

Summer 2013

ASTBERRYS

Newsletter

We are letting and managing agents for individual flats and blocks of flats in Kensington and Chelsea. We also sell properties within the Borough. We carry out all building works, refurbishment and maintenance of flats and blocks, which we manage. We offer in-house legal advice on all aspects of the property acquisition, letting and management.

We are members of the Association of Residential Letting Agents and we are authorised as an appointed representative by the FSA to conduct insurance mediation activities. One of our directors is a lawyer.

Our regular Newsletter covers areas of interest concerning the management and legal aspects of property, the sales and letting markets.

MORE CHANGES TO THE LAW RELATING TO MAJOR WORKS AND SERVICE CHARGES. MUCH NEEDED HELP FOR FREEHOLDERS AND MANAGING AGENTS

In our last bulletin, go to www.astberrys.co.uk and click on the Spring 2013 Newsletter, we commented on the case of **Phillips v Francis**. **This case appeared to make life very difficult for freeholders and managing agents**. It suggests that each time any works to a building are undertaken in any service charge year, then the freeholder or his managing agents would have to serve notices and go through the statutory consultation process no matter how small the sum involved. Before this judgement it was understood that the consultation process only applied in cases of expenditure over a sum calculated by reference to a statutory formula. The formula is £250 multiplied by the number of flats in the building, so in a block with 10 flats the consultation process is engaged in respect of all expenditure over £2,500 including VAT.

For a summary of the **statutory consultation** process itself go to www.astberrys.co.uk and click on the Newsletter for January/February/March 2011. **In brief, the process requires a freeholder to:**

- **Send a notice to all flat owners setting out the proposed works to the building and why they are needed**
- **Obtain quotes from any contractors nominated by any flat owner**
- **Summarise those quotes in a second notice and send it to all flat owners**
- **In certain circumstances give reasons for choosing one contractor as opposed to another**

The average time scale for this procedure is about three months. As a procedure it makes perfect sense for major expenditure, such as a new roof, redecorating the exterior or installing a fire alarm system. Flat owners, who are paying for major works to their building through their service charges, clearly have the right to be consulted before large sums are spent. However, the delay and expenses associated with the consultation process make no sense at all in cases, where a freeholder needs to spend a few hundred pounds or less fixing a broken banister, replacing some cracked tiles or repainting a wall. **Nevertheless, Phillips v Francis appears to have decided that the consultation process applies to all works in any service charge year irrespective of cost. In the wake of the judgement freeholders and managing agents were left in the unenviable position of either having to go through the consultation process in respect of minor works or risk being in breach of law.** The consequences of such breach are serious. To learn more go to www.astberrys.co.uk and click on the Newsletter for January/February/March 2011.

Now, in another very recent decision, the Supreme Court has come to the rescue of freeholders and managing agents, who were staggering under the burden of having to administer the consultation process for minor works.

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CAMPDEN HILL GARDENS, W8



COURTFIELD GARDENS, SW5



EARLS COURT SQUARE, SW5



HOLLAND PARK AVENUE, W11



LEXHAM GARDENS, W8



NEVERN SQUARE, SW5



BLOCK MANAGEMENT

We manage blocks at all of these addresses and at many others in Kensington and Chelsea. Astberrys are experts in block management. We only operate in Kensington and Chelsea and we are never more than 15 minutes drive away from any block we manage.

We offer:

- Service charges and ground rent collection in accordance with the lease and relevant legislation
- Administration of the “major works” process
- Company secretarial services for any freehold company owning a block we manage
- In house legal advice on all aspects of Landlord & Tenant Law
- Insurance mediation services
- In house maintenance for electrical, plumbing and most other work
- Insurance valuation and risk assessment

If you are a freeholder and you are looking for block management services please telephone on 0207 370 0123 or email us at business@astberrys.co.uk

In the case of *Daejan Investments Ltd v Benson* the freeholder had carried out expensive major works and had not correctly followed the statutory consultation procedures. The flat owners were refusing to pay for the works. The Supreme Court overruled the decisions of the Court of Appeal and the tribunals and granted the landlord dispensation from following the strict terms of the statutory consultation process. The Supreme Court decided that there is no justification for treating the consultation process as an end in itself and that the freeholder, on the facts of the case, was absolved from the full consequences of having failed to follow the consultation process. The sole question for determination will usually be - is there real prejudice to any flat owner flowing from the freeholder’s breach of the consultation process? Dispensation should not be refused even in cases where the landlord seriously breached or departed from the consultation process.

The Supreme Court explained that the consultation process was intended to reinforce and to give practical effect to Section 19 (1) of the Landlord and Tenant Act 1985. This legislation allows a flat owner to challenge service charges if they are for works which were not necessary and/or not carried out properly and/or too expensive. For a discussion of this area, please go to www.astberrys.co.uk and click on the Newsletter for Autumn 2012.

The Supreme Court further explained that it would be for the flat owners to show the prejudice that they suffered or might have suffered. The judges considered that prejudice should be given a narrow definition.

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EXAMPLES OF RECENT SALES



Onslow Square, SW7

Unmodernised 2 bedroom flat on the second floor of a modern block. No garden view.

Sold by Astberrys at £1,600,000 within 4 weeks.

£1,600 per ft²



Penywern Rd, SW5

1 bedroom basement flat in need of total refurbishment.

Sold by Astberrys at £385,000 within 7 days

£715 per ft²

The skill is in the valuation and marketing. To talk to us about valuing and selling your property please email us at business@astberrys.co.uk or telephone 0207 370 0123.

Our commission is banded and calculated as a percentage of the selling price as follows:-

Up to £500,000 - 1.5% commission plus VAT

Between £500,000 and £1 M - 1% commission plus VAT

Over £1 M - 0.75% commission plus VAT

This means that when there is a failure to comply with the consultation process, the flat owners will need to demonstrate that the freeholder caused or may have caused them financial loss. They will only be able to do this if they can successfully argue that the freeholder incurred costs unnecessarily or in an unreasonable amount or that the works were not carried out to a reasonable standard.

There may still be problems for some freeholders. They must still follow the statutory consultation process in respect of works over the statutory limit, which will vary from building to building. However, in relation to minor works it may now be far safer to proceed without complying with the procedures. As long as the repair to the banister was necessary, properly carried out and cost a reasonable amount, it is unlikely that a flat owner will want to complain to the LVT (the initials of the Tribunal in which most disputes between freeholders and flat owners are litigated). Even if he did, it is unlikely that the LVT would penalise the freeholder. The flat owner in such circumstances would probably fail and have to bear his own legal costs at least.

The facts of each case are important and the statements of principles above should not be relied upon in relation to any particular service charge dispute. Please contact us if you would like advice with any particular problem that you may have.

At Astberrys we are experts in the management of service charge regimes and one of our directors is a lawyer. We enjoy excellent contacts with surveyors, solicitors and accountants who specialise in block management. We have our own maintenance and building team with direct links to specialist sub contractors, but we are also more than happy to work with contractors of your choice.

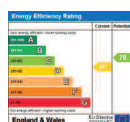
We only manage blocks in Kensington and Chelsea, never more than 15 minutes drive from our offices and we provide a fast and effective service.

We have blocks under management in Holland Park Avenue W11, Campden Hill Gardens W8, Lexham Gardens W8, Earls Court Square, Nevern Square, Courtfield Gardens SW5, Lennox Gardens SW1 and many other locations within the Borough.

To talk to us about block management contact us on 0207 370 0123 or email us at business@astberrys.co.uk

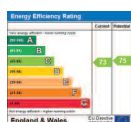
CURRENT PROPERTIES TO LET

Philbeach Gardens, SW5



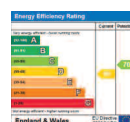
**3 bedroom flat with 2
reception rooms
115 m²
£825 per week**

Marloes Road, W8



**3 bedroom flat
with 2 terraces
90 m²
£760 per week**

Harcourt Terrace, SW10



**2 bedroom flat
with patio
95 m²
£550 per week**

**To talk to us about letting and managing your property please telephone us on
0207 370 0123 or email us at business@astberrys.co.uk**

MARKET UPDATE

SALES

In the 4 years to December 2012 prices of property in prime central London have risen by an average of nearly 43%. This growth has not been uniform. One of the interesting variations is between new build and period properties. The new developments, so sought after by non European buyers including Academy Gardens in Kensington, have not fared as well as period properties. The best performing modern development gained only 33% in the same period and in some modern developments prices even fell. The cachet of an individual and unique period property not being marketed along with many similar properties means that “old is better than new”.

Meanwhile the rise in prices for prime central London for the first six months of 2013 is currently standing at around 8.5%. Will this growth continue? We think so, but the market is vulnerable to a withdrawal of investor interest. If London is no longer seen as a safe and fashionable place to buy property, prices will fall. The rise in stamp duty on purchases over £2M and the attacks on companies owning property are straws in the wind. A Labour government, likely to be elected in 2015, might be far more radical and this prospect coupled with the present trend of “banker bashing” might make for a change. No market moves up in a straight line. **There is already some evidence that purchasers will not pay inflated prices for “flipped” developments on busy roads, in basements or with other drawbacks.** On the other hand there is no immediate sign of any significant interest rate hike and in any event many properties in Kensington and Chelsea are purchased mortgage free. **Finally, there is a firm trend established for at least 50 years - prices in prime central London double at least every 10 years. Nevertheless, a pause is quite possible.**

RENTALS

It is estimated that about 100,000 have now been made redundant in the City in the 5 years to December 2012. There will be at least another 10,000 redundancies this year. On the supply side there continues to be an increase in flats coming onto the market. **This reduction in the number of tenants and increase in the number of properties has translated into weaker rents, especially for the larger properties.** Void periods are also increasing. Rents have fallen generally and the bigger the flat the greater the percentage price reduction. As always in a downturn rents are holding up better for studios and one bedroom flats. On average we are seeing price drops of around 10 to 15% from the rental levels achieved between 12 and 24 months earlier for the same property. Above all it is the professional landlords who are doing best in this market. Properties need to be well presented and benefit from good after contract maintenance service. **Landlords who do not follow these recommendations are finding that their tenants are not renewing, their flats are taking even longer to let and are being let at the lowest rents. There is a great deal of choice especially amongst the larger and more expensive homes.**



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