13.8 **Demands for service or administration charges or ground rent:**

Information relating to tenants' rights and obligations must be sent with any demand for service or administration charges; if this is not sent payment can be withheld. The wording and other requirements to be used for each summary are specified in regulations. When we asked for the report on mismanagement we were refused this by VWV on the pretext that it was prepared just to the Charities Commission yet the advertisement on their appointment stated otherwise.

No tenants' rights and obligations have been sent with the Rentcharge demand to owners by the Trust or by PDC in respect to recovery actions.

14.4 As you can see there are several issues you would need to address

4. The Election of the current Trustees was incorrect therefore you are usurping your positions and as such you cannot replace the old Trustees until such time as you follow the procedure as laid down by the Companies Act.

4.1 In September 2015 the Charities Commission appointed Veale Wasbrough Vizards LLP (VWV) as Interim Managers (IM) of the Trust after receiving a number of complaints from a group of residents calling themselves "Save the Island" group. Their instruction to the IM were to:

- i. To investigate mismanagement,
- ii. The validity of the then current elections, and
- iii. The current litigation by the Trust.

4.2 On 14 November 2016 the (IM) handed over the running of the Trust to a group which is mostly comprised of members of the "Save the Island group", yet no report of mismanagement by the trustees was ever published.

4.3 Furthermore, the procedure for removing directors as set out by section 168 of the Companies Act was not followed. The relevant sections of Section 168 require that:

1. A company may by ordinary resolution at a meeting remove a director before the expiration of his period of office, notwithstanding anything in any agreement between it and him.
2. Special notice is required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.

3. A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.
4. A person appointed director in place of a person removed under this section is treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

4.4 Special notice section 312 of Company Act 2006states:

4.5 Where by any provision of the Companies Acts special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company **at least 28 days** before the meeting at which it is moved.

4.5 Notice of the EGM was given 22 June 2016 and the meeting was held on 14 June 2016, 21 days and not 28 days as stipulated by section 312. Furthermore, the resolution was to

- (a) to receive an update on the Trust and the work of the Interim Managers appointed by the Charity Commission; and
- (b) to consider and, if thought fit, to pass the following resolution as a special resolution with effect from the end of the meeting:
- (c) That the Articles of Association in the form laid before the meeting be approved and adopted as the Articles of Association of the Trust in substitution for and to the exclusion of the existing Articles of Association of the Trust.

4.6 No proper notice of the resolutions to remove directors or appoint the current directors/Trustees was given to members and as such we submit that the current directors/Trustees are not authorised to instruct a debt collection agent or appoint a Managing Agent.

4.7 No notice or ballot paper was offered to members of the people nominated to stand as Trustees at any time. This was decided in the evening of the meeting where only 40 people attended and mostly non-member or members in arrears, none of who were eligible to vote.

4.8 In addition, the alteration of the objects of any company regulated by a charitable company requires permission by the companies and the prior written consent of the Commission's consent, in the absence of which if such consent has not been obtained such resolution is ineffective. This rule has also not been satisfied.

4.9 We will now refer to the elections on 28 April 2014. For the first time in its existence the Trust engaged the services of an independent election provider, Electoral Reform Services (ERM) to hold their elections. The remit of ERM was to ensure that all the rules were followed and the votes of members in arrears were not counted. The independently monitored election results

show the results in that the previous Trustees were properly appointed by an overwhelming majority.

- 4.10 An employee of the Charities Commission decided that these elections were not valid and asked the Trust to hold another EGM where the Save the Island Group could also put their candidates for elections. The trust complied and re-engaged ERM to hold a second election on 21.05.2015 where all the previous trustees were again elected by an overwhelming majority and the three elected trustees of the Save the Island group were only elected because there was no vote against and there were available positions.
- 4.11 These elections were invalidated by the same person at the Charities Commission because as he said the candidates should have not communicated their thoughts and wishes for the village to the voters. The response of the Trust was that members have a right to know who and why they are voting for a candidate.
- 4.12 Two months and two weeks after the elections of 21 May 2015 the Charities Commission appointing the IM which cost the Trust what we estimated to be well over £152,228 for a report that never materialised.
- 4.13 We believe that on handover by the IM apart from the fact that the proper notices were not given to members, the elections to change the object did not achieve the required 75%. The results were not published anywhere, and the vote was by a show of hands irrespective of one member one vote per property and disregarding members in arrears not being eligible to vote. In addition, we are aware that at least 10 proxies sent by Mr Ioannou from people asking him to hand them in which he also emailed to the VWV as Interim Manager within the appropriate time, all of which were disregarded and not counted. This is in our opinion blatant electoral fraud assisted by the Charities Commission and it is our intention to ask the Tribunal to investigate this matter further as well as bring it to the attention of SRA.
- 4.14 As you have not given owners a summary of Tenants Rights and Obligation owners were not aware what their rights were in represent to the charges under Section 3 of the Service Charges (Summary of Rights and Obligations, and Transitional Provision (England) Regulation 2017. In fact, until till this is done under Section 21B owners have a right to withhold the Rentcharge.
- 4.15 We will ask in our Section 24 Notice that the tribunal appoint a new interim manager and not Veale Wasbrough Vizards LLP or anyone else who have links to the Charity Commission to investigate possible fraud. Further the re-run of the election should be with an independent

body such as the Election Reform Services (ERS) and not a body that has links with the Charity Commission or the Trust.

- 4.16 Because of all the above we will be asking for Enfield Island Village Trust Charitable status be reviewed on the grounds that it is not in the public interest for it to remain a Charity. We believe we should not have been registered in the first place as a Charity due to the extra costs that Enfield Island Village Trust has had namely the costs in the form of Fees paid to Veale Wasbrough Vizards LLP who were interim managers. The role of the Enfield Island Village Trust should revert to its original role of a Residents Association. In fact, the majority of members (66%) do not wish to remain a Charity. This is evident by the independent elections carried out by the previous trusts.

5 The articles of association were incorrectly amended therefore the previous version should be reinstated

Under Section 283 of the Companies 2006 to change the articles you needed to achieve 75% approval of members voting; the results were not published. You have so far not published the results, nor have you accounted for our 10 proxies which voted against the change of the Articles of Association as submitted by Mr. Ioannou. The Trust claims to have had 100% agreement in regard to this amendment. Where is the evidence to support this?