



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

**Case Reference:** CAM/00ME/LSC/2014/0062

**Property:** 2 Queen Anne's Road, Windsor, Berkshire SL4 2BJ

**Applicant:** Miss Geraldine Ruth Vickers

**Representative:** Miss Diana Kootstra (daughter)

**Respondents:** The Crown Estate Commissioners

**Representatives:** Miss Harriet Holmes of counsel

**Type of application:** Section 27A and section 20C, Landlord and Tenant Act 1985

  

**Tribunal members:** D Banfield FRICS  
J Sims  
A Kapur

**Date of hearings:** 4 September 2014

**Date of Decision:** 3 October 2014

**DECISION**

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**The Tribunal allows the following works:**

- 1. Tree work (subject to the restriction referred to in paragraph 32(a) below.**
- 2. Replacement of 15 no lamp post tops and remedial works.**
- 3. Remedial works to Queen Anne's Road**

**The Tribunal does not allow;**

- 1. Reconstruction of footway between 4&5 Queen Anne's Road.**
- 2. Tree work other than that referred to above.**

**The Tribunal accepts the assurance that the costs relating to these proceedings will not be placed on the service charge.**

### **Background**

1. The Applicant applied for a determination of their liability to pay ongoing service charges from the financial year 2014 together with works referred to in correspondence relating to Section 20 proceedings namely;
  - a. Annual ongoing maintenance of grass, leaves and drain clearance.
  - b. Essential maintenance and or removal of trees and associated landscaping works.
  - c. Replacement of 15 number lampposts or tops
  - d. Repair and reconstruction of footway between numbers 4 & 5 Queen Anne's Road.
  - e. Remedial works to Queen Anne's Road to include pot-hole repairs, resurfacing and kerb and cracking repairs.
  - f. Maintenance, repair and cleaning of the sewers under Queen Anne's Road and or the associated common area.

It was said that some of the above works were due to the result of the landlord's past negligence or the inadequate construction.

2. In the Directions Order dated 18 June 2014 Regional Judge Edgington stated in a preamble that "The Tribunal can only consider whether a particular service charge demand is reasonable and/or payable. It cannot determine a dispute involving contested evidence over what may or may not have been in a contract entered into some years ago or whether a party has been negligent. These are matters for the county court. In the light of this the Applicant may wish to take advice and if she wishes to withdraw the application no doubt she will inform the Tribunal"
3. Directions were then set out regarding the timetable to be followed and the production of a hearing bundle.

## Inspection

4. The Tribunal inspected Queen Anne's Road in the company of the Applicants and Mr Arnott of Smiths Gore on behalf of the Respondent. We had the benefit of both the lease plan and plan showing the tree works (pages 106 & 169 of the bundle) indicating the extent of development. We noted the generally substantial properties on generous plots facing a rather modest road with grass verges in which were located some rather dated lamp standards. There was no defined boundary between the subject property and the verge whereas most other properties had marked the division by either planting trees or shrubs or by a hard division. We also noted the surface to the road was cracked in places.

## Hearing

5. At the commencement of the hearing Miss Kootstra said that the Applicants objection related to;
  - a. The works required due to the poor standard of road construction.
  - b. The service charges subject to the S.20 procedures
  - c. Why the road had not been adopted by the local authority thereby relieving lessees of any obligation to contribute to the costs and as envisaged under the lease.
6. Miss Holmes said that the issue was a narrow one and related solely to the potential liability for works envisaged under S.20 procedures but which had yet to be demanded. She referred to the Notice of Intention to Carry out Works dated 9 April 2014 (p.24) and agreed that for the purpose of these current proceedings the costings and specification contained in and with Smiths Gore's letter of 4 September 2013 (p.s 29-40) could be used. This stated the costs as:

a. Tree work	as per Bartlett's schedule	£6,160.00
b. Replacement of 15 lamp post tops		£4,222.00
c. Reconstruction of footway between nos 4&5		£6,860.00
d. Remedial works to road		£25,900.00
7. Miss Kootstra said that here was a history of problems relating to the road construction as evidenced by the involvement of Henry Cooper and Sons in 1985 (p.s 126-132) and was concerned that there would be a long term cost liability.
8. She referred to damage caused to sewers by the construction of a swimming pool over which the Respondents had taken no action.

9. She said it was the clear intention of the Crown Estate to have the road adopted by the Local Authority and referred to a letter from the Royal Borough of Windsor and Maidenhead dated 30 May 1986 (p 135) in which they said that the "highway will be considered for adoption at the expiration of the maintenance period on 8 May 1987. A manuscript note requests a Mr Watson to make a "long term diary resumption as above"
10. In support of this intention she referred to Clause III(7)(a) of the lease (p. 110) which refers in connection with ascertaining the lessee's share of maintenance costs "...until the same shall be taken under the management of the Highway Authority"
11. She acknowledged that adoption of the highway had not taken place but considered this to be due to the negligence of those acting for the Crown Estate.
12. She referred to the letter from the Crown Estate Commissioners dated 26 June 1980 (p.102) confirming that the Applicant had confirmed that she would grass over and maintain the front verge and a further letter dated 21 September 1984 (p. 41) regarding the need to keep verges clear to comply with the Section 40 agreement which was a requirement of adoption and which obligation she had met.
13. She considered that the applicant should not have a liability to contribute to costs relating to areas over which she does not have specified rights of access in the lease. Referring to the costs relating to the footway between Nos 4 & 5 she said that this was to provide access to those properties which unlike the Applicant's did not have direct access to Windsor Great Park.
14. She further considered that if the Applicant had been aware of an ongoing maintenance liability she would have made a lower bid for the property.
15. Miss Holmes for the Respondent said that the matters under consideration related to future works for which no demand had yet been made. She said that the quotations attached to the letter of 4 September 2013(p.29) may include works to areas outside those envisaged by the lease and that they would not be charged for.
16. She said that s.III (7) (a) of the lease did not contain an obligation on the landlord to have the road adopted and did not affect the lessee's ongoing liability to contribute to service charges.
17. She referred to Clause III(6) which required the lessee to "*pay on demand.....a reasonable share....of making repairing renewing*

*rebuilding and cleansing all party walls and fences hedges sewers drains pipes watercourses gutters.....used or enjoyed or capable of being used or enjoyed by the owners or occupiers of the demised premises in common with the owners or occupiers of any adjoining premises” and of Clause III(7)(a) which required “ on demand being made by the landlord forthwith to pay to the Landlord ...a fair proportion of the cost of keeping in good repair order and condition the road shown on the said plan and thereon coloured green and the sewers thereunder and of lighting watering and cleaning the said road....”*

18. On a question from the Tribunal she confirmed that the reference to “road” in the above paragraph related only to the area coloured green on the lease plan.
  
19. The lack of a definition in the lease as to common areas is accepted but in practice those envisaged by Clause III (6) are simply the areas between the road and the various demises. The clause has the function as is usual in such cases of shifting the costs of maintaining common areas from the landlord to the tenant.
  
20. On a question from the Tribunal regarding the apparent differences between the boundaries as shown on the lease plan and those that were apparent on inspection Mr Arnott said that there were instances where encroachment had occurred and which were subject to ongoing discussions.
  
21. With regard to the works to trees as shown on the plan at p.169 Mr Arnott said that this simply showed those trees where work was required and may well include trees outside the definition of common areas.
  
22. Regarding the adoption of the road she said that the lease provides for both options and that the lessee’s obligation to contribute to the road costs only ceases if and when the road is adopted. There is however no obligation on the landlord to pursue such an option. Whilst the correspondence makes it clear that the landlords had intended that adoption should take place it simply didn’t happen. This was a case that for adoption to take place agreement had to be achieved between the parties involved. The landlord as one party only could not give an undertaking that an agreement would be reached.
  
23. As to whether the road had been constructed correctly she referred to Henry Cooper’s letter of 28 November 1985 (p.128) referring back to the situation in 1972 in which it states *“It is reasonable, therefore, to assume that the works were constructed fully in accordance with the appropriate requirements”*

24. Although no estoppel points had been raised by the Applicants Miss Holmes went through the requirements for such an argument to be successful and concluded that they could not be met.

### **Decision**

25. There has clearly been an ongoing dispute between the parties on this matter for some considerable time. However, as indicated in the preamble to the Tribunal's directions our decision is limited to whether service charges are payable. As no demand has yet been made we are unable to determine the amounts to be paid but must limit ourselves to matters of principle as to which items of expenditure are allowable.
26. It is clear to us that it was the original intention of both parties to the lease that the road would be adopted by the Highway Authority and if that had happened then the lessee's liability under Clause III (7) (a) would have simply melted away.
27. For various reasons this did not happen and whilst it may or may not have been an omission on the part of someone acting for the landlord the question we must ask ourselves is whether the landlord had an obligation to obtain adoption and if he did not what should happen?
28. We have seen nothing in the lease or elsewhere obliging the landlord to have the road adopted. In fact the lease covers both situations setting out both a pre and post adoption mechanism for the recovery of costs. We are satisfied therefore that the costs of maintaining the road as envisaged in Clause III (7) (a) are recoverable under the lessee.
29. Turning to the attachments to Smith Gores' letter of 4 September 2013 and without making any determination as to whether the amount of the costs are appropriate we do determine that all of the road repair works listed on pages 35 & 37 are allowable as they specifically relate to the repair and lighting of the road.
30. We now turn to those matters falling under Clause III(6) in which we are obliged to consider the meaning of "*capable of being used or enjoyed by the owners or occupiers of the demised premises in common with the owners and or occupiers of any adjoining premises*". We are immediately in some difficulty in that the areas shown as common in the copy of the lease plan attached to the Applicant's lease differ from those on the ground. We heard that the matter of encroachment was under review but were not told of what action was being taken or indeed the hoped for outcome. As such we intend to treat as common those areas that are physically accessible to all of the lessees and capable of their enjoyment as set out in the lease.

31. We then need to consider what is meant by “*any adjoining premises*” In the absence of a definition of the area over which the enjoyment may be exercised. The Tribunal believes the general rule to be that ‘ordinary words ought to be given their ordinary meaning’ (*per Swinfen Eady, LJ, in Beard v. Moira Colliery Co. [1915] 1 Ch. 257, at p. 268*). ‘Adjoin’ is defined in the Concise Oxford English Dictionary as ‘to be contiguous to’, and ‘adjoining’ has been judicially interpreted in a way entirely consistent with this definition, such that ground has been held not to adjoin a house unless it is absolutely contiguous (*R. v. Hodges (1829) Mood. & M. 341, at p. 343*) So also, in *Re Ecclesiastical Commissioners for England’s Conveyance [1936] Ch. 430, at p. 440, per Luxmoore, J*: ‘When used in conjunction with the word ‘land’ the word adjoining in its primary sense means that which lies near so as to touch in some part the land which it is said to adjoin.’ The Tribunal does not consider that there is anything in clause III (6) which implies that the ordinary literal meaning of the word ‘adjoining’ was not intended by the parties to the Lease
32. The effect of the preceding two paragraphs is that
- a. Only costs relating to those trees situated in the verges of Queen Anne’s Road will be allowed. We cannot list all those excluded as our inspection was not in such detail. For the avoidance of doubt however those forming part of the front boundary of individual properties e.g. Number 1 are excluded together with those opposite Castlemead Cottages.
  - b. The costs relating to the footpath between Nos 5&6 are excluded, because, under the Lease, the Lessee has no right to use this path. Further, the Tribunal considers that there can be no implied right to use that path. The path exists solely to provide access to the park beyond, to which entry can be gained through a locked gate: the Lessee has neither implied right or indeed need to use the path as she has her own direct access from her own property.

## **THE COST OF THE CURRENT PROCEEDINGS**

33. Miss Holmes on behalf of the Landlord gave an assurance that the costs relating to these proceedings would not be placed on the service charge. In receipt of such an assurance there is no need for the Tribunal to make an order under S.20C of the Landlord and Tenant Act 1985.

D Banfield FRICS  
3 October 2014