

ALTERATIONS AND EXTENSIONS TO FLATS: CAN FLAT OWNERS DO AS THEY WISH? WHAT ARE THE RIGHTS AND OBLIGATIONS OF THE FREEHOLDER?

It is a common source of tension, and even litigation, in a building when flat owners wish to carry out works to their flat. In fact, the rights of flat owners in a building as well as those of the freeholder are clear and well defined.

The first question to ask is: What works does the flat owner wish to carry out? There is a fundamental difference between proposed works to your own flat or other part of a building demised to your flat, like a garden or terrace, and proposed works which also involve common areas or other parts of a building. These non-demised parts do not belong to the flat owner. The law is very clear: You cannot, without permission, carry out any work on parts of a building that are owned by the freeholder or any other flat owner.

The second question, therefore, involves looking at the lease and asking: Are the proposed works to the flat owner's own property or do they involve work to areas which are not demised? For example, the owner of a top floor flat may want to put in a skylight. However, unless the lease of his flat demises the roof to him – an unlikely provision, he cannot do so. The roof belongs to the freeholder. The freeholder may agree to the addition of a skylight unconditionally. Alternatively he may agree only on the condition, that the flat owner pays money for the right to install the skylight, and/or takes over all, or part of, the responsibility for maintaining the roof. **This is all a matter of negotiation between the two parties. If they can agree terms, or the freeholder does not want to impose any, then works may go ahead. However, if the freeholder refuses, or the parties cannot agree terms, then the works may not be carried out.** The flat owner has no right to cut a hole in the freeholder's roof and install a new skylight. It does not make a difference, if he is a member of the freehold company he still requires permission. Otherwise, the flat owner may be committing an act of trespassing, and even criminal damage.

The position is **different if all the proposed works are to the flat owner's own property.** In such a case what he may, or may not, do will be set out in the lease. **Broadly speaking, there are three clauses that commonly appear in residential leases, and which govern the flat owner's right to make changes to the flat.**

- **An absolute prohibition against carrying out any works on a flat.** Such clauses are very rare, but they do exist. In such circumstances, the flat owner is in the exact same position as if he wanted to carry out work on property owned by the freeholder, (see above). For example, he may want to knock down an internal wall to make two rooms into one. However, if there is an absolute prohibition against any alterations, then he simply cannot. He must ask the freeholder for permission. The freeholder may or may not grant it, with or without terms. If the flat owner goes ahead without permission, the freeholder may be able to force him to re-instate the flat.
- **No prohibition at all against any works.** If the lease does not say anything about the need to obtain the freeholder's consent for works, then the flat owner may do as he pleases. This is subject to the service of Party Wall notices, (see below). The absolute right to do as you please within your own flat is rare, almost as unusual as being subject to an absolute prohibition.

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CAMPDEN HILL GARDENS, W8



COURTFIELD GARDENS, SW5



HOGARTH ROAD, SW5



HOLLAND PARK AVENUE, W11



LENNOX GARDENS, SW1



LEXHAM GARDENS, W8



NEVERN SQUARE, SW5



REDCLIFFE GARDENS, SW10



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- Administration of the “major works” process
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- **Works permitted, but the freeholder’s consent must first be obtained.** These are the most common clauses that are found in leases. They should be read carefully; they are all different but they usually draw a distinction between structural and non-structural works. The lease typically allows non-structural works to be carried out without the freeholder’s prior permission, but stipulates that permission is required for structural alterations.

How do you know if a proposed alteration is structural or not? In many cases this will be obvious. The removal of a load-bearing wall would be structural. The removal of a stud partition would not be. However, it is wise to obtain the advice of a chartered surveyor before making any decision. A flat owner may need such advice for all but the simplest alterations. May the freeholder refuse permission? No, unless there is good reason to do so. Often the lease will state that the permission is required for any structural and in some leases even non-structural alteration, but also that the freeholder may not unreasonably refuse or delay consent. Even if a lease does not explicitly say so, section 19(2) of the Landlord and Tenant Act 1927 implies these words into all leases.

On what grounds could a freeholder reasonably refuse consent to a structural alteration? The most obvious and cogent ground of objection would be technical: the alteration is not safe, or would in some way compromise the building and/or other flats. It may also be possible to object on grounds that the alteration would have a harmful effect on other flat owners. For example, the simple reconfiguration of an existing flat by reversing the layout and placing a living room where a bedroom had been, or building a kitchen in a living room, could have implications. Noise, nuisance, and smells for the neighboring flat owners above and below might increase and so the freeholder might be justified in refusing consent.

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May the freeholder ask the flat owner to pay money in order to obtain consent? No. Otherwise, however unreasonable his objection, the freeholder could always prevent an alteration by demanding an exorbitant payment for consent. Section 19(2) of the Landlord and Tenant Act 1927 does not permit a freeholder to behave in this way. Nevertheless, the section does allow a freeholder to demand, as a condition for consent, that the flat owner pays the fees of his own chartered surveyor and structural engineer where appropriate to supervise the works. The flat owner also must pay the fees of the freeholder's solicitor who will draw up the licence for the works. If consent is required but not obtained or reasonably refused by the freeholder, yet the flat owner still goes ahead, the freeholder may force the flat owner to re-instate the premises. Furthermore, it is very difficult to sell a flat, that has undergone alterations, without a licence. Any solicitor, acting for a purchaser, is likely to advise against buying a flat without such a licence.

What about the Party Wall Act? Most leases say nothing about this. However, many leases stipulate the need to comply with all statutory requirements when carrying out alterations. The requirements are rarely listed, but they will typically include matters related to planning, building control, and party walls. Even if the lease specifies what is required, any well-drafted licence for alterations will also refer to these matters. In all but the simplest renovations, the need to serve party wall notices should be carefully considered. They may have to be served on any other potentially affected flat owners in the building or adjoining buildings. It may also be necessary to serve the freeholder, and perhaps even the freeholder of an adjoining buildings. It is worth remembering that a wall or ceiling (party walls may be horizontal as well as vertical) are often owned in part by a different flat owners, and/or the freeholder.

What about building insurance? If the proposed alterations are structural, especially if located towards the bottom of the building, and/or involve welding, the insurers of the building need to know. They are very likely to impose conditions and/or reduce or alter insurance cover depending on the nature and duration of the works. Much will depend on the type of policy held by the contractor carrying out the works. The licence for alterations is also usually drafted so as to pass the obligation to obtain any extra insurance, or pay any extra premiums onto the flat owner.

At Astberrys we have great experience of looking at the “alteration” provisions of leases, and are able to advise freeholders appropriately. We have excellent contacts with party wall surveyors, structural engineers, and landlord and tenant solicitors whom we regularly instruct on behalf of freeholders. To talk to us about any alterations to flats in your building or about block management in general, please e mail us at business@astberrys.co.uk or call us at 0207 370 0123.

MARKET UPDATE

SALES

Last year ended on a softer note following the stamp duty changes in the Chancellor's Autumn Statement. However the downward trend, especially in relation to properties selling at £2M or more, established itself earlier in the year. **What does 2015 hold in store?** A number of factors will determine property prices in Kensington and Chelsea

- **The May 2015 election.** Many transactions are on hold. Although an outright Labour majority looks increasingly less likely a leftward leaning coalition of Labour, the rump of the Liberal Democrats and the SNP looks possible. A mansion tax may be a consequence but more likely is a revision to the current system of paying council tax. Nevertheless, even taking into account the new stamp duty regime and an increase in council tax, property in Kensington and Chelsea will

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still be taxed less heavily than in many other places. The real danger is not from property taxes but from the general harm left-wing governments do to economies and currencies, and the negative message that will be communicated to foreign investors, who make up so large a percentage of purchasers in the Borough.

- **Geopolitical events and foreign investment.** Recent developments in Russia and the slow down in China have had only a marginal effect on the prices of most properties. Although trading volumes are lower than at the beginning of 2014. If Russia imposes currency controls, oil continues to fall in price and the economy dips substantially while Chinese and South East Asian growth disappoints then, the pool of available investment money may diminish. Paradoxically, a Tory or right wing coalition in May 2015 might exacerbate the problem. Sterling has already strengthened over the course of the last year and the exchange rate is nothing like as favourable as it has been. However, this trend is more likely to have an impact on European investors, especially if the Euro weakens further.
- **Europe.** The greatest numbers of investors in the Borough are still European and the exchange rate does not favour them at the moment. Their own economies are performing poorly and there are problems with austerity in Greece and the Iberian Peninsular, where anti establishment politics are potentially destabilising. However, true quantitative easing will come sooner or later and some improvement is likely. Part of the money that will be created is likely to be invested in the Borough.
- **The City.** Last year was one of growth. Financial Services may have accounted for 10,000 new employees in the three months to September 2014 and the hiring trend has continued, although numbers are still down on 2008. Overall, according to the ONS, the number of jobs in London increased by 6.1% in 2014. Employment, salaries and bonuses are inextricably connected to house prices and rents within the Borough. There is little to suggest that 2015 will see a downward trend in the fortunes of the City. Any fear of a possible withdrawal from Europe will only start to come into play, if at all, after the May 2015 election and only if there is a Conservative victory or coalition. Labour are not promising a referendum on the issue.

It is probable that the first half of 2015 will be flat with continued small falls at the very top end of the market. Depending on the outcome of the general election and the world economy the second half of 2015 may be more positive. **A conservative majority and improving world economic events are likely to have a significant impact on prices of property above £2M. Over the longer term it is hard to see prices doing anything but increasing in the Borough. There is simply too little supply, even accounting for new and ongoing developments in the Western part of the Borough. We would be surprised if, 5 years from now, prices were not at least 20% higher. The last 5 years has seen growth rates 3 to 4 time that.** And even if you are achieving only a 3 % yield or worse, where else can you safely invest (especially if you are a non-European)?

RENTALS

Invariably inverse to the price of property. As the price is currently softening, especially at the very top end, rents will rise. All the more so bearing in mind a growing economy and an expanding workforce in the City. We expect rents to rise throughout 2015, especially those in excess of £1,000 per week. Small well presented “pod” flats also continue to be in high demand bearing in mind the Borough wide under supply.

Astberrys manage property in Kensington and Chelsea. If you are looking for an agent to manage your block of flats, or to let and look after your property, please contact us by email at business@astberrys.co.uk or by telephone 0207 370 0123.



ASTBERRYS
36a Kenway Rd, London SW5 0RA 0207 370 0123
business@astberrys.co.uk
www.astberrys.co.uk

