



year. It creates a fund that can be drawn on in the event of emergencies. It can put you in a position where you may be able to obtain better value from contractors or suppliers because funding for projects is readily available. It enables you (and future lessees) to understand “where they stand” and what their future occupation costs for the building might be.

BUDGET REPORT

Sometimes a managing agent is able to put together an approximate plan based on their own experience. However these often concentrate on items of day-to-day maintenance as this is often the focus of a managing agent’s duties, and they are not always the best person to advise on

items of major expenditure – particularly building construction or engineering work. More typically a chartered building surveyor or engineer are employed to produce a budget report (often described as a planned maintenance report).

In producing such a report the building surveyor would inspect the building, audit its condition and, based on their experience and expertise, provide advice upon the likely cost of future work and the appropriate timing of such work.

With this information you, or your managing agents can calculate the level of contributions required to the service charge to accumulate the funds that may be required, or at the very least, a contribution to those funds.

Remember work might not only include periodic repair and redecoration of the exterior or to other common parts of the building but may also include longer term requirements such as the replacement roof finishes, new lifts or boilers. Other items included might be work to mature trees, the repair or replacement of boundaries and hard landscaping, and perhaps contingencies for compliance with future legislation.

With some forethought coupled with good professional advice this is one area of service charge administration that need not be a worry.

As Winston Churchill said “Let our advance worrying become advanced thinking and planning”. ■

BUYING THE FREEHOLD OF YOUR BLOCK



Justin Bennett, director at enfranchisement specialist surveying practice Langley Byers Bennett spoke to *News on the Block’s* Editor, Jamie Reid, on some aspects of buying your freehold that you may not have considered.

Q Collective enfranchisement sounds a rather complicated process. Is it?

A Buying your freehold or collective enfranchisement of a block of flats should be fairly straightforward. However, in an ideal world, there would be no need for notices, counter-notices, nor both sides employing surveyors and solicitors when failing to agree premiums, nor determinations by Tribunals, nor the need for Court orders where landlords cannot be found. In an ideal world – a world where leases exist of course – buying your lease extension or freehold would not involve costly proceedings. There would be a willing landlord/ lessor (seller) and a willing tenant/ lessee (buyer). Should

such a world exist there would be neither dispute nor lengthy delays. Commonhold could and should be the answer. However, in this real world the various incarnations of Leasehold Reform law exist.

Q So what should people consider when thinking about this process?

A The reality is that in the *real* world when selling a landlord tries to maximize, and when buying a tenant tries to minimize. It is worth bearing this in mind when deciding whether or not to

Q And what can a landlord do to make leaseholders pay more for the freehold?

A The landlord can try to maximise through various means, by the creation of extra elements to the building such as the conversion of redundant communal plant rooms and ancillary lobbies into extra flats; the construction of extra floors to buildings or conversion of lofts; on a less grand

participate in a collective enfranchisement, as your status will change the moment you and your fellow tenants take control of the freehold and grant yourselves long leases. Post enfranchisement you will be the landlord and any non-participating tenants will be coming to you for lease extensions.





scale cellar rooms/lockers being rented out as additional storage space. These are the most commonly sought areas by landlords and their advisors.

Q Can tenants counter these measures?

A In negotiations relating to a premium this development value, or hope of development, is generally the most robustly defended or denied by tenants' advisors. The terms of leases, a building's construction and issues of planning permission and Building Control are often the main factors in these disputes. Of course, once the freehold is bought, the ease in which these obstacles can be overcome – particularly when all tenants are party to the purchase – varies and the new tenant freeholders may be then able to maximise their freehold.

Q I've heard landlords can also maximise by laying claim to parts of the building?

A When there are headleases and most commonly where there is a caretaker's flat, this can be "contentious" and these types of dispute are very real and current. The cases of *Howard de Walden Estates Ltd. v. Aggio (and others) and Earl Cadogan (and another) v. 26 Cadogan Square Ltd* are illustrations of this. These cases were decided in the last week of June 2008 and related to: whether a head landlord can be a qualifying tenant for a lease extension or as part of an enfranchisement claim, and whether a caretaker's flat or flats can be acquired as part of the claim for the freehold. The House of Lords has allowed the appeal and decided that the qualification criteria is met. No doubt readers of *News on the Block* will be kept posted on the potential fallout of this decision in their next issue.

Q When tenants become freeholders and where there is not 100% participation are they entitled to collect ground rents and income from lease extensions on non-participants flats?

A Yes. Tenants deciding whether to become involved in acquiring a share in their freehold ownership should also consider the value to themselves of the purchase of the shares of non-

participating tenants. As matters stand – until the House of Lords in the case of *Sportelli* decide otherwise (or not as the case may be) participating tenants have the ability to buy in the hope value (proportion of marriage value/ profit) at nil premium.

Q It sounds like the legislation allows for tenants to have a good deal?

A To an extent this is true. In the future when a non-participating tenant comes to the new resident freeholders they will have the opportunity to realise value when selling a lease extension – but this time as a landlord. However they will have initially paid some compensation to the previous landlord for his loss of ground rent income and future value of those flats, so it is not all free money.

Q With regards the valuation process, is there anything else that should be considered?

A There are other areas where value is considered and this relates to appurtenant land such as garages, grounds, drives and gardens. Again the proportion of tenants who participate in buying the freehold will influence the ease in which, post enfranchisement, these areas outside the main building envelope could be developed by the new resident freeholders. The landlord and their advisors, in a forced sale situation, will again look to realise at the point of sale. Circumstances will dictate how readily this can be achieved. Rights and easements may frustrate claims to value but ultimately if a persuasive argument can be presented the gardens and grounds can be sources of creativity.

Q Can you offer some examples?

A A large development in a central location where parking is limited may be prime for some development. Narrowing of border lawns adjacent to parking set at an angle, if altered, may allow for a few extra spaces to be created by head-on parking. Visitors' bays or unallocated bays could be developed. There is case law relating to parts of larger developments where land was retained for future development and fought over –

particularly relating to rights of way.

Q So when tenants become freeholders there are some benefits to this complex issue of appurtenant land?

A Not all appurtenant land is complex. Simple issues such as the installation of a conservatory in a garden may be the easiest way for a group of resident freeholders to maximise their new assets post-enfranchisement.

Q What should tenants and landlords know about the serving of Notice?

A For everyone in the process, full consideration of the property being bought is essential. Proper advice is crucial particularly in relation to value. The preparation of the building and site plan to attach to a Notice itself may be complex so good legal advice is needed.

The plan accompanying a section 13 Notice to buy your freehold must be properly prepared. It is not as simple as drawing a red line around an area. To a lesser or greater extent a Notice should incorporate and show three parts:

1. The premises (the building containing the flats) to be acquired;
2. Any other property (appurtenant land) that is also claimed, this includes private gardens, garages, parking spaces; and also the communal grounds;
3. Finally any land where easements are claimed, such as rights of access over communal roads in larger estates of blocks of flats where only a single building is being bought by the residents.

Accompanying this, a Notice should breakdown the price to be paid for the premises and appurtenant land – exercise caution where there is one or more headleases as then more figures are needed to compensate these interests – your surveyor should advise accordingly on the split of the overall premium. Care should also be taken where there are mandatory leaseback flats, such as where there are local authorities involved. These will also need to be identified.

On the whole, each property is unique, but each property may yield a circumstance where value can potentially be gained, with willing and proper legal and valuation advice. ■