

Committee(s)	Dated:
Barbican Residential Consultation Committee Barbican Residential Committee	27 November 2017 11 December 2017
Subject: Lease Enforcements	Public
Report of: Director of Community & Children's Services	For Decision
Report author: Paul Murtagh Assistant Director Barbican & Property Services	

Summary

The purpose of this report is to raise with Members the issue of lease enforcements for residents on the Barbican Estate and to seek approval from the Committee on how best to take this matter forward.

Recommendations

The Committee is asked to:

1. Consider and discuss the issue of lease enforcements for residents on the Barbican Estate, particularly those specific provisions in the lease outlined in this report.
2. To consider the options outlined in this report on how to proceed with lease enforcements and to agree and approve a preferred option to ensure a consistent and transparent approach that gives officers a formal basis on which to assess individual issues and make decisions.
3. Agree that a further report be brought back to this Committee with officers' proposals for a protocol for the implementation of the Members preferred option for dealing with lease enforcements.

Main Report

Background

1. When signing their lease, leaseholders on the Barbican Estate, as with any other leaseholders, are naturally bound by the specific clauses and conditions contained in the lease. A failure to comply with the conditions of the lease is considered a 'breach' of lease and gives rise to appropriate enforcement action.
2. Whilst the conditions of the lease for residents on the Barbican Estate are explicit, historically, with regard to a number of covenants in the lease, the City has adopted a 'soft' approach to enforcement. The three particular covenants in this case relate to the following:

- Installation of wooden floors;
- Animals;
- Short-term holiday lets.

Installation of wooden floors

3. The installation of wooden floors is not dealt with specifically or explicitly by the Barbican leases. The relevant clauses of the lease that preclude the installation of wooden floors are:
 - Clause 4.5(e) – (the tenant must) “carpet all floors in the premises from wall to wall”;
 - Clause 4.6(e) – (the tenant must not) “insert or drive nails or screws or sink plugs or make any fixing whatsoever to the floors of the premises”.
4. As part of the ‘Landlord’s Approval for Alterations’ letter to leaseholders who have made an application to the City (the landlord) for alterations in their home, leaseholders are reminded that **“The lease for Barbican Estate properties states all floors (except the original kitchen, bathroom and WC) will be carpeted”**. The standard template for the ‘Landlord’s Approval for Alterations’ letter is attached at Appendix ‘A’ to this report.
5. In addition to the above, the Barbican Estate Office (BEO) sends out reminders of the requirement that all floors must be carpeted by way of its regular bulletins. This message is consistently given out to leaseholders by staff when they contact the BEO to discuss alterations and improvements.
6. The use and installation of wooden floors has become increasingly popular in modern homes and, although contrary to the terms of the lease, it is commonly understood that a significant number of residents on the Barbican Estate have installed wooden floors in their homes.
7. Whilst it is true to say that residents who have fitted wooden floors in their homes have done so without the permission of the landlord (the City), it is also true to say that the City has, historically, taken a ‘soft’ approach to enforcing the conditions of the lease (or not as the case may be) in this regard. One of the likely reasons for this is the potential scale of the problem given the significant number of Barbican residents who have, without permission, installed wooden floors in their homes.
8. It is clear from the records that we have and from the experience of longer serving members of staff that the City has only tended to take action against residents who have had wooden floors installed if there is evidence that they are causing a nuisance. Whilst it would seem that this is a reasonable and pragmatic approach that has remained unchallenged for some time, from a legal perspective, it has left the City somewhat exposed.
9. Up until now, in general terms, there appears to have been some inconsistency with the way the City has dealt with this matter even, allowing for the ‘soft’ approach that has been taken. In some cases, for example, in order to be

satisfied that there is a noise nuisance, the City has required evidence in the form of noise monitoring logs and witness statements before taking action. In other cases, action has been taken without any such evidence.

10. We have recently been dealing with a complaint from a Barbican resident relating directly to the installation of wooden floors in the property above. In this particular case, the resident has taken up a formal complaint against the City for non-enforcement of the condition of the lease. The resident has made it very clear that this is not a matter of judgement and he does not accept that it is necessary for him to demonstrate that the wooden floors are causing a nuisance. Although arguing that his family suffer noise nuisance as a result of the wooden floor above, the primary issue for the resident is that the City is not enforcing the conditions of the lease. The resident has now exhausted the City's formal Complaints Process and escalated the matter to the Housing Ombudsman.
11. The advice of the City solicitor is that the long leaseholder who has installed the wooden floor is clearly in breach of the lease specifically, Clause 4 (5) (e), which is the requirement to carpet wall to wall. As such, the City may, if it chooses to do so, issue a Section 146 Notice requiring the leaseholder to remedy the breach within a reasonable time. If the leaseholder does not do so, the City would be able to issue a court claim for the forfeiture of the lease. It is however highly unlikely that the court would forfeit the lease but would, instead, make an order for 'relief from forfeiture on terms' – the terms being that the leaseholder removes the wooden flooring and installs carpets within a certain period of time.

Animals

12. The keeping of animals is dealt with specifically and explicitly by the Barbican lease under Clause 6 of the Sixth Schedule which states that **“the tenant will not keep or suffer to be kept any animal or bird on the premises”**.
13. In a similar way to the issue of wooden floors, the City has for some time taken a 'soft' approach to enforcing the conditions of the lease in this regard. It is again clear from the records that we have and from the experience of longer serving members of staff that the City has only tended to take action against residents who are keeping animals if there is evidence that the animals are causing a nuisance.

Short-term holiday lets

14. The issue of short-term holiday lets is not dealt with specifically or explicitly by the Barbican leases. The City's powers as landlord is included in Clause 4(8) of the standard Barbican long lease which requires tenants to observe the covenants and restrictions in the Sixth Schedule to the lease. The following Sixth Schedule restrictions are relevant to short-term subletting:
 - **“The tenant will not do or allow to be done in or on the premises anything whereby any insurance by the Corporation of the premises or the Building or any part thereof (or any property for the time being owned by the Corporation) may be vitiated or prejudiced nor without the**

consent of the Corporation do or allow to be done anything whereby any additional premium may become payable for the insurance of the premises or the Building or any such other property”.

- **“The tenant will not do or permit or suffer to be done in or upon the premises or any part thereof anything of an illegal or immoral nature or any act matter or thing which in the opinion of the Corporation may be or grow to be or become a danger nuisance or an annoyance to or to the prejudice of the Corporation its tenants or lessees or to the owners lessees or occupiers for the time being of any premises in the neighbourhood”.**
- **“The tenant will not carry on or suffer to be carried on upon the premises any manufacture trade or business whatsoever but will use the premises as a private dwelling in the occupation of one individual only and his or her immediate family. (The City would argue that the use of short-term holiday letting websites is a clear breach of the letter and spirit of this clause. In the event that a court disagreed, the City would look to enforce other Schedule 6 restrictions)”.**

15. The issue of short-term holiday lets has been considered in detail previously by the Barbican Residential Committee (BRC). At its meeting on 14 September 2015, the BRC considered a detailed report on the issue of short-term lets and subsequently approved and endorsed a comprehensive enforcement process. A copy of this report is attached at Appendix ‘B’.
16. This enforcement process has been in place for nearly two years now and seems to have been successful. The issue of short-term holiday lets is now monitored as part of the SLA and forms part of the Key Performance Indicators (KPI’s) that are reported to the BRC on a regular basis.

Conclusions

17. The recent formal complaint relating to the installation of wooden floors has raised concerns with the approach that the City has taken in the past in relation to enforcing the particular conditions of the lease. In the absence of any form of written policy or procedure, the ‘soft’ approach that the City has taken in the past has been called into question and Officers have struggled with being able to justify why the conditions of the lease are not enforced at all times.
18. Whilst it does appear that the City is legally able to decide whether or not to instigate enforcement action for a breach of lease, other than custom and practice, there appears to be no formal process, procedure or policy that sets out how the City will deal with known breaches of lease and the criteria for deciding whether or not to commence enforcement action.
19. Clearly, this is a potentially difficult and sensitive issue particularly, in relation to the installation of wooden floors and the number of Barbican residents who have installed them. It is however important that Members debate this matter and issue clear guidance and instruction to Officers on how to deal with lease enforcements

in future to ensure a consistent and transparent approach and to give officers a formal basis on which to assess individual issues and make decisions.

20. With specific regard to 'short-term holiday lets', it is generally accepted that this matter has been dealt with previously by the BRC and the enforcement process, which has been in place for nearly two years now, has been successful. It is therefore suggested that there is no need for the BRC to consider this matter further at this stage.

Consultation

21. At its meeting on 4 September, the Barbican Residential Consultation Committee (RCC) considered this report and a number of members offered their views on the issue of lease enforcements and the approach that the Corporation should take going forward. All but one of the residents who took part in the discussion spoke in favour of a strict implementation of the lease.
22. Unfortunately, due to a procedural matter, the meeting of the Barbican Residential Committee (BRC) scheduled for 11 September was cancelled. In the absence of this meeting, BRC members were asked to consider the report and submit their views, comments and preferences to the Town Clerk for consideration.
23. It was subsequently agreed that the consultation period for this report would be extended to 9 October to allow consideration by members of the RCC and the BRC and their wider membership including, for example, relevant individual Barbican House Groups.
24. A significant number of responses were received through the consultation process and a collation of all the responses received is included at Appendix 'C' to this report. All the responses received have been considered in the preparation of this report.

Options

Option 1 – Strict Enforcement of the Lease for all Future Cases

25. Under this option, going forward, it is agreed that the Corporation will strictly enforce the relevant clauses in the lease for all future cases brought to its attention.
26. For the avoidance of doubt, if this option is agreed, the Corporation will take no retrospective enforcement action against residents who have, for example, previously installed wooden floors with or without the knowledge of the Corporation.

Option 2 – Formal Adoption of Current Practice for all Future Cases

27. Under this option, the Corporation will effectively decide to use its discretion in enforcing the various restrictive clauses within the lease, endorsing the current 'soft' approach of only taking enforcement action against residents who have 'breached' a particular covenant in the lease and such a breach is causing a 'nuisance' to adjacent residents.
28. Under this particular option, there will be no requirement for the 'affected' party to have to demonstrate to the Corporation that the 'breach' is causing a nuisance. In the case of wooden floors, for example, there will be no requirement for the affected party to complete and submit 'noise monitoring sheets' as has been the case previously.

Option 3 – Strict Enforcement of the Lease in all Cases

29. Under this option, it is agreed that the Corporation will strictly enforce the relevant clauses in the lease for all cases, past, present and future, that are brought to its attention.
30. For the avoidance of doubt, if this option is agreed, the Corporation will take retrospective enforcement action against residents who have, for example, previously installed wooden floors with or without the knowledge of the Corporation.

Other Considerations

Resources

31. Depending on which of the three options members decide upon, there could be significant additional resource implications for the Barbican Estate Office (BEO).
32. Whilst it is understood that the BEO will not be expected to actively 'police' the enforcement of the various covenants in the lease, there will likely be an increased volume of work arising from any of the decisions made by members. This will need to be given careful consideration when further work is done on developing processes and procedures to deliver members preferred option.

Appendices

Appendix 'A' - 'Landlord's Approval for Alterations' Letter

Appendix 'B' - Lease Enforcement Issues Report BRC – 14 September 2015

Appendix 'C' – Consultation Responses

Paul Murtagh, Assistant Director, Barbican & Property Services

T: 020 7332 3015 E: paul.murtagh@cityoflondon.gov.uk