



**LONDON RENT ASSESSMENT PANEL
RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

LON/00BK/LIS/2006/0116

**DECISION OF THE LEASEHOLD VALAUTION TRIBUNAL ON AN APPLICATION UNDER
SECTION 27A LANDLORD AND TENANT ACT 1985**

Applicant: Detour Properties Ltd

Represented by: Mr Comport (Solicitor, Dale and Dale) and Mrs Gordon (FW Gapp, Managing Agents)

Respondent: Various Lessees

Represented by: Not represented

Also in Attendance; Mrs H Hegarty and Miss J Moini (Residents' Association) Mr Wurtzel (Lessee)

Property: Manor House, Marylebone Road, London NW1 5NP

Members of the Tribunal:

Mr Colum Leonard
Mr C Kane FRICS
Mr Owen Miller

Chairman

Hearing Date: 20 November 2006

STATUTORY REGULATION OF SERVICE CHARGES

1. Section 18 (1) of the Landlord and Tenant Act 1985 defines a service charge as
“...an amount payable by a tenant of a dwelling as part of or in addition to the rent—

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs...”

3. Section 19 provides;

“(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
- and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise”.

5. Section 27A of the Act provides that

“(1) An application may be made to a leasehold valuation Tribunal for a determination whether a service charge is payable and, if it is, as to—

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable...

(3) An application may also be made to a Leasehold Valuation Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable”.

THE APPLICATION

5. This is an application under section 27A (3) of the Landlord & Tenant Act 1985. Detour Properties Ltd (“The Landlord”) has made the application in relation to the proposed replacement of a motor vehicle barrier to the front of Manor House, Marylebone Road, London NW1, with a vehicle security gate and pedestrian security access at a currently estimated cost of £24,660 plus VAT. Manor House is a block of 58 residential units with 16 parking bays. The Landlord’s stated

intention is to undertake the appropriate consultation under section 20 of the 1985 Act but first, to ask the Tribunal to make a determination under s 27A (3) as to whether a service charge would be payable for the proposed works. That is the purpose behind this application.

THE SERVICE CHARGE PROVISIONS IN THE LEASES

6. The Applicant states that although not all the leases of flats in Manor Court are in the same format, the relevant service charge provisions are the same. A sample lease (of flat 1) has been produced by way of illustration.
7. Paragraph 5(4) (A) of the lease provides for the Tenant to pay to the Landlord service charges in relation to expenditure incurred by the Landlord in performing services and covenants set out at paragraph 6 (2). Paragraph 6 (2) defines the relevant obligations by reference to the Third Schedule. The Third Schedule provides at paragraph 2 (i) (e) for the Landlord to "maintain, repair, renew and clean... the boundary walls and fences of and in the curtilage of the building", at paragraph 3 (iv) for the Landlord to "maintain and replace such fire and burglary prevention systems as the landlord may from time to time consider necessary..." and at paragraph 3(viii) for the Landlord to "provide such other services facilities and furnishings or do such other acts or things in or about the building reasonably calculated to be for the benefit of the tenants in the building which the Landlord considers desirable to provide or do."

THE REASONS FOR THE WORKS

8. The proposed works will replace a car barrier with a gate system incorporating a vehicle gate and a pedestrian gate. It is proposed that both gates will ultimately be opened with a fob or keypad system in conjunction with an entry phone system, to be completed once the lease on the current entry phone system expires in 2008 (and on raising the necessary funds).
9. In the meantime, even pending completion of the locking system it is the Landlord's case that the installation of a gate in place of the existing barrier will improve access for tenants (the existing barrier being an obstacle to tenants with pushchairs or luggage). More importantly it will reduce or eliminate a constant nuisance caused by motorcyclists, pedestrians and cyclists using the forecourt of Manor House to shelter from the busy Marylebone Road and to variously plan routes, use mobile phones and in some cases undertake what appear to be commercial and possibly illegal transactions. It will also improve security at Manor House; attacks on residents have been reported. This is supported by police advice.
10. This assertion is fully supported by the evidence of Mrs Hegarty and Miss Moini, respectively Chair and Treasurer of the Residents' Association. They added that the existing barrier is in a poor state of repair, being regularly used as a seat and otherwise abused by passers-by, and in need of replacement. In addition the access cards used to open the barrier have become obsolete and irreplaceable.

THE COST OF THE WORKS

11. Competitive quotes have been obtained from Strand Systems Limited and Lace Control Systems in 2005 and 2006. The most competitive and most recent quote is from Strand Systems and is dated 26 October 2006. This prices the work at £24,660 plus VAT.
12. Mrs Gordon of FW Gapp, the managing agents, indicated that it is intended to charge a managing agents' fee of 12.5% on the final cost, reduced as appropriate to reflect charges previously rendered.

NOTIFICATION TO TENANTS

13. The Tribunal made directions on 4 October 2006. Those directions included provision for the applicant to send all lessees and the Residents' Association a copy of the directions by 11 October, any Lessee proposing to object to inform the Applicant and the Tribunal by 18 October. A copy of the bundle prepared for the hearing was to be sent to any Respondent who objected.
14. Mr Comport for the Applicant confirmed that the directions had been complied with. Mrs Hegarty and Miss Moini informed the Tribunal that a letter to all lessees had been circulated by email, post or delivery to each unit (as appropriate) informing Tenants of the purpose of the application and encouraging them to attend a forthcoming Residents' Association AGM to discuss it. They stated that

only one Tenant, Mr Rautalahti, has expressed any reservations but that he is content to abide by the Tribunal's decision.

15. The Tribunal has also seen correspondence addressed by the managing Agents to lessees generally notifying them of the intended works.

16. Mrs Hegarty and Miss Moini also confirmed that the plan to replace the barrier to the front of Manor House has been common knowledge among residents, and the subject of open discussion in newsletters regularly circulated to all residents of Manor House, for many years. In fact the funds to install security gates to both the front and the back of Manor House were first raised in 1999 but had to be partly diverted to building works, so that only the rear gate was installed at that time. More funds have been raised since, including some £5,000 in the last service charge year. Both witnesses stated that the project has always enjoyed a substantial level of support among residents, whether active members of the Residents' Association or not.

APPLICATIONS

17. No applications were made under section 20C of the 1985 Act or for reimbursement of fees.

CONCLUSIONS

18. Based on the evidence the Tribunal has reached the following conclusions;

- a) The Landlord and the Resident's Association between them have done everything practicable to keep lessees informed in relation to the proposed works.
- b) The works proposed fall within the service provisions of Schedule 3, paragraph 3(viii) of the lease, being reasonably calculated by the Landlord to be for the benefit of the tenants in the building.
- c) The proposed works, subject to the requirement for consultation imposed by section 20 of the 1985 Act, are reasonable.
- d) The cost of the proposed works, subject to the requirement for consultation imposed by section 20 of the 1985 Act, is reasonable, as are the managing agents' fees of up to 12.5 % which will be charged in respect of them.
- e) Accordingly, subject to section 20 Consultation, a service charge will be payable for the proposed works.

Dated 20 November 2006

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a smaller, more complex mark that appears to be 'L' or a similar flourish.

Colum Leonard

Chairman