

**DRAFT MINUTES OF WESTSIDE ONE RESIDENTS' ASSOCIATION HELD IN APARTMENT 62 WESTSIDE ONE, 22 SUFFOLK STREET, BIRMINGHAM, B1 1LS  
ON TUESDAY 23 OCTOBER 2007 AT 7.00 PM**

**Present:**

James Dunphy	JD	Chairman
David Barrington	DB	Secretary
Nicky Brain	NB	
Jason Goh	JG	
Noel McLoughlin	NM	
Ross Anderson	RA	
Ranjit Badesha	RB	
Ash Naik	AN	
Paul Hodson	PH	
Samir Desai	SD	
Amandip Lally	AL	
Dean Bowen-Tillsley	DBT	
Bim Patel	BP	

**Apologies were received from:**

Annie Liew	AI
Ben Jackson	BJ
Kathy Binns	KB
Karen Wilkins	KW
Garry Taylor	GT
M Harding	MH
Bob Greenwood	BG
T Sheehy	TS
Fal Naik	FN

- Welcome Address.** David Barrington opened the meeting by welcoming all leaseholders present to his apartment. He briefly explained the programme for the evening as set out in the Agenda that it would include the formal adoption of the Westside One Residents' Association (WORA) constitution, and the subsequent elections of committee officers.
- Before concentrating on the main business of the evening DB had prepared a short slideshow presentation entitled, "The past 5 years". This was well received and provided an informed insight as to the current state of affairs with the landlord (Wenghold Limited), their appointed managing agents (Estate and Management Limited, and County Estate Management Limited). The more important issues were outlined for later discussion and minuted below. A copy of the slideshow can be downloaded from the Association's web site at <http://westsideone.co.uk>.
- The meeting then focused its attention on the formal duty it had to perform concerning the adoption of the rules for the Association and election of committee officers.
- Adoption of Residents' Association Rules.** DB explained the draft rules for the Association had been duly promulgated on the WORA website with frequent references made to the formation and election of officers on the associated blogspot site. The draft rules had been a virtual copy of those provided by the Leasehold Valuation Tribunal (LVT) and were therefore properly constituted and acceptable to landlords and their managing agents. Adoption of the rules would in turn allow the leaseholders present to elect the officers, etc.
- The meeting discussed the requirement and merit in appointing an Honorary Treasurer at this time. It was felt that as the Association was presently without income or assets there was no mandatory need for such an appointment at this time but would nonetheless like to have the rules governing the Treasurer's position preserved so it could be evoked at a subsequent Annual General Meeting. Accordingly the rules of the Association were

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amended to show there was no present need for a Honorary Treasurer but that the rules would remain as part of the Constitution until evoked.

6. **Proposal and Decision.** It was proposed by DB to adopt the Westside One Residents' Association rules (also to be known as the Constitution) as amended and attached to minutes at Enclosure 1. The proposal was seconded by JD and on putting to the vote was unanimously carried by the meeting.

7. **Election of officers.** Following adoption of the rules, the meeting was required to consider nominations for the election of a Chairperson and Secretary. The duties and tenure of each post was explained. Nominations and the acceptance for a nomination were invited and subsequently proposed and seconded.

8. **Voting for the position of Chairman.** Two nominations for Chairman were recorded: Dr Jason Goh (JG) and Jim Dunphy (JD). JG thanked the leaseholders present for proposing him but due to professional commitment asked that another nomination be considered. JD thanked leaseholders for his nomination. His candidature was proposed by RB and seconded by JG. The vote for JD to be elected as Chairman was unanimously carried.

9. **Voting for the position of Secretary.** There was one nomination for Secretary. DB thanked the leaseholders present for nominating him as Secretary and hoped that he would be able to carry on the work accomplished so far on behalf of leaseholders. His candidature was proposed by JD and seconded by RB. The vote for DB to be elected as Secretary was unanimously carried.

10. **Decision.** It was agreed that the Secretary would write to the building's landlord and their agents to inform them of the above appointments and adoption of the Constitution. As CEM had previously offered to circulate correspondence on leaseholder's behalf they would be asked to distribute the minutes to all leaseholders. The formal elections having been decided, the meeting moved to the main agenda items.

Secretary

11. **Absent leaseholders, proxy leaseholders and current Association membership.** A further 13 leaseholders were recorded as absent but being represented by their elected proxy. This aggregated with the number of leaseholders attending the meeting, those offering their absence, and those agreeing to membership of the Association by correspondence, totalled an overwhelming 94% membership. The 6% represented those apartments currently subject to repossession, which would ultimately have a new leaseholder and thus be incorporated into the membership. There would be a requirement for the managing agent to inform all new apartment purchasers of the existence of the Residents' Association and to pass on the contact details of incumbent leaseholders when they change. The guideline for formal recognition of an Association by the landlord is to show a minimum membership of approximately 60% leaseholders. This had been achieved.

12. **Decision.** The Secretary was to write to the landlord and managing agent asking them to provide the contact details of new leaseholders whenever apartments were exchanged within the building.

Secretary

13. **Managing Agent's absence.** Louise Jensen (LJ) from County Estate Management (CEM) had been informed of the intention to convene a meeting of leaseholders but that on this particular occasion CEM would not be able to participate. It was reported that following the unilateral decision of CEM to cancel the residents meeting on 31 July 2007, several leaseholders had expressed their concern that it would be inappropriate to have CEM present before them at this meeting when discussing topics relating to the demand, payment, withholding of service charge, coupled with the plans for pending LVT determination and compensation claim.

14. **Matters Arising from the last meeting.** The following matters arising from the last Residents' Meeting held on 19 September 2006 were identified and discussed:

- a. **Residents' Association.** (Para 3.0 refers.) The minutes of the previous meeting reflected a clear wish that leaseholders wanted CEM to recognise the

Residents' Association. LJ had pointed out that officially, 60% membership of lessees needed to be registered for a certified residents association to be recognised, however, CEM would be happy to work with the residents and would acknowledge the current association. Since then leaseholders were repeatedly disappointed with the prevailing unproductive attitude the landlord and CEM had shown, especially their ambivalence and reluctance to accept the Association. The Secretary drew the meeting's attention to the measures taken in August 2007 to enable the landlord and CEM to formally recognise the Association. On 21 September 2007 the landlord (through their agent) had been served with the appropriate documents in readiness for pursuing an LVT application to issue a Certificate of Recognition in accordance with Landlord and Tenant Act 1985.

**Decision.** It was agreed, if required the Secretary was to submit an application for a certificate recognising a Residents' Association to the LVT.

Secretary

b. **Service Charges, Accounts & Finances.** (Para 4.0 refers.) LJ had previously informed leaseholders that the service charge arrears figure as of 31st December 2005 was £78,400.00. From CEM's correspondence with recent leaseholders, it was now believed this figure had escalated to £140,000 or thereabouts during the course of 2007. This later figure had been confirmed to NB by email on 23 June.

In September 2006 CEM had promised to obtain all accounting information from York Laurent in order to get the accounts properly audited and signed off by a certified accountant. LJ confirmed that CEM would prioritise this and keep residents informed of progress within 3 weeks. This was an unfulfilled and ambitious intention; the certified accounts for the year endings 2002/03,04,05 and 06 were finally distributed in August 2007.

With regard to the points raised by the Secretary in respect to Estates & Management (E&M) the freeholder and CEM comparing address information to establish correct address detail for lessees. Since the last meeting the Association had requested they be provided with the name and address of absent leaseholders in the pursuant of enfranchisement. It was noted that both E&M and CEM had declined to share this information with the Association and accordingly, therefore the legal right to enfranchisement was made impossible.

The Secretary had raised the issue of the £2,000.00 that should have been transferred to the Westside Account from KingsOak to contribute towards the work on the foyer. LJ had confirmed in the previous meeting that KingsOak had indeed submitted an invoice for the work on the foyer and had deducted £2,000.00 from the total bill. However, the omission of such an invoice or entry in the financial accounting records in respect to the amount, (and/or agreed repayment for the abstracted electricity it related to), has yet to be produced. As a result, the amounts referred to above must be considered as unpaid and KingsOak remain a creditor to the service charge account.

c. **Water Billing.** (Para 5.0 refers.) The Secretary had informed LJ that when the development was first set up each apartment had its own water meter and the concierge, for billing purposes, took readings. At the previous meeting it was agreed that CEM would revert back to this arrangement to ensure flat owners were paying for water usage rather than paying an estimated bill. LJ had been asked to progress this at the previous meeting. Since that meeting, CEM had done nothing in restoring the correct billing of water despite reminders. (Secretary's note: LJ admitted on 30 October 2007 that CEM had not liaised with Severn Trent Water, or even simply re-billed apartment owners with apportioned water invoices to cover the interim periods).

d. **Cleaning.** (Para 6.0 refers.) LJ had informed the last meeting that the window cleaning would be resumed in September 2006 as funds were now available. The obligation set within the lease agreement is for the window cleaning to be carried out bi-monthly. Leaseholders showed unanimous disappointment and anger that since September 2006, despite a clear promise, window cleaning had only been undertaken once.

e. **Out of Hours Service, Contact & Availability.** (Para 7.0 refers.) LJ had confirmed that a 24 hour emergency number would be in operation and confirmed that all correspondence received would be replied to. There were still reports that CEM staff had not responded to individual leaseholder letters or telephone calls.

f. **Maintenance & Insurance.** (Para 8.0 refers.) At the last meeting LJ had informed the residents that a Health & Safety (H&S) & Fire Risk Assessment (FRA) would be carried out in order to identify any health & safety issues at the development. A full maintenance report would be carried out and items considered being the responsibility of the builder to rectify, would be identified and brought to their attention. The H&S and FRA audits were both commissioned in October 2006 (ie one year ago). It was understood 17 of the 20 recommendations had been classed as Very High (immediate action) or High (risk to health and safety is substantial or worse and/or represents a serious contravention of legislation). The London office of CEM had confirmed it was their intention only to undertake items deemed essential but has as yet to action even those. Leaseholders raised their concern over the apparent neglect in rectifying some of the most important breaches of regulations brought to the landlord's attention, namely: no fire sounder located on all levels above the first floor.

At the last meeting LJ had said the redecoration of the internal communal stairwells would be carried out once the financial situation had improved. Since then, LJ had written to leaseholders and said the financial condition had improved. However, the redecoration of the communal areas had not been addressed.

g. **Freehold.** (Para 9.0 refers.) The residents requested clarification as to why there was no consultation between the lessees and the landlord in the appointment of the new managing agent following the departure of York Laurent. LJ had said the issues raised at the last meeting would be passed to E&M. This had not been actioned leaving the Secretary bringing the matter of freehold acquisition to the attention of E&M through the Rt Hon Clare Short MP. The matter of offering the correct notice for the disposal of the freehold to leaseholders was complex, presently ongoing, and required further discussion.

**Decision.** It was agreed the Secretary was to pursue the issues relating to the disposal and acquisition of the freehold, and that same should be included as an agenda item at the next meeting.

Secretary

h. **Resident Representative.** (Para 10.0 refers.) At the last meeting the leaseholders agreed that "DB had done a great job in taking up the issues relating to the running of the building", and it was agreed for him to continue liaising with CEM to obtain satisfactory results. It was decided that LJ and DB to meet again on a regular basis. Since the previous meeting the Secretary reported he had experienced a growing reluctance for CEM to want to maintain a meaningful and fruitful dialogue with the Association on matters concerning all owners. Leaseholders wished to correct the last meetings minutes to say that LJ had **actually promised** to visit the building on her fortnightly visits to Birmingham. Leaseholders were disappointed and angry this arrangement had not been complied with as agreed.

**Decision.** The Secretary was to write to CEM in order to convey leaseholder's concern over CEM's considerable lapse in communication and service.

Secretary

15. **Identification of major area/issues.** The leaseholders (and/or their proxies) had identified the following areas of concern:

a. **Door frames, communal architrave.** Leaseholders were concerned that no action on the part of the landlord had been taken in referring the latent building defects to KingsOak Homes Limited (the construction company who had refurbished Westside One). NHBC governing the quality of materials and construction stipulates that apartment entrance doors (denoted as a fire door) should not have architrave or doorframe gaps in excess of 3 mm. The contractor would be obliged to correct and repair such latent defects.

b. **External cleaning of the building and access to car parks.** Leaseholders were concerned with the present disrepair of the external building. Westside had been abused over the many years of adjacent construction site redevelopment. The Secretary explained that previously Sisk & Sons Limited, builders of West 2 had made good their building mess on leaving the site. The Association writing to Sisk & Sons and requesting they clean the parts of Westside their workforce had dirtied achieved this. The Secretary had asked CEM to contact Crosby Lend Lease and DBK Back in respect to the ongoing construction, abuse and cleaning of Westside's exterior. (Secretary's note: LJ asked Secretary on 18 October to provide contact details for contractors of Edwards No.8 to enable her to request unhindered access for residents during construction).

c. **External wooden cladding deterioration.** The cladding had continued to deteriorate. This was more obvious in areas surrounding the Westside One signage. Several leaseholders, absent and present at the meeting, were clearly angry that CEM had done nothing to rectify the appearance of the building.

d. **Edwards No.8 nightclub.** The Secretary reported on the successful progress made in the decision to relocate the side entrance to Edwards No.8 nightclub from Lower Severn Street to John Bright Street. These had been accomplished with the help of Ladywood Ward Councillors and direct liaising with DBK Back. Following letters from the Association, the Secretary had attended a construction-planning meeting with all parties whereby residents views and objections were voiced.

e. **Fire precautions, evacuation planning and procedure.** Following the discussion and points mentioned in Para 14f residents were concerned over the inadequate fire alarm system and poor emergency evacuation planning that existed within the building. Several leaseholders considered this as being the most important issue of the whole evening. The meeting felt there was an overriding legal responsibility for the landlord to address this problem.

f. **Service level agreement.** Leaseholders were concerned the managing agent had not made it clear what it was that their cleaning contractors, concierge, maintenance team did, how often and to what satisfaction level. No service level agreement had ever been agreed and as a result, individual performance was difficult to measure. (Secretary's note: The cleaning contractor workforce has confirmed that they have not been provided with any schedules of work and are not entirely sure what it is they are supposed to be cleaning.)

g. **Managing agent point of contact and complaints procedure.** There was a concern that leaseholders were finding it difficult to speak with CEM on matters relating to the lease, service charge and services provided. Leaseholders reported that one member of CEM staff was often rude and unprepared to accept justifiable criticism levelled at CEM. Leaseholders agreed, CEM had a difficult task in getting in unpaid service charge but where it was being withheld on a proper legal basis then rudeness was unmerited.

h. **Car parking and Birmingham City Council resident's parking permits.** Residents without designated parking bays within the building continue to experience considerable inconvenience and difficulty in negotiating a fair and realistic price for off-site parking. The Secretary said he would continue to bring this to the attention of the Ladywood Ward councillors and City Centre Neighbourhood Forum. Birmingham city council were looking into the feasibility of using and keeping open the "Birdcage" car park on Navigation Street 24hrs a day. At a recent public meeting in the city it was felt that managing agents could collectively help through stronger proactive initiatives to ease the off-site parking hardship, possibly through the joint negotiating of special long-term parking fee rates with firms like NCP, etc.

i. **The operation, reliability of upper and lower roller shutter door 'zappers'.** Residents were still experiencing difficulty in operating the roller shutters

with the electronic zapper. Users were advised to drive their vehicle past the lower ground car parking roller shutter by 2 m and then point the zapper at the receiver. In the majority of cases, though not ideal and inconvenient, this allowed the proper functioning of the gate.

j. **The Concierge, his duties and employment.** Leaseholders present were concerned to learn about the poor physical working conditions the concierge had to endure. Only recently had the water supply to his toilet been rectified enabling the toilet to flush and that for almost 2 years he had been forced to use the bathroom facilities of empty apartments. Sometimes this had not been possible and he had been required to leave the building and find a public facility. The meeting was further concerned that even today his bathroom is still without a supply of hot water - despite repeated requests to CEM to have the electric boiler repaired. The concierge's conditions of service and employment contract were discussed. It was understood the concierge was directly employed by CEM and ultimately his wellbeing and safety at work was their concern but leaseholders were mindful of the terms of his employment, poor facilities, failure to promulgate employer's liability insurance and CEM's inability to pay him on time in the agreed manner.

16. **Decisions.** It was agreed that the Chairman would speak with the Concierge to reassure him the Association had his interests at heart and that it would be doing everything in its capacity to regularize his conditions of employment.

Chairman

17. It was agreed the Secretary would write to the landlord and managing agent separating the many issues discussed within the meeting into what is achievable with and without drawing upon the service charge fund.

Secretary

18. It was agreed the Secretary would write to the landlord and convey leaseholders concern that they were treating the building's concierge in such a despicable and Dickensian manner.

Secretary

19. **Leasehold Valuation Tribunal (LVT) referral and determination.** The meeting discussed the potential routes to gaining LVT determination on matters of service charge, variation of lease, the right to manage the building (including enfranchisement) and/or the appointment of a new managing agent. It was felt that leaseholders had received an unacceptably low service and perhaps the only recourse was for the Association to seek collective LVT determination on contentious matters.

20. The Secretary expanded on the recent LVT determination where Bank Chambers Residents Association had challenged the liability of its members to pay various service charges, as well as the reasonableness of those charges. The position had been complicated by the inability of the Respondent to produce invoices for the works, which it claimed, were done. For the period 2001-2004 the LVT reduced the service charge liability by almost £170,000. On closer scrutiny of the case detail, there was a striking resemblance to Westside.

21. **Plan of Action, calculating quantum and actual loss.** The leaseholders present at the meeting felt there was a high level of mistrust existing between the freeholder, managing agent and individual leaseholders. They recognised a conflict in freeholder/managing agent interests, particularly as Solitaire residential management, which seemingly had vested controlling interests in both E&M, Wenghold Limited, had acquired CEM during the course of this year. Westside in some eyes was regarded purely as a "cash cow". The meeting was mindful of the constant posturing of personalities and sometimes the inability of two parties to communicate at the right level. This would have to be overcome in order for real progress to be made - one that would ultimately lead to a mutually satisfactory outcome. Moreover, for any plan to succeed then all parties would have to buy in to the negotiation and joint management process. The meeting felt that it was imperative that landlord, leaseholders and managing agent met soon. Clear unambiguous goals required setting - parties must know what it is that each wanted from one another, and how in realistic terms this could be achieved.

22. Leaseholders were mindful of their financial loss. It would be important to include schedules of actual known and recorded losses where service charge had been levied but

the service not provided. The Secretary referred all leaseholders to the Association's website where the details of known and emerging questionable charges had been made available. (The source of which related to the inspection and copying of accounting material held by CEM on 21 September 2007).

23. **Obtaining legal and professional advice.** Leaseholders at the meeting were determined to identify and calculate the actual financial loss they individually/collectively incurred. The Secretary reminded the meeting that this would be a massive undertaking and would more than likely have to be coordinated by a professional firm, possibly on a no win, no fee basis. It was suggested that an approach to a firm of solicitors or accountants specialising in residential management law at this stage would be a good idea. The meeting agreed it would be useful to approach a number of legal firms to gain advice before it next met.

24. **Decision.** It was agreed that the Secretary and NB would investigate how best leaseholders interests might be professionally managed and to what arrangement legal advice could be obtained on a fixed or no win, no fee basis.

Secretary  
and NB

25. **Any other business.**

a. **Venue for the next meeting.** RB informed the meeting of the Centenary Plaza conference facilities which could be used for the next meeting. The Secretary thanked him for his kind offer and would liaise with him when making future meeting arrangements. The Secretary explained the Association still had the opportunity of holding the next meeting at the Birmingham Ramada conference suite, and this would include free refreshments to attendees.

b. **The Association's relationship with sub-tenants.** The meeting discussed the way in which tenants (ie those on short term leasehold agreements) could be made to feel more a part of Westside One. It was pointed out this could benefit the building in many ways, particularly in reducing damage and litter within the communal areas. It was felt that tenants could be made to feel more included by possibly a managing agent taking the initiative to issue "welcome packs" to new occupants. The Concierge could dispense such packs. It was reported this had been achieved successfully in other city centre apartments.

26. **Date of the next meeting.** It was decided to hold the next meeting of the Residents' Association before the end of 2007. It was decided the Secretary would canvas the best date for the next meeting and make arrangements to issue an agenda.

Secretary

The Chairman thanked all the leaseholders present for attending. In the absence of any other business the meeting closed at 9.45 pm.

Jim Dunphy  
Chairman Westside One Residents' Association

Signed and Dated: