

Winter 2013

ASTBERRYS

Newsletter

We are letting and managing agents for individual flats and blocks of flats in Kensington and Chelsea. We will also let to you our own properties. 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 letting business and property law. We also carry out valuations and property sales.

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 barrister.

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

BALCONIES AND TERRACES, A FREQUENT BLOCK MANAGEMENT PROBLEM

Many flats have balconies, terraces or flat roofs to which access is only possible through that flat. Questions of ownership, the right to use these areas and liability for repair or damage are ones which constantly arise in many blocks of flats we manage. There are no straightforward answers to the questions posed by this common and often very unsatisfactory arrangement.

The starting point is always the exact wording of the lease. If the area is “demised”, then there is usually no problem relating to use of the outside space. The word “demised” simply means, “granted” or “given” and is a legal term used to describe an area, which is included in any leasehold property. How do you find out whether or not an area, joined to the flat and accessed exclusively through it, is or is not demised? The answer lies in the wording of the lease. Sometimes the lease is very clear and specifically states that any contiguous outside area is included in the lease of the flat. Often however, the lease is unclear and it may be necessary to look at the whole of the lease and in particular those clauses, which deal with the responsibility to pay for the repairs of the outside area and/or the right to control the use of the outside area. These clauses will give clues as to whether or not the space is demised. The plan which accompanies the lease usually delineated in red, may also be of some help, but it is not definitive. Finally, it may be necessary to see whether the leaseholder has established any claim to the outside space by long and uninterrupted use.

If the outside space is not demised, then the flat owner may not use it, unless the freeholder agrees to demise the space or allows the flat owner to use it. In either case this may be subject to payment and/or conditions.

Assuming the outside space is demised to the flat then the owner will be able to do what he likes with it, subject to any other provisions in the lease restricting use. For example, the flat owner may wish to place plant pots on the terrace. However, even if the area is demised to his flat this may not be permitted by the lease.

The question of responsibility for repairs frequently creates difficulties. This is especially the case in relation to roof terraces. Often leases are unclear concerning the depth of any demised roof terrace. A typical lease might demise only the inner covering of the ceiling to the flat. Sometimes the lease goes further and demises to the flat the nearest half of any beam or joist above. Who is then responsible for the area above, either the ceiling or the upper half of any joist, but below the roof terrace covering? This will depend on the exact wording of the demise of the roof terrace. To what depth does the demise go? It is quite possible to have a situation where the flat owner's and freeholder's responsibilities are in the form of a sandwich! The flat owner is liable for repairs to the upper and lower sections but the freeholder is responsible for the area in-between the ceiling of a flat and the surface of any roof terrace.

Other problem areas include terraces at first floor level, especially over front door porticos and also at second floor level, especially where any terrace is directly above the bay window of the first floor flat. Leaseholders often wish to use these areas to sit out on and on which to place tubs and pots filled

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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

with earth and plants. Assuming the area is demised and also that there is no clause in the lease or regulation made under the terms of the lease prohibiting such actions, then the flat owner may place furniture and pots on the terrace. However, the cost of the upkeep of surface of the terrace and/or of any beams or reinforcement underneath may be one for which the freeholder is responsible. It will all depend on how the lease is drafted. **Where the freeholder is a company in which all the leaseholders have shares such an arrangement often gives rise to problems.** Many leaseholders (who do not benefit from any outside space accessed through one flat alone) object to paying for someone else’s private terrace. They also complain about paying, through their service charges for the inevitable damage to any surface (especially to asphalt) caused by the weight of water sodden pots or sharp metal chair legs. In addition, soil and plant debris are the frequent cause of blocked hopper heads and gutters. And even if the lease makes the flat owner responsible for the maintenance of the terrace, what happens if he does not ensure that it is kept clean and watertight? It may well be that he is responsible for any damage to the portico or flat below. However, he is also frequently a neighbour, living in your building and somebody you see on a regular basis. The freehold company may be entitled to sue for any damage caused to the common parts but will it in such circumstances? **On the question of freehold companies and building management generally go to www.astberrys.co.uk and click on the Newsletter for February/March 2010.**

Astberrys are used to dealing with this type of problem. One of our directors is a barrister. By using us you and other members of any freehold company are placed at a distance from any other member who may not be behaving correctly in relation to his use of outside space. When we act as managing

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agents for any block of flats we will always help you work out if an outside area is demised, if its use is subject to restrictions and who is responsible for its upkeep and the areas immediately below. If legal action is necessary we may conduct it for you ourselves in the Leasehold Valuation Tribunal (where most disputes about leases are heard) or instruct a barrister directly without the need and expense of using a solicitor. Above all we are able to give you the benefit of our experience of problems relating to outside space and leases generally.

These are the basic guidelines we have found helpful in promoting good block management in this difficult area;

If the outside space is demised,

- **The exact extent of the demise must be established.**
- **The owner of the demised outside space needs to ensure that it is kept in good condition or if the responsibility rests on the freeholder, then he (or the freehold company) must do the same.**
- **If there is a failure to keep to this rule, which results in any damage to the common parts, then the person at fault should pay.**
- **Covenants in the lease, if any, prohibiting the placing of plants and furniture on outside space should generally be enforced or a written undertaking secured from the flat owner making him responsible for any damage to the surface, the structure below and the rainwater goods and drains.**
- **If there is no covenant but the lease allows regulations to be made to the same effect, then the freeholder should consider making the same.**

If the outside space is not demised,

- **Consider demising it. Most flat owners will be delighted to be able to include any outside space within the title to their flat. It increases its value.**
- **As a condition of the demise a clear clause should be inserted in the lease setting out the exact depth and extent of the demise. It should also make the flat owner responsible for the upkeep of the outside space and any damage to the structure below in case of breach.**
- **In addition, it may be possible to ask for payment from the flat owner for this extra space. However, even if this is neither possible nor desirable the building will have benefited. The owners of all the other flats will no longer have the burden of paying for the upkeep of an area, which is used exclusively by one flat owner.**

Of course every lease and building is different and any of the above guidelines may not be appropriate for your building. To contact us about block management please email us at business@astberrys.co.uk or telephone 0207 370 0123.

MARKET UPDATE

SALES

Since the Budget in April, sales of properties at between £2M to £5M have fallen by around 20%. The increase in stamp duty is not the cause, although it has not helped. For several years now, the sales market in Kensington and Chelsea has been characterised by a very low volume of transactions. This has kept prices high. About half of all property in the Borough is owned free of any mortgage, interest rates are low, yields are respectable in comparison to other perceived “safe assets” and the prospect of further capital growth, especially in the long term, remains. As a result **few people either need or wish to sell and some people, especially from abroad, either need or wish to buy.** These factors explain both, the continued upward drift of prices and the paucity of transactions.

Will this continue into 2013? We think so. The economic climate in 2013 is unlikely to be very different to 2012. The housing market in the Borough will follow suit. What has happened since 2009 has been unprecedented. Between the autumn of 2007 and the spring of 2009 according to the Nationwide house prices in the UK, including London, fell about 20%. From the end of 2009 to the end of 2012 however, London has experienced a rise of around 25% and the rest of the country around 9%. The house price rise in the Borough during this period has been even greater at up to 40%. The pressure from the “super rich” (go to www.astberrys.co.uk and click on the Newsletter for Summer 2012) to own property in Knightsbridge

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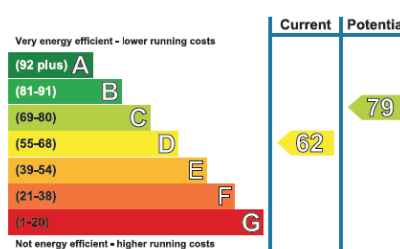


INVESTMENT OPPORTUNITY

Approximately 540ft² (50m²) totally un-modernised basement flat in Penywern Rd, SW5, near Earls Court underground station. Own entrance through common parts. Suitable for re-development and re-sale or letting.

Guide price £385,000

Energy Efficiency Rating:



and Kensington has displaced the merely “middle class rich” west - towards Hammersmith and south - towards Fulham. In turn, prices have risen here according to the usual law of supply and demand.

What could change all this is a Euro collapse. This would make prime property abroad look so ludicrously cheap that many will cash in their sterling assets here and buy there. **The other factor to watch is an improvement in the global economic situation.** This is unlikely to occur in 2013 but one day it will and when it does, why will the “super rich” want or need to lock up money in a Knightsbridge flat? And when they come to sell, the downward pressure will be felt across the market, transaction numbers will rise and just possibly the “ordinary middle class” will be able to afford a flat in the western part of the Borough! **But for now we expect 2013 to be much like 2012.**

RENTALS

The market is characterised by an oversupply of properties, especially the more expensive ones. Reductions in price of 20% are quite normal in property previously let in 2011 at £1,500 per week upwards. **We expect rents across the board to fall in 2013. However, the small, but well appointed flats will sustain the lowest percentage drop, if any.**

The number of jobs in the City is forecast by the Centre for Economic and Business Research to fall during 2013 by about 5% or around 12,000 to 237,000 and then stabilise at near that level in 2014. (By way of comparison the 2007 figure was 354,000). **The Kensington and Chelsea letting market is highly dependent on demand from foreigners employed in the City. The 5% drop in potential demand will be felt by Landlords, who will need to ensure that their properties are updated and fresh if they are to compete for the reduced demand.**



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