

# Should residents in Trust owned roads pay for road sweeping? Yes says the LVT

In March, the Trust was involved in a case at the Leasehold Valuation Tribunal, the body appointed to make decisions on various types of dispute involving residential property.

The case involved recharging the costs of road sweeping a private road owned by the Trust to a leasehold house. After negotiation with the owner failed to resolve the issue, the owner applied to the LVT to determine whether the charges made by the Trust were payable.

The owner, a respected retired barrister, argued that according to the terms of the lease he was not liable to the Trust for road maintenance charges. He suggested the correct interpretation of the lease covenant to contribute to the Trust's costs of maintaining the road meant that if his house did not have frontage to the section owned by the Trust, there was no liability. The reason for this was that the lease stated the contribution was according to the frontage of the house to the road.

The road in question lies on the boundary of the former boroughs of Hendon and Finchley. Only the part of the road in Finchley was adopted and is now maintained by Barnet. The remaining section of the road is owned by the Trust.

The Trust submitted to the Tribunal that the lease covenant relating to road maintenance required a contribution in common with other users. The specific covenant contained a reference to a notional frontage to the road, which was different to the actual frontage of the house to the road as shown on

the lease plan. The Trust's contention was that reference to a notional frontage is clearly a method for calculating the amount of the contribution and therefore actual frontage to the Trust owned section was not a requisite to collect charges.

The Tribunal agreed with the Trust's contentions and concluded that 'the lease involves a liability on the leaseholders to contribute to the maintenance and upkeep and cleaning of the road until it ceases to belong to (the Trust)... The obligation under this clause is to make a contribution towards the cost of the whole road and if a part of the road is removed from the ownership of (the Trust) the liability... is reduced accordingly.'

The Tribunal also found the Trust was not prevented from collecting road maintenance charges under the lease despite not having done so over previous years.

The Hampstead Garden Suburb Trust owns and maintains over 20 private roads and paths across the Suburb. Freeholders with use of a private road are liable to contribute to the Trust's costs of maintaining the road under the Scheme of Management. Leases of houses also contain covenants to contribute to these costs.

NICK PACKARD



# Has your car been ticketed or clamped?

Residents may have noticed a while back that a private parking company had erected a sign in Hill Rise notifying that it was enforcing restrictions in the private car park behind the library and that it would issue a 'parking charge notice' to those who parked there without a permit. Although that particular sign was removed by Barnet Council because it was erected on a public road residents would be wise generally to avoid parking where they are not sure who owns the land.

As well as the Hill Rise car park several of the large blocks of flats along Aylmer Road have used private parking contractors and perfectly legitimate visitors have sometimes found themselves the victims of these organisations which tend to take action first and ask questions later – or more often not ask questions at all. It is therefore worth knowing a little about how the private parking contractors tend to operate and how to deal with them if they should target you.

Where private parking contractors wish to enforce an 'offence' they can obtain a motorist's details from the DVLA. They will then send the motorist a carefully worded document which is designed to look like a local authority penalty charge notice. This document is likely to be given a name that sounds rather similar to an official penalty charge notice and which carries the same abbreviation (PCN). To aid the appearance of authenticity the 'ticket' will often include details of an essentially pointless internal appeals process.

Although a careful reading of the document would usually reveal that it has no force, many recipients assume they have received a genuine parking ticket and pay the sum demanded

when the most sensible course of action (unlike with a real parking ticket) would be to ignore it. If the 'ticket' remains unpaid the parking company will almost certainly send several reminders and these may become increasingly threatening, including suggestions that the 'debt' will be registered with the courts or that a debt collector may visit. These threats may be regarded as more or less entirely empty as such a visit would be likely to breach the Office of Fair Trading's rules governing such matters. If the demands are simply ignored the correspondence will cease once the parking firm realises that the exercise is not even justifying the cost of a postage stamp.

And that tends to be the end of the matter because in order to establish any entitlement to a fine a parking contractor would almost certainly have to bring proceedings against the motorist. However in most cases there will be no grounds for mounting an action as it is probable that no contract exists between the contractor's principal and the motorist for which the principal might be able to prove a breach. In short the whole purpose of the threats and warnings contained on private parking tickets is to bully or frighten recipients into paying an unenforceable charge. The private parking companies are in the business of raising money for themselves and their principals and for as long as there is a chance this can be done easily and for little outlay they will continue to send letters and notices. Conversely the costs of bringing a flimsy legal case will not appeal so these are rarely if ever mounted.

If the issue of private parking tickets is easily dealt with the problem of private clampers is much more serious and there

have been some reports of these also operating close to the Suburb. Private clampers often rely upon signs notifying either a blanket restriction on a piece of land or restricting parking to permit holders only. These notices may or may not be prominent. A watcher (sometimes on commission) will alert a roving clamping unit or a motorist may be caught by a routine patrol. The vehicle may be immobilised on the spot or towed to a distant location and will only be released upon payment of a fee, usually of several hundred pounds, sometimes payable only in cash. The surroundings (if the car has to be collected after being towed) and the personnel are often intimidating but a receipt should always be obtained and if the opportunity exists a written note should be left with the staff that payment has been made under duress.

The law provides disgracefully little protection against these activities which can cause untold distress and inconvenience and which pays no heed to the age, medical condition or vulnerability of the motorist who will frequently have committed the alleged infraction wholly unwittingly. (Regrettably it must be said that these remarks apply equally to the local authorities as to private companies.)

As private clamping companies will rarely make refunds willingly the solution for those who have had money extracted in this way is to issue proceedings against the firm in the small claims court. This is a simple enough process although some grounds for action are necessary. These might include the restriction sign being too small or poorly positioned or unlit at night.

The clamping companies are of course agents acting for

the principals (property owners, shopkeepers, resident groups) who have employed them. Legal action is therefore often more effective if the motorist can establish who are the clamping company's principals and join them into any proceedings. A joint action of this type can cause friction between principal and agent with each blaming the other for the fact that it is facing a trip to court and this may increase the prospect of a settlement as one party or the other may lose its nerve and pay up. Even if this does not happen and the case comes to court, the motorist's prospects of success should be good provided he can argue that the clamper or landowner did not display any notice of restriction in such a way that a reasonable motorist could not have failed to see it.

Anyone needing assistance with fighting parking or traffic cases, whether local authority or private, is welcome to contact me at raparking@hgs.org.uk

GARY SHAW

## New build at Garden Suburb School

Garden Suburb school has applied for planning permission to demolish temporary classrooms and build a new classroom and canteen block.

The proposed building is two storey at the front with a single storey element at the rear, adjacent to the boundary. The plans, which can be seen at the Trust office by appointment, are the result of some months consultation with the Trust.

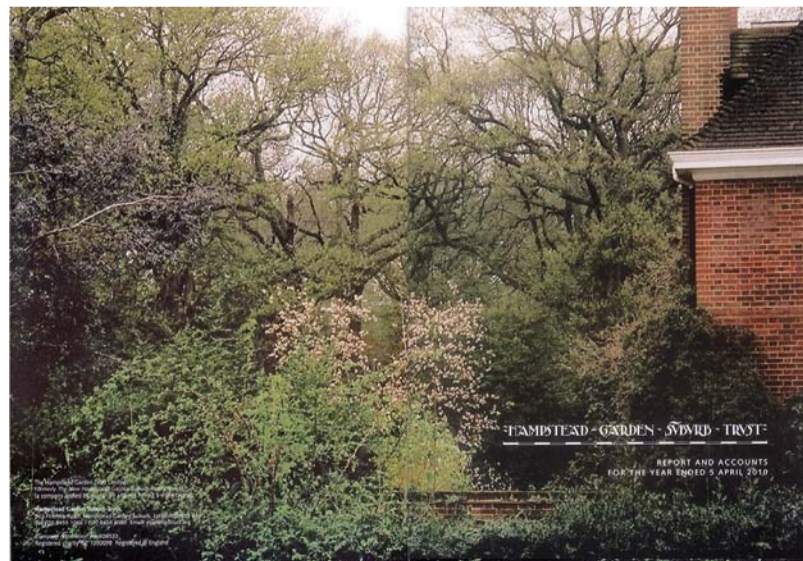
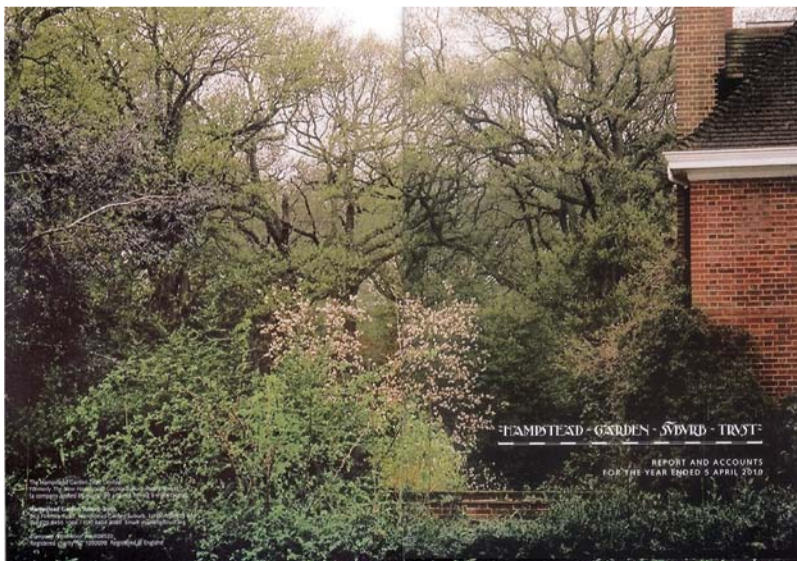
*Trust (trust) n. reliance on and confidence in the truth. Custody, charge or care. (Sp in Hampstead Garden Suburb – members elect four Trustees to the Trust Council in whom is vested legal powers to preserve the character and amenities of the Suburb.)*

## The Trust requests the pleasure of your company as a member

The Trust Council would like to see more Suburb residents represented as members. The sole requirement for membership is to have lived continuously on the Suburb for three years.

Many residents come to live here because it is a unique environment and support the aims of the Trust in trying to preserve the Suburb's character and amenities.

All residents who believe that the job we are trying to do is worthwhile should be members of the Trust. New residents are now welcome to join as associate members.



**HAMPSTEAD - GARDEN - SUBURB - TRUST**

862 Finchley Road, Hampstead Garden Suburb, London NW11 6AB · 8455 1066 · mail@hgstrust.org · www.hgstrust.org