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Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
DECISION BY LEASEHOLD VALUATION TRIBUNAL  
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 as amended – Section 27A

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**Ref: LON/00BE/LIS/2006/0062**

**Property:** 49 Melford Court, Melford Road, Dulwich, SE22 0AT

**Applicant:** London Borough of Southwark

**Represented by:** Mr Jeffrey Joseph, Home Ownership Unit, Southwark Council  
Mr Dave Packham, Responsive Repairs Manager,  
Dulwich Area Housing Office

**Respondent:** Mr Maurice Martin Burgon  
Mrs Theresa Florence Burgon

**Tribunal Members:** Mr G F Bowden, TD MA FRICS – Chairman  
Mr F L Coffey, FRICS  
Mrs M B Colville, JP LLB

**Inspection:** 4 September 2006

**Date of Hearing:** 4 September 2006

**Date of Decision:**

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**LON/00BE/LIS/2006/0062**

**PROPERTY: 49 MELFORD COURT, MELFORD ROAD, EAST DULWICH, SE22 0AT**

**1. Background**

- 1.1 This was an Application by the London Borough of Southwark, under Section 27A of the Landlord and Tenant Act 1985 (hereinafter referred to as "the 1985 Act") to determine the reasonableness of service charge costs incurred, and whether these costs were reasonably incurred.
- 1.2 The Respondent was Mr Martin's Burgon, who was the long leaseholder of Flat 49 in the subject development.
- 1.3 The Applicant's claim related to the tarmac resurfacing of the pathways in the courtyard area, between blocks on the subject development, and specific to this claim, the pathways outside the Respondent's flat.

**2. Inspection**

- 2.1 The Tribunal inspected the paths in question on the morning of Monday, 4 September 2006.
- 2.2 Melford Court was a low-rise, brick-built residential development built in 1952, flanking either side of Melford Road, a residential side-turning off the busy Lordship Lane in East Dulwich.
- 2.3 The exterior of the flats themselves, and the surrounding communal garden areas, appeared to be maintained to a reasonable standard.
- 2.4 A number of the flats, perhaps the majority, were still occupied under direct tenancies from Southwark Council. However, long leases of some flats had been acquired by the tenants, under the "right-to-buy" legislation, who were still in occupation.
- 2.5 The tarmac surfaces in question surrounded areas of greensward, forming an open courtyard between two blocks of flats. The tarmac had been laid with a camber falling to the grass verges. There were a number of cracks opening up, some were just slight fissures, but others which had widely opened revealing deep cracking to the subsurface below.
- 2.6 The Tribunal formed the opinion that the surface was still subject to movement, and was likely following the very hot, dry summer to deteriorate further in winter conditions.

**3. Hearing**

- 3.1 A Hearing was held on the afternoon of Monday. The Applicant Council was represented by Mr Jeffrey Josephs, Home Ownership Unit; and Mr Dave Packham, Repairs Manager, Dulwich Housing.

- 3.2 The Respondent, Mr Martin Burgon, appeared in person and represented himself at the Hearing.
- 3.3 Mr Packham gave evidence on behalf of the Applicant in accordance with his witness statement which was before the Tribunal.
- 3.4 He explained how the resurfacing contract had come about. There had been an unexpected grant from European Union funds for general environmental improvements. Part of this 'bonus budget' had been allocated to the Melford Court development.
- 3.5 When contracts were for sums in excess of £20,000 open tender procedures were followed by the Council. Since the works in question amounted to less than £10,000, competitive quotes had not been sought, but the Council's nominated Contractor, Messrs Botes Maintenance, had been assigned the work.
- 3.6 Mr Packham explained that no-one at Southwark Council's Housing Department had been responsible for preparing the specification or estimate for this work. Nor had anyone been responsible to check to what specification it was being carried out during the course of the work.
- 3.7 Mr Packham explained that he had not inspected the condition of the pathways before the work had been put in hand. Nor had he visited the site when the work was in progress.
- 3.8 It was not the practice of the Council to supervise such works. On completion he had inspected the finished work and thought it to be carried out to a satisfactory standard. With the increasing opening up of the surface, which he estimated to be between 35 and 50 cracks appearing, Mr Packham did acknowledge that the work could not now be considered satisfactory.
- 3.9 It emerged from his answers to questions from the Respondent and members of the Tribunal, that although the tarmaced paths in question had been resurfaced as recently as 1994 no records of this work had been retained by the Southwark Council.
- 3.10 Mr Packham was unable to confirm or deny whether Messrs Botes had sub-contracted the works in question.
- 3.11 Messrs Botes was now a company in administration and could not in the circumstances be held responsible for any defects.

#### Respondent's Case

- 3.12 Mr Burgon explained that he had been resident in the subject block since the time of its construction in 1952. He had in the early 1980's purchased a long leasehold interest in his flat under the 'right-to-buy' legislation.
- 3.13 By 1990, the paths in question had deteriorated and their defective condition was drawn to the Council's attention. Some three years later it was

resurfaced and had remained in a reasonably satisfactory state. Over the years some cracks had appeared but these could have been satisfactorily filled and patch-repaired. A complete resurfacing was unnecessary.

- 3.14 Mr Burgon asserted that the paths were now in a worse state than they had been before the recent work had been carried out.
- 3.15 Mr Burgon stated his belief that the two men who carried out the work were not direct employees of Messrs Botes, but were in fact subcontractors.
- 3.16 Mr J Faulkner, a long term resident at Flat 50, Melford Court, in a letter which was before the Tribunal (Trial Bundle p11) had watched the works being carried out. He stated –

*"The old tarmac was not removed or prepared in any way but was just covered in new tarmac by the cold tar method."*

- 3.17 The photographs of work in progress included in the trial bundle pages 7 and 8 would appear to corroborate this statement.
- 3.18 The two workmen involved were on site and completed the work in question "for not quite a full working day".

#### **4. Decision**

- 4.1 The Tribunal carefully considered the evidence before them, both documentary and photographic. They took note of oral testimony at the Hearing and what they had seen on inspection.
- 4.2 When the Tribunal inspected the work, they found the tarmac surfaced crazed with deep cracks in a number of places. Photographic evidence of work elsewhere on the estate by same contractor, indicates that a layer of tarmac had been spread over an uneven surface.
- 4.3 The Tribunal accepted Respondents evidence that there were two workmen on site "for less than a working day."
- 4.4 The Respondent stated his belief that they were subcontractors. Mr Packham was unable either to confirm or deny whether the work was subcontracted. Since there was no direct evidence on this point and nothing material turned on it, the Tribunal made no finding of fact on this matter.
- 4.5 The Tribunal considered in detail the quotation for the works in question by Messrs Botes Maintenance (bundle page 149).
- 4.6 The subject works involved the excavation and removal of an existing tarmac paving and sub-base under, and its replacement. The superficial area of the works was estimated as being 184 square metres.
- 4.7 The quotation of cost submitted by Botes Maintenance is at page 149 of the bundle. It is in the sum of £9,936.96, together with Value Added Tax

thereon. The quotation has been prepared from a schedule of rates which appears at pages 157-257 of the bundle.

- 4.8 From the exhibited Housing Committee report on 'Award of the Day to Day Building Repairs & Maintenance Contract' dated 16 February 2000, it appears that Botes Building Limited were appointed to provide a repair and maintenance service, based on the schedule of rates, for a period of three years from 1 April 2000, with a further option available to the Council to extend the contract for a further two years.
- 4.9 An examination of the quotation document indicates that in addition to removing and renewing the 184 square metres of tarmac, 64.4 cubic metres of excavation and removal of sub-base was undertaken, and that this was followed by 'back-filling' with 27.6 cubic metres of MOT type '1' or '2' compacted, granular fill prior to the renewal of the tarmac.
- 4.10 With regard to the tarmac itself, this is described within the schedule of rates as comprising:
- Dense bitumen macadam to BS 4987 base and wearing course laid to cross-falls including all grit blinding, tack coats and labours*
- 4.11 The descriptive code RD390X – indicates that the macadam was to be laid to a finished thickness of 90mm.
- 4.12 A number of questions were raised by the detail of the quotation document, not least in a seeming discrepancy between the volume of material removed and disposed of from the base of the works; 64.4 cubic metres as opposed to the volume of material employed in the subsequent back-filling; 27.6 cubic metres.
- 4.13 In particular, the Tribunal heard evidence from the Respondent to the effect that the works took no longer than one day, and that no more than two men were employed during this operation.
- 4.14 For the Applicant, Mr Packham stated that he estimated that the works, as specified, would have taken two or three days. He was unable to confirm quite what works were undertaken, as he was not personally involved in the supervision of the works. Nor, it appears, was any other officer of the Council, and it appears that the contractor was rather 'left to his own devices'.
- 4.15 The Tribunal finds that evidence submitted by the Respondent to be more compelling than the evidence adduced by the Applicant.
- 4.16 The Tribunal also considered that the identified cracking was consistent with macadam being applied to a poorly prepared background.
- 4.17 Mr Faulkner, resident Flat 50, observed work as it was being done and set out the facts in a witness statement (bundle page 11) in which (as noted in paragraph 3.16 above) he stated that the work had been carried out in an unsatisfactory manner.

- 4.18 It was stated that the contract was supported by a ten-year guarantee. However, the Contractor, Botes Maintenance, is now in administration, this guarantee is worthless since they cannot rectify the faulty work.
- 4.19 It was acknowledged by the Applicant that the repair of the tarmaced path areas in question was not a matter of maintenance priority and had not been scheduled in any programme of maintenance or repair. However, when an EU Environmental Grant unexpectedly became available, it was decided that the paths and carriageways on the Melford Road estate should be resurfaced.
- 4.20 Mr Packham in his witness statement says "The paths were inspected and identified as needing full resurfacing as they were full of potholes. The paths were a potential health and safety risk." In answer to questions from the Tribunal, Mr Packham accepted that he personally had not inspected the state of the paths before the work was put in hand. The Tribunal had some difficulty in reconciling the fact that the repair of these paths were not on any priority list, with the statement that they were potential health and safety risk.
- 4.21 The Respondent and his neighbour Mr J Faulkner of Flat 50, both long-term residents at Melford Court, stated that the pathways in question had been resurfaced in 1994. However, the Applicant Council had no record of this work carried out only 10 years before. The Tribunal found the lack of record keeping to be surprisingly casual, unprofessional and not consistent with good practice in housing management.
- 4.22 The fact that during the course of the work no inspection was made by an officer of the Council to ensure that it was being carried out in accordance with the specification surprised the Tribunal. The Tribunal felt that the Council, in the interest not only of the lessees of flats, but also their own tenants, were under a duty to ensure that the work was being done in accordance with the specification, and to ensure that proper value was being obtained for the expenditure of public money.
- 4.23 Mr Joseph drew the Tribunal's attention to the decision in, and schedules attached to the relevant leases emphasising that any such works undertaken should be to a reasonable standard. The Respondent accepted the lessees' covenants and liabilities contained in the lease. However, this was not the point at issue. What was in dispute was whether the work was, in the first place, necessary. Moreover, that the work having been done, far from being to a reasonable standard, was defective to the extent the finished job left the paths in a worse condition than they had been before the work was undertaken.
- 4.24 Mr Packham in his witness statement dated 17 July says "I have inspected the completed works and am satisfied that they have been carried out to a reasonable standard." However, in answer to questions by the Tribunal he stated that the condition of the surface had deteriorated since his earlier inspection, and he acknowledged that in its present condition it was not satisfactory.

4.25 In the light of the above consideration, the Tribunal determined firstly that the resurfacing work to the paths in question were defective to an unacceptable degree. Secondly that there was no evidence that the subject work was necessary, and consequently the total costs incurred were unnecessary.

4.26 In these circumstances the Tribunal determined that the Respondent leaseholder had no liability for any payment in respect of these works.

Chairman: ..... *Cervus Bowden*

Dated: ..... *24 October 2006*