

MONTPELIER SQUARE

1. Introduction

I have examined the Montpelier Square Committee's documents (including the original minute book), kindly supplied by the Chairman, and I report as follows:-

1. Ownership of the Enclosed Garden

The enclosed garden is legally vested in the Montpelier Square Committee under the Gardens in Towns Act 1863 (which I attach for your ease of reference as Appendix 1).

An order under the seal of the Metropolitan Board of Works formally vesting the enclosed garden in the Committee is recorded as having been received by the Chairman of the Committee, dated 28th June 1867 (see Minute of Meeting 20th September, 1867).

2. Constitution of the Montpelier Square Committee

The first meeting of The Montpelier Square Committee took place on 13th April 1867, under the 1863 Act.

It may be useful if I transcribe from the minute book the wording of the notice concerning the first meeting of the Committee:

"To the occupiers of houses in Montpelier Square

The Metropolitan Board of Works having, pursuant to the power contained in the Gardens in Towns Act in that behalf taken charge of the enclosed garden or ornamental

ground in Montpelier Square, Knightsbridge in the Parish of Saint Margaret, Westminster in the County of Middlesex.

We the undersigned being rated inhabitants of Montpelier Square aforesaid hereby convene a general meeting of the rated inhabitants of the said Square to be held at the office of the Board of Works for the Westminster District No. 3 Trevor Square, Knightsbridge at 5 p.m. on Saturday 13th April 1867 then and there to choose and appoint a committee of the rated inhabitants of the said Square consisting of not more than nine or less than three of such rated inhabitants in whom the said garden or ornamental ground shall vest in order that the same may be kept as a garden or ornamental ground for the use of such inhabitants and for the other purposes named in the said Act.

Dated this 8th day of April 1867"

The Act's requirements regarding the constitution and conduct of the Committee can be summarised as follows:

- (i) No more than nine nor fewer than three of the rated inhabitants to constitute the Committee;
- (ii) membership of the Committee to be determined by annual election of all rated inhabitants of the Square;
- (iii) The Committee may require [Westminster City Council] to raise the sums required by the Committee for "defraying the expenses of the maintenance and management of [the] enclosed garden ... by an addition to the general rate

to be assessed on the occupiers of [houses in the Square];

- (iv) The Committee may make, revoke and alter byelaws for the management of the garden square "and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein". The byelaws must however be authorised by a Court. I attach a copy of the byelaws, amended by the Committee on 10th February 1959. (Appendix 2).

As well as these wide provisions contained in the Act, it is apparent from the minute book that the following "extra legal" customs have emerged:

- (i) auditing of accounts - In June 1868 the solicitor to the District Board of Works suggested that the Committee's accounts be audited annually by a member of the Committee and another rated inhabitant. This suggestion was adopted.
- (ii) The sums required by the Committee have been demanded by way of "precept" (although the Committee does not fall within the definitions of precepting authority contained within either The General Rate Act 1967 or The Local Government Finance Act 1988). The "precept" is ratified and signed by the members of the Committee present at the Annual General Meeting.

4. Rules as to voting, etc.

Detailed provisions as to, for instance, the conduct of meetings and elections of members are not contained within the Act. No fixed period of notice is stipulated for AGMs and other meetings. The

Committee must however comply with the broad rules of natural justice that dictate, for instance, that reasonable notice be given to Committee members of proposed meetings and that an adequate record is kept of all proceedings.

Bearing in mind the requirement that the Committee must consist of at least three persons, it would be fair and reasonable to set a quorum of three for any one meeting.

It would similarly be fair and reasonable for any decision to be by a simple majority vote of those present at the meeting. Certainly no proxy votes are recorded in the minute book in my possession, which dates from 1867 to 1950. In the absence of a constitution permitting proxies, I would be of the view that proxy voting is not permissible.

So far as voting rights at AGM are concerned, the Act, probably deliberately, merely refers to the fact that the Committee members shall be "chosen annually" by the rated inhabitants. At the time this probably meant in effect one vote per house. Clearly, the 1863 Act was well before women's suffrage!

Should these matters presently be a cause for concern, an answer may be for a draft constitution to be prepared and considered by the Committee in the first instance.

The legal efficacy of adopting a Constitution when the Gardens in Towns Act is silent as to guidance thereon is something which would require highly specialised (and expensive!) advice from a leading QC who may well advise seeking judicial sanction. We should in my view, keep matters in perspective and remember that the Garden Committee has operated

matters since 1867 without a formal Constitution!

If we adhere to the rules of natural justice my own feeling is that we could carry on in the same way for another hundred years!

Development of the garden square

The garden square is vested in the Committee in order to keep it as such (Section 1 of the 1863 Act). Any person "in right of any house or other property" may seek to protect the garden square by requesting [Westminster City Council] to take action to that effect (Section 2).

Furthermore, Montpelier Square is a "protected square" under the London Squares Preservation Act 1931, the basic effect of which is to prohibit its use otherwise than as an ornamental garden, pleasure ground or ground for play, rest or recreation and to prohibit any building or other structure or erection from being placed on or over the Square except in connection with its authorised users.

It could be strongly argued that the provision, for instance, of an underground car park, is contrary to the intention of both the 1863 and 1931 Acts (although perhaps not the strict wording of these Acts, since the Acts do not expressly prohibit buildings or structures "under" the Square and no doubt underground car parks were not envisaged as a possibility). Planning permission would be required from Westminster City Council for any such development, who would take into account the fact that the square falls within a conservation area, contains listed buildings and protected trees.

As I have already explained, technically speaking, the Committee is not a precepting authority. Instead, the expenses of maintaining the Square are met by charging the Square's residents with "special expenses" under Section 147 of the Local Government Act 1972.

Section 147(1) Local Government Act 1972 provides that:-

"All expenses of a principal Council shall be general expenses chargeable on the whole of their area except - (a) those which by virtue of any enactment or instrument of a legislative character are special expenses chargeable only on part of their area..."

Section 147(3) provides that:-

"A district council may by resolution declare any expenses incurred by them to be special expenses chargeable only on such part of their area as may be specified in the resolution, and any such resolution may be varied or revoked by a subsequent resolution of the council."

Section 149(3) provides as follows:-

"Amounts leviable by a District or London Borough Council by means of a rate shall be chargeable:-

- (a) in the case of amounts leviable to meet liabilities in respect of general expenses, on the whole of the District or Borough;

(5) In the case of amount leviable to meet liabilities in respect of special expenses, on the part of the District or Borough chargeable therewith."

There is no prescribed maximum amount that may be raised by this procedure. However, the Committee, and Westminster City Council, would be acting unlawfully were they to purport to raise under the 1863 Act any sum that was not required for defraying the expenses of the maintenance and management of the enclosed garden.

Such expenses as replacing railings, providing sheds, employing a gardener and the like have been incurred, and recovered, in the past, and in my view this is perfectly lawful.

Position under the Local Government Finance Act 1988

One of the main effects of the Local Government Finance Act 1988 is, of course, to abolish domestic rates and replace them with the community charge. However, the Act retains the concept of special expenses chargeable on a part of the Authority's area. Section 33 of the Act sets out the circumstances in which a charging authority (the new name for a rating authority) may set more than one amount for its personal community charges within its area. I attach a copy of the Section and draw your attention to Sub-Section (4), which sets out the situations in which "special expenses" may arise.

I am presently not clear whether the Committee's expenses would fall within the sub-section, and suggest that clarification is required from Westminster City Council. We have made an initial approach to the Council on a "no names" basis,

asking how the garden square presently subject to the "special expenses" system will be rated under the 1988 Act. We were told that the only two relevant garden squares are Hanover Square and Montpelier Square. The officer stated that what she called the "garden rate" (i.e. recovery of maintenance costs as special expenses") would continue. This would have to be by Council resolution, but she could not specify under which provision the resolution would be made. It would be unsafe to rely on this telephone conversation, and I suggest that a formal approach be made. Clearly, lobbying may be needed if the right response is not forthcoming!

The level of the community charge has not yet been set, and indeed will not be set until after April next year. However, I understand from Westminster City Council that the Department of the Environment recently estimated that had the community charge system been in operation in Westminster in 1988/1989 the charge per adult would be in the order of £450. Thus allowing say 2 adults per house, the new community charge (excluding the special charge for the garden) bill will be say, £900 per annum against a current rate bill per household (again excluding the garden charge!) of say, £4,000 ie. a saving of about £3,000.

If this guesstimate proves to be accurate we shall be able to demonstrate to householders that they are substantially "in credit" as a result of the switch to community charge and therefore our "one off" request for the replacement of the railings may seem palatable.

Kind regards

Sirley Becken

14.2.89

- T H E -
M O N T P E L I E R S Q U A R E G A R D E N
E N C L O S U R E

BYE-LAWS
as amended by resolution of the Committee
made the 10th day of February 1959

That no persons be allowed in the enclosure, except those residing in the Square, their Children, Visitors and Servants.

That no Dogs be allowed in the Square, except led by a string.

That no wheeled vehicles of any kind other than Perambulators, Invalid Chairs and Gardening Equipment be allowed in the enclosure.

That no Hoops, Kites, Balls or other Games be permitted except Croquet.

That no Inhabitant, Servant, or other person admitted to the Square shall pick the flowers, walk on the Flower Beds, or commit any damage to the Trees, Plants, Shrubs, Seats, Tools, Tool House or Railings.

BY ORDER OF THE COMMITTEE