

Manor Fields Estate Limited (MFEL)

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The MFEL 2022 Leaseholders' Meetings - Questions & Answers

Dear Leaseholders 2 November 2022

Introduction

We looked at some of the questions that have been asked by leaseholder during recent months and decided that as some overlap with those asked of us last year, we would replicate some of those questions and answers again in addition to seeking to address some of the key questions that came out of the leaseholders' meeting on Saturday 29 October.

We have also enhanced this list with answers to some additional email questions that refer specifically to the recently published accounts.

You will find the following categories of Q&A in the pages that follow: -

Service Charges	Questions 1-10
Non-Annual Works	Questions 11-15
Health & Safety	Questions 16-17
Governing Instruments	Questions 18-27
Leaseholders' Meetings	Question 28

We hope you find this further information helpful.

Yours sincerely
The Directors

Service Charges Questions & Answers

1. Why are the Principal Service Charges increasing by so much?

1.1. Having consulted Richard Benson of Kinleigh Limited, his opinion is "the MFEL service charges budget has been reviewed line-by-line and each item of expenditure looks perfectly reasonable". We can never sensibly compare an original mansion block estate, with generously proportioned flats, the 3rd largest privately owned gardens in London, and private roads, garaging, and parking, to the thousands of managed blocks across London, with shoebox apartments, many without lifts, gardens, and/or other facilities.

1.2. An estate of this age, size and complexity, especially with the 3rd largest privately owned gardens (with a network of roads) in London, has particular needs, and the costs of labour and materials continue to increase. The primary focus must be on maintaining the fabric and appearance of the estate and the plain fact is that the cost of doing so goes up.

1.3. Further, where the previous cyclical refurbishment delivered shoddy workmanship, much of which was not fully revealed until the scaffolding went up in 2018, by a contractor that went into administration (preventing us from acting against them), it is inevitable that the costs this time around would escalate.

1.4. Hindsight is revealing, the consequence of which is the need to increase service charges gradually to replenish the reduced reserves to ensure sufficient funds are available the next time the scaffolding goes up.

1.5. Better this than what you will see happening to thousands of leaseholders around the country, where major refurbishments come as a significant shock and, rather than having reserves, the management companies force the leaseholders to pay double, triple, or more, of their standard service charge to raise the money to deliver a project, along with significant delays (and associated deterioration and cost overruns). How thankful we all are that we do successfully operate a reserve fund. Over the past 30 years, we have retained an average of £300,000 reserves.

1.6. That said, the costs in real terms, i.e., when inflation is taken out, show that the service charges on average, for the 10 years between 1998 and 2008, went down 1% per annum, and subsequently went up by 1% until 2019, where it was necessary to increase it to 5% above inflation to recover the drop in cash reserves.

1.7. As and when individual leaseholders assert that we are in breach of various regulations, including the Companies Act, GDPR, Trust Deed, the Leases, the Landlord & Tenant Act, and more, the directors have a duty to seek legal advice, where appropriate. Whilst the 2021/22 accounts show a reduction in the cost of legal fees, it is unfortunate that the 2022/23 accounts will not present such a positive picture.

1.8. These costs also include responding to Data Subject Access Requests, facilitating S22 requests (to examine the lessor accounts in detail), and complying with other statutory requests, including providing the full company register to shareholders.

2. Why have the Garage Service Charges increased by so much?

2.1. The re-roofing of the external garages and the major refurbishment of the Glenalmond garages structure in 2018/19 and 2020 depleted the garage reserves. A more realistic reserve level of around £500,000 is planned for future non-annual expenditure. The garage door refurbishment has now been completed and the garage service charges will be reduced over the next few years.

3. ***Why do some of the service charge estimates vary considerably to the actuals reported in the following year?***

    3.1. When the board prepares a surveyor's estimate, it is exactly that, an estimate.

    3.2. With the best efforts, until a project's scope is written down and proposals are invited from potential suppliers, the estimates can only be a guesstimate.

    3.3. When real potential costs become more visible, and the closer in time we come to execution of our plans, it's only then that estate priorities, available funding and opportunities for phasing works become more precise.

    3.4. In addition to scoping, tendering, and phasing of works, it is very difficult for the board to estimate future inflationary pressures, as we have all seen recently.

4. ***Why are we no longer receiving service charge forecasts for the next 10 years?***

    4.1. In consultation with our Company Secretary, Richard Benson of Kinleigh Limited, we were advised that we should not be attempting to predict future service charges in the way that we have done for may years.

    4.2. The reason for this is embodied in the L&T regulations as demonstrated by case law where RMCs are required to comply with the governing structures, primarily leases but in our case the Trust Deed too.

    4.3. This rationale is seen in the way that all leaseholders receive the first bi-annual service charge statement, which is always 50% of the previous year's costs.

    4.4. Until the current year's costs have been partially spent, and the previous year's accounts finalised, only then in October are we permitted to predict the forecast for the forthcoming 6 months and issue an increased demand to all.

    4.5. Because of this approach, any use of inflation indices (such as RPI, CPI, and CPIH) is considered inappropriate, so we have stopped doing this.

    4.6. By the nature of our collection and spending of reserves funds, we do need to estimate future spending on projects. The further out we go, the less accurate this becomes.

    4.7. We are bound by many regulations and accountable to all leaseholders for all annual and non-annual spend, and none of the larger projects can be executed without going through the section 20 process.

5. ***Are the service charges going to double as predicted by a leaseholder in the leaseholders' meeting?***

    5.1. It is understandable that the way the projected trustee reserve movements have been presented, this could be interpreted in an alarming way, with reserve contributions increasing to £1,300,000 by 2029, an increase of over £500,000 compared to the 2022 actual figure of £724,000.

    5.2. It is certainly not our intention to apply an inflationary uplift or to show a permanent increase in non-annual spend and as we reported in the leaseholders' meeting, the 10-year projection of non-annual expenditure is in today's prices, therefore the contribution to reserves should be too.

    5.3. This is the first year we have adopted this approach and will need to look at how this information is derived and presented.

6. ***Why does the contribution from North House and Myton House vary in percentage terms when our leases are all fixed percentages?***

   6.1. North House and Myton House are not tenants nor leaseholders of MFEL. They have written access agreements where specific grounds/gardens related services are charged to them.

   6.2. As a consequence, this may vary year by year, as has been observed by some leaseholders.

7. ***Why was there a 20% increase in staff costs from 2020/21 to 2021/22?***

   7.1. The staff costs rose from £323,262 in 2020/21 to £359,329 in 2021/22, an increase of 11%, excluding the furlough grant received in 2020/21.

8. ***Why was there a 16% increase in security services and maintenance from 2020/21 to 2021/22?***

   8.1. Security services and maintenance cost rose from £89,662 in 2020/21 to £97,067 in 2021/22, an increase of 8%, primarily due to higher security contract costs and an increase in maintenance callout on the door entry phone systems.

9. ***Why was there a 27% increase in buildings insurance from 2020/21 to 2021/22?***

   9.1. The building insurance costs rose from £48,852 in 2020/21 to £51,769 in 2021/22, an increase of 6%, essentially due to the indexed rise in rebuilding costs.

10. ***Why was there a 100% increase in surveyors and other professional fees from 2020/21 to 2021/22?***

    10.1. Surveyors and other professional fees rose from £15,917 in 2020/21 to £30,540 in 2021/22, an increase of 92%, due to the higher volume of damp and water ingress maintenance issue driving the increased usage of on-site surveyors.

Non-Annual Works Questions & Answers

11. ***Why did the recent external refurbishments cost considerably more than predicted?***

    11.1. Various figures continue to be circulated regarding the initial and completed costings of the major refurbishment works completed in 2018 through to 2020. Individuals suggest these exceeded budgets by £800,000, £880,683, or similar. The Estimates in the long-term forecast for non-annual expenditure are the best view that can be taken long before obtaining tendered bids. Depending on what comes to light during the refurbishment, some costed elements can be removed as unnecessary, and others will be added. The additional 25% of cills and mullions that were replaced did not constitute a cost overrun due to lack of efficiency or supervision, but a necessary additional cost to restore and maintain the fabric of the Houses.

11.2. Phase 1 (2018/19), which included Armstrong, Magdelene, Mansfield, Newnham, Ripon, and Somerville Houses, contract costs (including VAT): -

Original Specification Cost	£800,082
Actual Cost (excl. variations)	£776,142
Agreed variations	£ 87,752
Revised Total	£863,894
Difference btw original spec & final costs	£ 63,812
Of which, extra 25% oak cills and mullions cost	£ 63,812
Overspend less cost of additional oak	£ nil

11.3. Phase 2 (2019/20), which included Balliol, Girton, Glenalmond, Harvard, Estate Office, and Selwyn (including VAT): -

Original Specification Cost	£1,612,554
Actual Cost (excl. variations)	£1,405,488
Agreed variations	£ 460,748
Revised Total	£1,866,236
Difference btw original spec & final costs	£ 253,682
Of which, extra 25% oak cills and mullions cost	£ 250,232
Overspend less cost of additional oak	£ 3,450

11.4. The bottom line is, across the 2 phases costing a total of £2,412,636, there was a total overspend of £3,450, plus a total contract variation cost, attributable primarily to the oak cills and mullions, of £314,044.

12. Why did the Director's Report inform leaseholders that the 2022/23 planned expenditure to complete the Bede/Keble works is £900,000?

12.1. This was a mistake on our part for which we apologise. The way paragraph 2.2 was written can be interpreted that way but was intended to describe the total outstanding spending from the reserve funds, which includes cyclical, sustainability, external grounds, internal redecorations, health & safety, and garden & office equipment.

13. Why was there no section 20 for the works carried out on the staff flats?

13.1. The staff flats were victims of flash flooding that rendered them uninhabitable for a period of time.

13.2. As a consequence of the flooding, emergency refurbishment works, and preventative maintenance had to be carried out.

13.3. Because the staff flats are owned by MFEL, and rents are charged to the leaseholders, the necessary works carried out were funded by MFEL company, and not the leaseholder. Therefore, no section 20 regulations were applicable.

14. Why has the board not looked at parking controls on the estate?

14.1. The board has listened to many variable views on security related incidents and potential ways to improve that on the estate.

14.2. During the past year, the board did examine in some detail an option to use a parking control company to manage ticketing on the estate at no cost to leaseholders.

14.3. Unfortunately, to enable the parking control company to enforce parking tickets, the estate would have to have large and highly visible parking notices repeated multiple times on every stretch of road that cars are parked, around the greens, down the central drives and so on.

14.4. The visible intrusion of this looking like a "municipal car park", plus the complexities associated with how they would procedurally handle visitors and delivery drivers, meant the proposal did not meet the board's expectations of a private estate and was rejected.

14.5. The vast majority of notices affixed to car windscreens relate to residents who have been issued with car permits but who, without reminders, have not displayed them.

15. Has the board decided to change Manor Fields to a "Gated Estate"?

15.1. No. During the leaseholders' meeting, the board presented some illustrations of what a gated estate might look like from the main entrance.

15.2. The board is looking into what options it might have to enable this and it is clear that there are many complexities that may be contentious, including one-way traffic flows and traffic management, automated number plate recognition, handling deliveries and visitors, and so much more.

Health & Safety Questions & Answers

16. What increasing regulation and legislation in "health and safety" is leading to increased costs on the estate?

16.1. Manor Fields Estate is a place of work, and the company is a landlord of all leasehold properties (leaseholders are tenants), resulting in us being governed by a raft of legislation, for example: -

16.2. The Health & Safety at Work Act 1974.

16.3. The Regulatory Reform (Fire Safety) Order (RRO) 2005.

16.4. Work at Height Regulations 2005.

16.5. Electricity at Work Regulations 1989.

16.6. Gas Safety (Installation and Use) Regulations 1998.

16.7. The Building Safety Act 2022.

16.8. Construction (Design and Management) Regulations 2007.

17. Why is there £2,900,000 forecast for "health and safety" over the next 10 years?

17.1. This includes a 10-year programme to refurbish the lifts.

17.2. Historically, the maintenance of the lifts was categorised as Health & Safety, primarily as people could be trapped in lifts should they breakdown.

17.3. The extension of this principle is related to risk management and the avoidance of harm in the event of a total loss of service. Not just fear of injury but also the consequential impact such a loss of service might have on vulnerable tenants.

17.4. Refurbishing the lift motors mitigates the risk of a breakdown.

17.5. This is not driven by legislation. It is because of their mechanical and electrical components becoming obsolete making a repair or replacement impossible.

17.6. We may also reach a point where the insurers may refuse to provide cover.

Governing Instruments Questions & Answers

18. Why is the name of the company on the letterheads wrong?

18.1. The registered name of the company is "The Manor Fields Estate Limited", as detailed in the company's certificate of incorporation. This, along with the registration number appears in the footer of every letter issued by MFEL.

18.2. The letterheads contain the company's trading/brand information and therefore refers to itself in the slightly shortened version of Manor Fields Estate Limited (MFEL). This enables the consistent use of MFEL throughout our communications.

19. What can you tell me about the Trustee and the Trust Deed?

19.1. The Trust Deed was put in place on 8 December 1969, before The Manor Fields Estate Limited was incorporated in 1985. A copy of the deed should be provided to new owners during their purchase process by their own solicitor/conveyancer.

19.2. The current Trustee is Wood Group Trustees Limited, a Trust Corporation which means it has the relevant powers and necessary paid-up capital to fulfil that role. They are part of the Residential Management Group Limited, which deals with residential management, some of it in the social housing sector and some in the private sector. The ultimate holding company is Places For People Group Limited, a company limited by guarantee, which is a form of company that is used in the not-for-profit sector.

19.3. The Trustee acts as an independent and safe Custodian of reserve funds. It is not an active cash fund manager, and its permitted investments are strictly limited by legislation. Past instances of fraud on, or theft of, reserve funds suffered by other estates are in the public domain and reinforce the important safeguard that this role provides to all of us.

20. Has the board failed to supply the required Trustee's Surveyor's Certificate in accordance with the Trust Deed?

20.1. The Trustee's Surveyor provides a certificate to the Trustee every year when the Service Charge Estimates are produced. They certify that the expenditure detailed within the estimates are fairly and reasonably in the best interests of the leaseholders, that the type of expenditure complies with the Trust Deed, Lease Covenants, and any relevant regulations.

20.2. The Trustee's Surveyor, Richard Cleminson of Kinleigh Limited, has always certified the estimates in accordance with the Trust Deed, considering the long-term plan as circulated.

20.3. Historically, this has been done by signing the back of the hard copy estimate.

20.4. The board has acknowledged that this is an outdated method of certification and has put in place the creation of a Certificate which has been received for the 2022/23 estimate and will distribute it to leaseholders who requested it.

21. Has the board failed adhere to the Company's Objects (6.7) by failing to maintain a sinking fund?

21.1. The company has always, and continues to, maintain a reserve/sinking fund.

21.2. The company invoices and collects service charges that represent double the annual operating costs for the estate.

21.3. All funds that exceed these operating costs are reserves and may be considered a sinking fund where specific major projects are forecast into future years, for which these reserves are retained.

22. Has the board failed to audit the Lessor's accounts in accordance with the Trust Deed?

22.1. The board has consulted with the company auditors, Venthams (who now compile our accounts) whose advice is that the Lessor's accounts do not need to be audited to today's standards, and provided the following extract from the ICAEW Guidelines on the matter: -

22.2. Many leases contain requirements for service charge accounts to be prepared for each year and audited. The terminology governing annual statements of account, particularly in older leases, may be quite general, and auditing standards and practice have changed fundamentally since the Auditing Practices Committee was established by the Consultative Committee of Accountancy Bodies (CCAB) in 1976, leading to the publication of the first Auditing Standards and Guidelines in April 1980. The work effort required by current generally accepted auditing standards is unlikely to be what was anticipated when leases were drawn up, especially where the original lease dates back many years.

22.3. In practice, therefore, there is scope for the landlord or managing agent to consider whether the terms in the lease may be construed according to the meaning given to those terms at the time when the lease was drawn up. Whereas the term 'audit' in a lease made before 1980 would not have involved any particular procedures beyond those needed to assist in the preparation of the accounts, for an auditing professional or other qualified, practising accountant to state now that an audit has been undertaken requires the professional to follow generally accepted auditing standards.

22.4. The Trust Deed refers "…and have the same audited by a qualified auditor as defined by the companies Acts 1948-1967…" Any leaseholder wishing to see an extract of the 1967 regulations can request this and the board will happily provide it by email.

22.5. The board is reviewing how it reports its income and expenditure to leaseholders and plans to consider how it can be more transparent in the future.

23. Has the board failed to audit the MFEL Company accounts in accordance with the requirements of section 476 of the Companies Act 2006?

23.1. The board has repeatedly advised all shareholders that the audit of the company accounts is an unnecessary and disproportionate expense for the company, which has a turnover typically around £50,000.

23.2. Despite this, a group of shareholders retain the misplaced believe that by exercising their rights under section 476 of the Companies Act, they will uncover some misuse of leaseholder's funds. The company's funds are unrelated to the leaseholders' funds and the leaseholders' reserves.

23.3. To exercise these rights, such shareholders must deliver an authenticated section 476 request within the prescribed timeframe as laid down in the regulations.

23.4. It is not for the company to facilitate the validation or authentication process, especially when it is not in the interests of the company or the shareholders to waste money on an audit of a company turning over £50,000.

23.5. The shareholders complaining that we failed to comply in fact did not submit a valid request.

24. Has the board failed to register as required by law, the residential management company with the Property Redress Scheme and/or The Property Ombudsman?

24.1. Those schemes apply to estate agents, professional property management companies, and housing associations.

24.2. MFEL is a Residents Management Company (RMC), run and operated by volunteer non-exec directors.

24.3. As such, it is not legally required to register with a redress scheme.

25. Are the directors under criminal investigation by the Information Commissioner's Office, regarding the unlawful and deliberate dissemination of the unredacted "Grievance Report" regarding the Estate Manager?

25.1. It was the board who reported this unlawful act to both the police and the information commissioner's office (ICO).

25.2. The ICO closed the case siting insufficient evidence.

26. Why does the board not respond specifically to some leaseholders' criticisms levied at individual directors?

26.1. Directors are required to act, and accept responsibility, collectively. That is, they are required to act together as a unified board in an agreed manner and not take action unilaterally.

26.2. All directors have an individual duty to inform themselves on matters about which they may have concerns or strong feelings.

26.3. To facilitate this, all directors have access to shared technology services that enable them to do their own research and analysis. Opposing views may be and are presented at board meetings where dissenting votes may be minuted.

26.4. For these reasons, leaseholders identifying individual directors to blame for specific perceived failings are considered vexatious and, in accordance with legal advice and board policy, are not responded to.

27. Is the Market value of flats being damaged by the poor management of the estate?

27.1. We do not accept the suggestion that flat values here have fared worse than in the local property market generally. Property values fluctuate up and down in the short term but grow consistently over longer periods. Achieved sales values also reflect how individual flats have been maintained by owners. Flat values at Manor Fields are subject to the same external market forces as other estates. Similarly, there are property hikes. It is therefore not accurate to pick out a particular year against which to compare present values.

27.2. There are various individuals communicating comparisons of our estate's service charge levels with other blocks around London, stating there must be something wrong with how we are managing ours because other blocks pay similar fees and have the added benefit of leisure facilities and so on. None of those blocks can compare with the 3rd largest privately owned gardens in London with a network of private roads, our unique selling point, which attracts a completely different buyer.

Leaseholders' Meetings Questions & Answers

28. Why are some leaseholders muted during the leaseholders' meeting?

28.1. Historically, leaseholders' meetings have been held in person. These meetings have experienced very difficult situations where the board could not get important messages across about the progress of works on the estate because a few individual leaseholders would dominate the meetings, shouting and/or filibustering.

28.2. By holding these meetings online, all leaseholders can hear from the board without such interruptions and then have equal opportunity to ask questions at the end. These two-hour meetings allow for 45-50 minutes presenting and covering a few questions asked in advance and the remainder of the time for leaseholders' questions.

28.3. There is no legal obligation for the board to conduct these meetings, but we want to facilitate a more open and inclusive approach to managing the estate.

28.4. What most leaseholders want to hear about is what we are planning for the estate and looking forward.

28.5. It is an inappropriate use of this informal meeting to make specific complaints about individual directors, to complain about a personal matter that is under investigation, and/or to continue to attack the board. When this happens, and as advised in our invitation letter, individuals may be muted.

28.6. A lot of effort goes into preparing material for these meetings and we now distribute this to all leaseholders with the accompanying lengthy Q&A.

Yours sincerely

The Directors