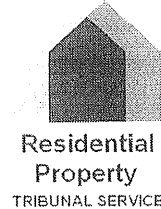


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**HM Courts  
& Tribunals  
Service**



**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS  
UNDER; SECTIONS 20ZA & 27A OF THE LANDLORD AND TENANT ACT 1985  
AND SECTION 159 COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Case References: **LON/00AC/LSC/2012/0566**

Premises: **3,4,5,6,7,8,9,10,11,12 & 15 Tuner Close, NW11  
6TU**

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Applicant: **Hampstead Garden Suburb Trust**

Respondents: **3,6,7 & 12 Turner Close (Respondents to the  
leasehold applications)  
4,5,8,9,10,11 & 15 (Respondents to the  
freehold applications)**

Date of hearing: **5 November 2012**

Present at hearing: **Mr N Packard MRICS – Estate Manager for the  
Applicant**

Leasehold Valuation  
Tribunal: **Mr M Martynski (Solicitor)  
Ms M Krisko BSc (EstMan) BA FRICS  
Mr O Miller BSc**

Date of decision: **7 November 2012**

**Decision summary**

1. A Service Charge and an Estate Management Charge will be payable in respect of proposed expenditure to:-
  - (a) reconstruct the footway at Turner Close by replacing the sub-base and laying a block paving surface
  - (b) introduce additional drainage at Turner Close via additional gullies or channel drains at low spots

- (c) reinstate the footpath between Turner Close and Turner Drive
- 2. If required, dispensation from consultation requirements is granted regarding any contract entered into with Wormald Burrows, Civil Engineering Consultants in connection with the carrying out of the above works.
- 3. The application in respect of the request for dispensation from consultation requirements for the appointment of alternative contractors (other than the Applicant's current contractors who are retained under a Qualifying Long Term Agreement) is refused.

## **Background**

- 4. These applications concern Turner Close and Turner Drive, which are roads within the Hampstead Garden Suburb Estate. The applications arise out of three proposed sets of works to take place in the close.
- 5. The footway running along Turner Close was constructed in the 1920's without any sub-base, presumably on the ground that it was never envisaged that the footway would have to bear the load of heavy vehicles. That footway consists of concrete paving slabs which are regularly replaced as they break. The problem has been that the slabs break very quickly after being replaced due to the traffic that drives over them. This was demonstrated to the Tribunal very clearly in photographs of the footway.
- 6. As a long-term cost effective solution, the Applicant proposes to reconstruct the footway by the laying of a sub-base of sufficient strength to support vehicular traffic on the paving laid upon it.
- 7. The second set of works concern the road itself at Turner Close which is ponding in parts due to the movement in levels. Again, as a long-term cost effective solution, the Applicant proposes to introduce additional drainage at Turner Close via additional gullies or channel drains at low spots to deal with the problem.
- 8. The final works proposed is the reinstatement of a pathway between Turner Drive and Turner Close. It is clear from lease plans and evidence on the ground that there used to be a pedestrian path between the two roads.
- 9. There has been considerable discussion with residents as to the proposed works. A structural engineer has been retained who has inspected and produced reports on the proposed works to Turner Close. The Applicant wishes to retain that engineer to oversee the works. It is thought that it may take more than 12 months for the work to be completed and signed off to the engineer's satisfaction and that therefore the engineer's retainer may be a qualifying long term agreement which would be subject to consultation regulations. The Application therefore sought dispensation from the

16. As to the reinstatement of the path between Turner Drive and Turner Close, such reinstatement clearly falls within the wording of 'maintaining'.
17. It follows therefore that a Service Charge can properly be levied upon the Respondent leaseholders in respect of the works referred to above.

#### *The works and the Estate Management Charge*

18. The wording of the Estate Management Scheme in force is different to the lease term referred to above. The Scheme provides that house owners must pay toward the cost of '*making up or maintaining such road or way or close...*'.
19. For the reasons given in respect of the Service Charge, the Tribunal considers that the proposed works firmly fall into the category of 'maintaining' as set out in the Scheme.

#### *Dispensation - Engineer*

20. The Tribunal does not consider that the instruction of the engineer to carry out and oversee the works will be a qualifying long-term agreement if the works take more than 12 months to complete. However, in the event that the Tribunal is wrong on this point, it grants dispensation from the statutory consultation requirements<sup>1</sup> in respect of this instruction for the following reasons;
  - (a) the engineer has been involved in the project from the outset
  - (b) there has been considerable discussion with residents as to the proposed works and those discussions have involved consideration of the expert's reports
  - (c) no leaseholder or freeholder has opposed the application for dispensation

#### *Dispensation - contractors*

21. The Tribunal does not consider it reasonable to dispense with consultation requirements in respect of contractors for the following reasons;
  - (a) there is no evidence that alternative contractors are likely to be needed
  - (b) if there is a need for alternative contractors, it would appear reasonable for residents to be fully consulted and in any event, if

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<sup>1</sup> Service Charges (Consultation Requirements) (England) Regulations 2003 - SCHEDULE 3

need be, a further application can be made to dispense with  
consultation requirements in this eventuality

Chairman:

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Mark Martynski

7 November 2012