

Joined-up enfranchisement



Justin Bennett of Langley Byers Bennett explains the role of the surveyor when considering the route to enfranchisement.

The chartered surveyor or valuer's role in an enfranchisement can vary. The typical leaseholder when seeking enfranchisement or lease extension advice will generally revert to the conveyancing solicitor who dealt with the purchase of their flat. The solicitor will discuss the legal issues and advise on the process and the implications of serving any Notice. The leaseholder seeking the advice will ask the solicitor to proceed. At that point the solicitor will advise their client that they need a surveyor.

The process and circumstance will vary but the surveyor, in most instances, becomes the project manager of any enfranchisement process. The surveyor is the person who coordinates the various flat owners for access, inspection and hosts the discussion in relation to the price the leaseholders should pay to purchase their freehold.

The surveyor is responsible for identifying the parts of the property that relate to the building and what relates to appurtenant land (such as outbuildings, gardens or garages). Invariably the surveyor will report his findings to the solicitor and the solicitor will then draw up a plan, which will be sent back to the surveyor to confirm.

VERTICAL DIVISION

The surveyor will confirm the vertical division in terraces of flats to ensure that the building can be enfranchised. The solicitor will mark



this to the plan and ask the surveyor to approve it. Essentially the surveyor is involved at all stages.

Once a Notice is served and the landlord obtains his valuation advice from his surveyor, the solicitor has a reduced involvement apart from procedural matters, which, although crucial, do not ultimately effect how much the leaseholder pays.

The solicitor's role is very much as the person responsible for ensuring procedural deadlines are met to ensure that neither the landlord's nor the tenants' Notices are deemed invalid or withdrawn. This role is vital.

Before beginning the process either a solicitor or surveyor will establish how many flats there are and how many tenants will join in; if there are any non-qualifying tenants (those who own three flats or more); how long is left on the leases; and the level of ground rent. Normally a surveyor will prepare the tenancy schedule and a schedule of ground rents. Where there are commercial parts, the surveyor determines if in fact the building qualifies.

Beyond the initial exchange of Notices, the surveyor is actively involved in all elements of the negotiation of the price to be paid.

Once the price is agreed, the surveyor is again involved in the apportionment of any premium amongst the various flats. In certain circumstances this may have already been determined by the participation agreement (the

contract which all leaseholders join up to buy the freehold). The surveyor will have assisted in the preparation of the percentage allocation based on his assessment of value of each flat.

EXPERT ADVICE

In the event of dispute and if the matter goes to a Tribunal, the surveyor often coordinates the expert evidence and in most circumstances will be the sole expert acting on behalf of the leaseholders. The solicitor will prepare the background documents for the Tribunal. A barrister may be employed to advocate at any Tribunal Hearing or the surveyor acts as advocate and expert.

Essentially, the solicitor's role and surveyor's role are distinct. The cost savings however by liaising direct with the surveyor in the first instance as opposed to the solicitor may be substantial.

A competent surveyor has good knowledge of enfranchisement law and is able to advise and recommend a solicitor. However, invariably it is the other way around and a surveyor is recommended by a solicitor.

An opportunity could be lost if the first point of contact is a conveyancing solicitor. Conveyancing solicitors do not always have specialist enfranchisement knowledge and therefore increased costs may be incurred at too early a stage. 🏠