

ISSUES CONCERNING RIGHTS OF ELM VILLAGE RESIDENTS

– LEASES AND INHERITANCE

Preliminary note:

(a) This document was drawn up on 12 March 2017 by Edward Lee as material for EVTRA Committee discussions.

(b) It can be forwarded to other residents for information, or in making representations to other bodies, such as Camden Council and PfP.

(c) However, anyone using the document is notified that

(i) details of informants will remain confidential and will not be disclosed

(ii) this document is no substitute for legal advice, since the persons concerned in the preparation are not legally qualified.

1 Leases: general points

1.1 There are clearly differences between the terms of leases for different properties. Resident A moved from a property in which the division was 76% to 24%, to one in which there are four shares available for purchase, each of 25%.

1.2 However, a letter dated 1.3.90 to Resident A from Osbornes Solicitors, who drew up the original leases for Elm Village, speaks of: “the Lease which appears to be in standard form for the whole estate”

2 Inheritance

2.1 It has been pointed out to EVTRA that there may be issues concerning the inheritance of a property.

2.2 At the time of writing this has not been discussed by EVTRA, but it is due to be looked at during the next meeting.

3 Freehold

3.1 Various residents wish to obtain the freehold of their property, and have encountered various issues.

3.2. The former Secretary of EVTRA reports that in the past some residents certainly have obtained the freehold. One such is in Bergholt Mews. In such cases the resident had first bought a 100% share of the property.

3.3 In fact, freehold is only available to those who have a 100% share. This is confirmed by legal advice given to Resident B: “you cannot buy the freehold until such time as you own 100% of the property.”

3.4 It appears that there is a difference between obtaining freehold and lease extension

4 Lease extension

4.1 General position

On 3 March 2017 Mike Edmunds Head of Leaseholders Services, Camden Council, wrote to Cllr Roger Robinson as follows: “Camden does not issue voluntary lease extensions”

4.2 Extension for freeholders

4.2.1 However, freeholders do have statutory rights. In the same letter Mr Edmunds wrote:

4.2.1.1 re flats: “Leaseholders of flats will have a right to claim a statutory lease extension from Camden as a freeholder under the Leasehold Reform Housing and Urban Development Act 1993”.

4.2.1.2 re houses: “Leaseholders of houses will normally have a similar right to a lease extension under the Leasehold Reform Act 1967. However leaseholders of houses will normally claim the freehold rather than seek lease extensions”

4.2.2 Other issues arising

4.2.2.1 Mr Edmunds advises that such applicants will need to arrange (and pay for) their own applications. This is because: “In each case there is a statutory process that the leaseholders must follow. Camden cannot act for leaseholders in a statutory claim against itself. Camden’s duty will be to protect its own interest and the interests of the intermediate landlord”

4.2.2.2 Resident B’s adviser states: ”you must have owned the property outright for 2 years in order to qualify for a statutory lease extension”.

4.2.2.3. Resident B’s adviser clarifies why this option is not stated in the lease: “if the freehold is owned by the Council ...then the lease would not generally say that you can acquire the freehold as it is not the housing association’s freehold to transfer”

4.3 Extension for other residents:

4.3.1 It is therefore clear that residents who have a less than 100% share do not have the statutory right to lease extension and that Camden would not offer this voluntarily. (see 4.1. above)

4.3.2 It is not clear at the time of writing whether, since between them PfP and the sharing owner do have 100%, they could jointly apply for the freehold and/or the extension. Even if this is possible, experience of PfP suggests that they would be resistant to such complications.